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

+ TEST.CAS. 80/2015

SMT ASHA RANI GUPTA Petitioner
Through: Mr. Ajay Kumar, Advocate for
Mr. Vishal Garg, Advocate.

versus

STATE THROUGH ITS
CHIEF SECRETARY & ORS Respondents
Through: None

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% Date of Decision: 30th October, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present petition has been filed by the petitioner under Section 276 of the Indian Succession Act for grant of probate in respect of Will dated 28th July, 2014 of the deceased Mr. Rabindranath Gupta.
2. It has been averred in the petition that the petitioner is the wife of the deceased Mr. Rabindranath, who expired on 4th December, 2014. The deceased is stated to have executed a Will dated 28th July, 2014, which was duly attested by Mrs. Parveen Mittal, Mr. Vinod Gupta and Mr. Sunil Gupta. The Will dated 28th July, 2014 is reproduced hereinunder:-

“WILL

THIS IS THE LAST WILL TESTAMENT of me Rabindranath Gupta, s/o Late Shb. Kishan Chand Aggarwal, r/o K-4/19, Model Town, New Delhi-110009, I being desirous of making provisions, as regards my properties specifically mentioned in Schedule A below, after my death, do hereby declare this to be my last Will being in possession of full senses. This will be effective after my death.

I have two sons Sunil Gupta and Vinod Gupta, & a daughter Parveen Mittal. All of them are happily married. I also have a grandson Dhruv Gupta s/o Sunil Gupta, who is yet unmarried. My children have taken full care of me during my lifetime. My wife Asha Rani Gupta also has her independent assets.

I do hereby bequeath the second floor in property bearing number flat No.A-7/2, Vasant Vihar, New Delhi to my son Sunil Gupta. I bequeath the terrace/sky rights in the said property to my son Vinod Gupta.

I bequeath the property bearing number Flat No.105, Mercantile House to my grandson Dhruv Gupta. Further, the balance in my PPF account, other savings and assets along with any accretion in them thereof shall go to Dhruv Gupta.

Provide that out of my balance with M/s Bharat Foils Limited, I bequeath Rs.90,00,000 (Rupees Ninety Lakh Only) to my daughter Parveen Mittal.

I bequeath my shares in M/s Bharat Foils Limited 50% each to Vinod Gupta and Sunil Gupta

I do hereby appoint my wife Asha Rani Gupta executrix to my Will. My wife, so long as she shall be alive will remain executrix to my Will and will take probate of this Will and administer my properties. IN case she does not survive me, my elder son Vinod Gupta will take probate of this Will and I do

hereby appoint him the executor for this purpose.

Be it understood that during my wife's lifetime, my son Vinod Gupta will not be entitled to take probate of the Will and to act as an executor. Be it also mentioned that the executrix or executor, as the case may be, will pay off the costs of the probate proceedings and debts, if any outstanding out of my savings or other assets along with its accretions.

IN WITNESS WHEREOF I do hereunto put my signature on the 20th day of July, 2014.

SCHEDULE A

- 1. Bharat Foils Limited (Delhi): Rs.15,500,00/-*
- 2. Flat No.A-72, Vasant Vihar, Delhi: Rs.3,443,185/-*
- 3. Flat No.105, Mercantile House, Delhi: Rs.535,034.80/-*
- 4. PPF with Bank of India: Rs.209,425/-*
- 5. Balance with Bank of India: Rs.14,065.56/-*
- 6. M/s Govind Ram Kishan Chand: Rs.9,346.30/-*
- 7. K.R. Industries: Rs.49,966/-*
- 8. 158,300 Shares in Bharat Foils Limited:Rs.1,955,005/-*
- 9. Cash: Rs.20,990/-*

The testator knowing the contents of this Will signed it in our presence and we all sign in his presence:

WITNESS:

- 1. PARVEEN MITTAL
W/o Sh.Ashwani Mittal
R/o Shanti Swroop Mittal Marg,
Civil Line Moradabad*
- 2. VINOD GUPTA
S/o Sh.Rabindranath Gupta
R/o K 4/16, Model Town,
Delhi-110009*
- 3. SUNIL GUPTA
S/o Sh.Rabinder Nath Gupta
R/o K4/19 Model Town,
Delhi-110009"*

3. Notice was issued on the present petition on 21st August, 2015. 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 “Navbharat Times”.

4. The respondents who have entered appearance, being respondent no.2 and 3 (sons of the petitioner), respondent no. 4 (daughter of the petitioner) and respondent no. 5 (grandson of the petitioner) have all filed their No-Objection supported by an affidavit. No objections have been received to the Will after publication of the citation.

5. As regards the petitioner, she has adduced evidence by filing her own affidavit. The affidavit tendered by her in evidence is marked as Ex.PW-1/A. It has been stated by the petitioner in her affidavit that the Testator was in a sound disposing mind at the time of signing the Will which was duly executed by him in the presence of the witnesses. It is further stated that the Testator expired on 4th December, 2014 at New Delhi leaving behind his last will and testament dated 25th July, 2014. The petitioner has proved the Death Certificate of the Testator as Ex.PW1/12

6. Mr. Vinod Gupta, one of the attesting witnesses, has filed his affidavit dated 7th November, 2016. In the said affidavit, he has deposed as under:-

“I, the above named deponent, do hereby solemnly affirm and declare as under:

xxx

xxx

xxx

2. That I have attested the last registered WILL dated 25.07.2014 left by the deceased testator Late Shri Rabindra Nath Gupta s/o Late Shri Kailash Chand Aggarwal, r/o K-4/19, Model Town, Delhi-110009 in his presence. The said WIL was duly attested by me in

presence of the other attesting witness namely, Mr. Sunil Gupta and Mrs. Parveen Mittal who had also attested the said WILL in my presence and in presence of the deceased testator.

- 3. That on 26.07.2014, I went to the office of Sub Registrar-VIA, Model Town, New Delhi, along with other attesting witnesses namely Mr. Sunil Gupta and Mrs. Parveen Mittal and the testator.*
- 4. That at the office of the Sub Registrar the deceased testator showed me the WILL dated 25.07.2014 and told me that he wanted to leave his all movable and immovable properties as per the terms and conditions mentioned in the said WILL and further requested me to append my signatures on the WILL as an attesting witness to the same. Mr. Sunil Gupta and Mrs. Parveen Mittal were also there and they were also asked by Late Mr. Ravindra Nath Gupta to sign as the other attesting witness to which they also agreed.*
- 5. That Late Mr. Rabindra Nath Gupta signed the WILL on all three pages of the WILL and these signatures may kindly be marked as point 'A', 'B' and 'C' respectfully.*
- 6. That after the testator appended his signatures on point 'A', 'B' and 'C' then Mrs. Parveen Mittal being one of the attesting witness to the WILL appended her signatures next to her name, in the presence of Late Mr. Rabindra Nath Gupta. Mr. Sunil Gupta and me which may kindly be marked as point "F". Thereafter, I, being the second witness appended my signatures in the presence of Late Mr. Rabindra Nath Gupta. Mr. Sunil Gupta and Mrs. Parveen Mittal which may kindly be marked as point "E". Thereafter, Mr. Sunil Gupta being the third witness appended his signatures in the presence of Late Mr. Rabindra Nath Gupta. Mrs. Parveen Mittal and myself which may kindly be marked as point "F".*

7. *That thereafter, the Sub Registrar got the signatures and finger prints of Late Mr. Rabindra Nath Gupta on the back side of the first page of the WILL and the same may kindly be marked as point 'G' & 'H'. Thereafter, Mrs. Parveen Mittal being one of the attesting Witnesses also signed and put her thumb impression on the said page and the same may be marked as point "I". The same procedure was followed by Mr. Sunil Gupta being the other witness to the Will dated 25.07.2014 and his signatures and thumb impression may kindly be marked as point "J". The photo of Late Mr. Rabindra Nath Gupta was affixed on the WILL on the first page at top which may kindly be marked as point "K".*
8. *That I further state that all of us i.e. Mrs. Parveen Mittal, Mr. Sunil Gupta and myself were present at the time of signing of the WILL dated 25.07.2014 by the deceased testator above named and all of us saw him signing the WILL dated 25.07.2014 and that there upon I, Mrs. Parveen Mittal and Mr. Sunil Gupta at the request of the deceased and in his presence and in the presence of each other all being present at the same time had put our signatures as witnesses thereof.*
9. *That the deceased testator, I, Mrs. Parveen Mittal and Mr. Sunil Gupta all signed the WILL in the presence of each other and in the presence of the Sub Registrar who has registered the said WILL.*
10. *That at the time of the execution of the WILL dated 25.07.2014, the deceased testator was in a sound and disposing mind and was mentally alert, competent, having good memory and understanding to execute and sign the said WILL and to the best of my belief and knowledge, the said WILL dated 25.07.2014 is his last Will made on his own free will and pleasure. The WILL of deceased testator Late Mr. Rabindranath Gupta dated 25.07.2014 is exhibited as Exhibit PW1/1."*

7. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Mr. Rabindranath Gupta had executed the Will dated 25th July, 2014 and the said Will was his last Will and testament. Consequently, the present petition is allowed. The probate in respect of the Will dated 25th July, 2014 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

OCTOBER 30, 2017

m/KA