

\$~10

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

+ TEST.CAS. 9/2016

MAINAK ADHIKARY

..... Petitioner

Through: Mr. Ashim Vachher and Mr. Sumit,
Advs.

Versus

STATE & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

16.03.2018

1. The petitioner seeks probate of a document, dated 28th May, 2015 registered with the office of Sub-Registrar VIII, Delhi/New Delhi as document No.319 in Book No.3, Volume No.1183 at pages 25 to 26 on 30th May, 2015, as the validity executed last Will of Shri Manabendra Adhikary resident of Flat No.D-115, Ila Apartments, Vasundhara Enclave, Delhi-110096.

2. The counsel for the petitioner, on inquiry states that the deceased was the father of the petitioner and the respondent no.2 Monamee Ghoshal and there is no other natural heir of the deceased. On inquiry, it is stated that the petitioner and respondent no. 2 have/had no other siblings and the mother and paternal grandmother of the petitioner and the respondent no.2 had pre-deceased the deceased.

3. The petition was entertained and notice thereof ordered to be issued and citation ordered to be published in the newspaper.

4. None appeared for the respondent no.1 or for the respondent No.2 Monamee Ghosal despite service and the respondent no.2 was proceeded against *ex-parte* on 14th November, 2017.

5. None else appeared or filed objections in pursuance to the citation issued and the petitioner relegated to leading *ex-parte* evidence.

6. The petitioner in his evidence has examined, besides himself, one of the attesting witnesses namely Uttam Viswas to the document claimed to be the Will and the witness to prove the Death Certificate and the witnesses to prove the fixed deposits and monies lying in the bank account of the deceased with Corporation Bank, Vasundhara Enclave, State Bank of India, Delhi University Branch, Oriental Bank of Commerce, Tughlakabad Institutional Area, New Delhi and Standard Chartered Bank, DLF Cyber City, Gurgaon Haryana and closed his *ex-parte* evidence.

7. I have perused the affidavit by way of examination-in-chief of Uttam Viswas, witness to the document claimed to be the Will. Though in the said affidavit, he has deposed that the document dated 28th May, 2015 was signed and executed by Shri Manabendra Adhikary in his presence and in the presence of other attesting witness Ram Narayan Paswan and he himself and the other witness Ram Narayan Paswan had also signed and affixed their thumb impressions in the presence of the deceased and in the presence of each other but the affidavit by way of examination-in-chief otherwise does not refer to the document and/or identify the same save for stating that the same has been proved as Ex.PW-1/1 by the petitioner in his testimony. The

said Uttam Viswas, when he appeared before this Court to tender his affidavit by way of examination-in-chief in evidence, also did not identify the document or his signatures or the signatures of the deceased or the signatures of the other attesting witnesses thereon.

8. If the matter were to be examined technically, the Will has not been proved by the attesting witness and the purported proof of the Will by the petitioner, who is admittedly not an attesting witness, is of no avail. However, taking a lenient view of the matter and finding that the petitioner as well as his sister respondent no.2 are residents of United States of America (USA), it is not deemed appropriate to vex them with the further leading of evidence.

9. The counsel for the petitioner states that he has instructions from the petitioner to undertake to this Court that the petitioner shall keep this Court indemnified against the claim, if any with respect to the estate on the ground of aforesaid technical default.

10. Else, the Death Certificate of the deceased has been issued at Delhi and shows the place of death as All India Institute of Medical Sciences, New Delhi and the deceased to be resident of D-115, Ila Apartments, B-7, Vasundhara Enclave, New Delhi.

11. I may also record that though the petition seeks probate but the petitioner admittedly has not been appointed as the executor under the Will. Only an executor of the Will can seek probate of the Will and the petitioner as beneficiary can only seek Letters of Administration with copy of the Will

annexed. However, the petition having been permitted to proceed, I am overlooking the said lacuna also in the petition.

12. The counsel for the petitioner, on inquiry states that valuation in pursuance to the orders has already been carried out and the report filed before the Court.

13. Treating the petition as one for grant of Letters of Administration with copy of the Will annexed, the petition is allowed and Letters of Administration be issued to the petitioner of the estate of the deceased Manabendra Adhikary, subject matter of the Will aforesaid of the deceased with copy of the Will annexed.

14. Finding that the petitioner is the only beneficiary under the Will and the only other natural heir namely the sister of the petitioner has not chosen to contest the petition, the petitioner is exempted from filing a Surety Bond of a person other than himself.

15. On the petitioner filing Administrative Bond and Surety Bond of the value of the estate, subject matter of the Will and upon the petitioner depositing the requisite stamp duty in this Court, Letters of Administration be ordered to be issued.

16. The petition is disposed of.

17. List for compliance of the formalities before the Joint Registrar on 24th April, 2018.

RAJIV SAHAI ENDLAW, J.

MARCH 16, 2018

bs