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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TEST.CAS. 75/2015

RAHUL(MINOR)

..... Petitioner

Through: Mr. Rajesh Rai, Advocate

versus

STATE & OTHERS

..... Respondents

Through: None

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Date of Decision: 25th September, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present petition has been filed on behalf of the petitioner by his father and natural guardian, Sh. Surinder Pal under Sections 276 and 278 of the Indian Succession Act, 1925 for grant of letters of administration in respect of Will dated 27th September, 2002 of the deceased Sh. Mam Chand.
2. Since the petitioner-minor in the present case has sued through his father who has no interest adverse to that of the minor-petitioner, the petitioner's father is appointed as the guardian for the minor-petitioner for the present petition.
3. It has been averred in the petition that the petitioner is the grandson of the deceased Sh. Mam Chand, who expired on 01st February, 2009. The deceased is stated to have executed a registered Will dated 27th September

2002, which was duly attested by Capt. S.R. Pal Holkar and Mr. Dharampal Singh. It is stated that the grandfather of the petitioner during his lifetime, executed the said bequeathing 56 sq. yds. out of 226 sq. yds. out of the property bearing no. WB-4, Gali No. 1, Shakarpur, Delhi – 110 092 in his favour.

4. The Will dated 27th September, 2002 executed by the deceased is reproduced hereinbelow:-

“This deed of Will is made at Delhi on this 27 day of September, 2002 by Shri Mamchand S/o late Trikha Ram R/o WB-4, Street No.1, Shakerpur, Delhi-110092 hereinafter called Testator in favour of Rahul minor son of Sri Surendra Pal R/o WB-4, Street No.1, Shakerpur, Delhi 110092 hereinafter called the Testimony.

Life is short God knows it may come to an end. My age is about 57 years. I, therefore, with my free will and consent without any pressure or compulsion from other and in my sound disposing mind make this will as under:-

Whereas the Testator is/was the actual owner and in possession of land measuring 4½ Biswa; 226 sq. yds. out of Khasra No.180 known as plot No.2, in the area of village Shakerpur Abadi, Delhi-110092. The said property purchased by the Testator from Sri Ikram Singh S/o Pt. Kishan R/o Seelampur Shahadra, Delhi vide sale deed dated 9.11.1964 duly registered as document No.10286 Book No.1, volume No.1184 on Page No.181-182 dated 9.11.1964 with the office of Sub Registrar Delhi.

The Testator in the year 2000 had executed a General Power of Attorney in favour of his son Birendra Pal of part of property No.WB-4, area measuring 56 sq. yds. out of 226 sq. yds. on plot No.2 out of Khasra No.180 bounded as:-

East: Property of Satish Pal park facing.

West: Property of Rahul

North: Property of Surender Pal

South: Property of Birendar Pal

The Testator on 7.12.2000 had executed an another General Power of Attorney in favour of his son Satish Pal of part of property No.WB-4, area measuring 56 sq. yds. out of 226 sq. yds. on plot No.2 out of Khasra No.180 bounded as:

East: Property of Satish Pal.

West: Property of Rahul

North: Property of Surender Pal

South: Property of Birender Pal

Thereafter Testator on 7.3.2001 had executed an another General Power of Attorney in favour of his son Surendra Pal of part of property No. No.WB-4, area measuring 56 sq. yds. out of 226 sq. yds. on plot No.2 out of Khasra No.180 bounded as:

East: Property of Satish Pal.

West: Property of Rahul

North: Property of Surendra Pal

South: Property of Birender Pal

The Testator by the present will wants bequeath his own share to his grandson Rahul of part of property no. No.WB-4, area measuring 56 sq. yds. out of 226 sq. yds. on plot No.2 out of Khasra No.180 bounded as:

East: Property of Satish Pal.

West: Property of Rahul

North: Property of Surendra Pal

South: Property of Birender Pal

I do hereby bequeath that after my death the Testimony shall become the absolute owner of the above said property and shall be entitled to sell, mortgage, gift or to transfer the said property in any way without any interference or disturbance from others and my legal heirs i.e. my sons, daughter, wife or any other relatives shall not right or concern with the above said property. If any one raise

any objection against this Will then the same objection shall be considered as null and void before the Court of law and biradari panchayat.

This is my last and final Will and earlier I have not executed any other Will in respect of the said property in favour of any other person.

IN WITNESSES THEREOF: the Testator has signed this Will on this day, month and year first above written.

Witnesses

(Thumb Impression)

Mamchand

*1. Shri Dharampal Singh,
S/o. Shri Khem Chand
R/o. WB-4, Shakarpur
Delhi – 110092*

*2. Capt. S.R. Pal Holkar,
S/o. M.R. Pal Holkar,
R/o. WB-19, Gali No. 1
Shakarpur, Delhi – 92”*

(Thumb Impression)

Testator

5. Notice was issued on the present petition on 04th May, 2016. Citation was also directed to be issued, which came to be published in the English edition of the daily newspaper “The Statesman” and Hindi edition of daily newspaper ‘Jan Satta’.

6. Vide order dated 06th November 2015, the other Class-1 heirs of the deceased namely, respondent no.2 – Sh. Virender Pal, son of the deceased and respondent no.3 – Sh. Satish Pal, son of the deceased were impleaded at the request of the petitioner. Despite service, objections have not been filed by either respondent no.2 or respondent no.3. In fact, none ever appeared

for respondent no. 3. For respondent no. 2, his counsel appeared for a couple of hearings, filed his Vakalatnama. However thereafter despite several opportunities the respondent no. 2 did not appear before this Court.

7. Sh. Surrinder Pal, father and natural guardian of the petitioner, has adduced ex parte evidence by filing his own affidavit which is marked as Ex.PW1/X. It has been stated by the father of the petitioner in his affidavit that the Will was duly executed by the Testator in the presence of the witnesses. It is stated that the Testator expired on 01st February, 2009 leaving behind his last will and testament dated 27th September, 2002. The petitioner has proved the Death Certificate of the Testator as Ex.PW1/10 and the Will of the Testator as Ex. PW1/2.

8. Mr. S.R. Pal Holkar, one of the attesting witnesses has filed his affidavit dated 01st September, 2017. In the said affidavit, he has deposed as under:-

“I S.R.Pal Holkar S/o. Sh. Ram Pal R/o – WB – 19, Street No. – 1, Shakarpur, Delhi-110092 aged about 74 years, do hereby solemnly affirm and state as under:-

- 1. I say that I am the attesting witness to the last Will and testament of testator Sh. Mam Chand which is already marked as Exhibit-PW1/2. I signed Exhibit PW1/2 in presence of late Sh. Mam Chand and on his direction.*
- 2. I say that I was present and saw the testator affixing his signature and thumb impression on Exhibit PW1/2.*
- 3. That Late Mam Chand was my neighbour and was of sound mind at the time of the execution of Exhibit PW1/2.”*

(emphasis supplied)

9. In view of the above, this Court is satisfied that the petitioner has

succeeded in proving that the deceased Sh. Mam Chand had executed the Will dated 27th September, 2002 and the said Will was his last Will and testament. The Court is further of the opinion that the requirements of Section 63 of the Indian Succession Act, 1925 stand satisfied in the present case.

10. Consequently, the present petition is allowed. The letters of administration with a copy of the Will dated 27th September, 2002 annexed thereto is granted in favour of the petitioner, subject to his furnishing the requisite Court fee in terms of the valuation report and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

SEPTEMBER 25, 2017

m/rn

