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

% **Date of Decision: 08th October, 2018**

+ TEST.CAS. 91/2011

SUNITA VAID

..... Petitioner

Through: Ms.Ankita Vashisht, Advocate

versus

STATE & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has filed this petition for grant of letters of administration with well annexed in respect of the will dated 16th March, 2009 of her father, late Mohinder Kumar Datta.

2. Late Mohinder Kumar Datta expired on 27th February, 2010. The deceased was survived by three daughters and two sons, namely:

- | | | | |
|-------|------------------|---|----------|
| (i) | Sunita Vaid | - | Daughter |
| (ii) | Parveen Randhawa | - | Daughter |
| (iii) | Savina Mehta | - | Daughter |
| (iv) | Ravinder Datta | - | Son |
| (v) | Sanjeev Datta | - | Son |

3. The deceased has left behind the following estate mentioned in Annexure B (Ex.PW1/3):-

- i. PCO Booth, Sector 6, Road No.224, Dwarka, New Delhi, near lawn adjacent to Wall of MTNL Office
- ii. One-Sixth share in house at village Sidhwan Jamita, Tehsil & District Gurdaspur, Punjab.
- iii. One-sixth share in agricultural land measuring 287 canals situated in the Revenue estate of Chakh Deewan, Bhim Sen Dutt, Tehsil Samba, District Jammu, Jammu & Kashmir.

4. Sunita Singh appeared in the witness box as PW-2 to prove the Will. PW-2 deposed that she visited the house of the second witness, Pradeep Mehta on 16th March, 2009 and the deceased read over the Will to her and Mr.Pradeep Mehta and thereafter, the deceased signed the Will and both the witnesses signed the Will in the presence of deceased and in the presence of each other. PW-2 also deposed that the deceased was of sound disposing mind at the time of execution of the Will. The Will has been exhibited as Ex.PW-1/2.

5. The petitioner appeared in the witness box as PW-1 and deposed that deceased was a permanent resident of Delhi at the time of his death and he left behind the estate mentioned in Annexure B (Ex.PW1/3). PW-1 proved the no objection of her sister, Parveen Randhawa as Ex.PW-1/4 and Ex.PW-1/5; no objection of her sister, Savina Mehta as Ex.PW-1/6 and Ex.PW-1/7; and no objection of her brother, Ravinder Datta as Ex.PW-1/8 and Ex.PW-1/9. PW-1 deposed that her brother, Sanjeev Datta has not been heard or

seen for more than last seven years by anybody in the family.

6. On 11th November, 2011, notice of this petition was issued to respondents No.1 to No.4 and the citation was directed to be published in 'The Statesman'. Notice was also issued to the Chief Revenue Controlling Authority to submit the valuation report in respect of the properties mentioned in the Will.

7. Respondents No.2 to No.4 have given their no objection to the Letters of Administration of the Will dated 16th March, 2009 being granted in favour of the petitioner. Respondent No.5 has not been heard or seen for the last seven years by anyone who would naturally have heard of him if he had been alive and, therefore, a presumption of death of respondent No.5 is drawn under Section 108 of the Indian Evidence Act.

8. The citation was duly published in 'The Statesman' and no objections have been received. The valuation report in respect of the properties mentioned in the will has also been received.

9. PW-2 has validly proved the execution of the Will dated 16th March, 2009 by the testatrix and that the testatrix was in sound disposing mind at the time of executing the Will. This Court is satisfied that the Will dated 16th March, 2009 is the true and last Will of late Mohinder Kumar Datta.

10. This Court is not required to go into the question of title of the deceased in respect of the above mentioned properties in these proceedings for letters of administration of the will of the deceased under the Indian Succession Act, 1925. As such, there is no impediment to the issuance of the letters of administration in respect of the will of the deceased.

11. The petition is allowed and the Letters of Administration with Will dated 16th March, 2009 annexed is granted in favour of the petitioner,

subject to the petitioner furnishing the requisite Court fees. Since the petitioner is the only beneficiary, the petitioner is exempted from furnishing of the administration and surety bonds.

12. Copy of this judgment be given *dasti* to counsel for the petitioner under signature of Court Master.

OCTOBER 8, 2018
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J.R.MIDHA, J.

