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

Date of decision: 2nd November, 2018

+ **TEST.CAS. 58/2014**

SHANTA TREHAN & ANR

..... Petitioners

Through: Mr. Sunil Narula & Ms. Isha Thakur,
Advocates (M-9811073767).

versus

THE STATE

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present testamentary case under Section 276 of the Indian Succession Act, 1925 has been filed seeking letters of administration of the last and final Will dated 28th June, 1999 left behind by Ms. Chander Kanta who is the owner of the property bearing no. B-127, Block-A/5B, Janakpuri, New Delhi. She expired on 25th May, 2011. Her death certificate has been exhibited as **Annexure A-1**.

2. She was a divorcee and did not have any children. Her near relatives were her elder sister – Mrs. Shanta Trehan, younger brother – Mr. Ramesh Chander, nephew – Mr. Sunil Nanda and niece – Ms. Veena Paul. During the pendency of the present suit, Mr. Ramesh Chander had expired, and he was survived by his wife and two daughters. His wife has now also expired and his two daughters – Mrs. Seema and Mrs. Neelam Seth are his legal heirs.

3. The Will has been exhibited as Ex. PW -1/1. As per her Will, she has two immovable properties and various movable assets which are as under:

- “i) DDA Built-up Flat No. 127-B, Block-A/5B, Janakpuri, New Delhi-110058.*
- ii) House bearing no.E-13, Sector-39, NOIDA (UP).*
- iii) Bank account No.0133000100363017 in Punjab National Bank, Tropical Buildings, H-22, Connaught Circus, New Delhi;*
- iv) Locker with Punjab National Bank at H-22, Connaught Circus, New Delhi;*
- V) Savings Bank Account No.SB/10593 (424492172) in Indian Bank, Near Chanan Devi Hospital, Janakpuri, New Delhi.*
- vi) Fixed Deposit No.4107000658 for Rs.1,02,030/- in Indian Overseas Bank, Janakpuri, New Delhi*
- vii) Savings Bank Account No.SHB/01/00000677 in Andhra Bank, Janakpuri, New Delhi;*
- viii) Savings Bank Account No.17751 in Indian Overseas Bank, 95/A-52, Janakpuri, New Delhi.”*

The bequest made by her as per the Will is as under:

“I hereby give half share of my DDA Built-up Flat no.127-B Block-A/58, Janak Puri, New Delhi alongwith Noida House AND my Younger brother Shri Ramesh Chander and balance half share of my Noida House bearing No-E-13, Sector 39, and Flat No. B-127, Janak apuri, New Delhi alongwith the half share from fixed Deposits with interest and Jewellery to my elder sister Shrimati Shanta Trehan wife of Shri M.L. Trehan, who shall be owners of the same after my demise.

My other legal heirs will have no rights, title and interest in the same. It is my desire that form my Saving Rs.5,00,000/- (Rs. Five lac only), is to be given to And Mahvidyala, Gole Market, New Delhi, after my demise.”

4. Her further bequest is for donating Rs.5 lakhs to Andh Mahavidyala, Gole Market, New Delhi. The Will is witnessed by two witnesses, namely, Ms. Gurcharan Kaur and Mr. K.K. Gupta, Advocate. In order to prove the Will, the Petitioners have led the evidence of the following persons:

- Ms. Gurcharan Kaur as PW-1;
- Mr. Deshbandhu Gosain – UDC from the Office of Sub-Registrar II - PW-4.

5. The statements of all the witnesses have been recorded. Ms. Gurcharan Kaur has tendered her affidavit in evidence, as have Petitioner Nos. 1 and 2. The Local Commissioner was appointed to make a list of movable assets in the locker, which has also been done. The report of the Local Commissioner – Mr. Kunal Sinha, Advocate dated 30th March, 2015 is also on record. The Court has perused the evidence and statements of the witnesses. There are no objections filed to the grant of the letters of administration.

6. Petitioner No. 1 i.e. Mrs. Shanta Trehan has stated in her affidavit that she and her brother Ramesh Chander were the beneficiaries of the will dated 28th June, 1999 by Ms. Chander Kanta. She has further stated that Ms. Chander Kanta had been a divorcee and had died issue-less. She has mentioned the details of the near relatives of the deceased in paragraph 2 of her affidavit. She deposed that Ms. Chander Kanta had executed her Will on 28th June, 1999 and had kept the same with Petitioner No. 1, however she had lost the second page of the said Will. She stated that as the Will had been registered, the details of the registration were available on the back of the first page and a certified copy of the Will was obtained from the office of the Registrar. The original first page of the Will had been filed along with

the petition. Further, she stated that Ms. Chander Kanta was of a sound state of mind at the time of execution of the Will, and the said Will was her last and final Will. Petitioner No. 1, in paragraph 5 of her affidavit listed the immovable properties and movable assets of which Ms. Chander Kanta was the owner. She submitted that the total value of the immovable properties left by the deceased, to be received by the beneficiaries in accordance with the Will was about Rs. 1 crore. She stated that she, along with her brother had earlier filed TEST CAS. 5/2012 before this Court, however the same had been withdrawn with liberty to file the petition again. Petitioner No. 2, Mr. Ramesh Chander filed his own affidavit to the same effect.

7. Ms. Gurcharan Kaur, PW-1 who is the attesting witness to the Will tendered her evidence by way of affidavit. She confirmed that Ms. Shanta Trehan had put her signature on the Will dated 28th June, 1999 in her presence. She stated that at that time, Ms. Chander Kanta had full knowledge and understanding of the contents of the Will, had read and understood the contents of the Will and had admitted before her the correctness of its contents, and the fact of its being her last Will. She stated that Ms. Chander Kanta had seen her affixing her signatures on the Will. PW-1 further stated that she had seen Mr. K.K. Gupta, the other witness of the will affixing his signatures on it.

8. Mr. Deshbandhu Gosain, UDC in the office of Sub-Registrar II, Basai Dara Pur was examined as PW-4. He stated that he had brought the record of the Will, as also its certified copy, which was exhibited as Ex. PW 4/1.

9. Mrs. Veena Paul, the niece of Ms. Chander Kanta also filed her affidavit. She stated that she had received the notice issued by the Court with regard to issue of probate to the Petitioners, and that she has nothing to

say or urge against the Petition or the Petitioners. She stated that she was aware of the Will wherein she had bequeathed one half of her movable and immovable property and assets to Mr. Ramesh Chander and the other half to Mrs. Shanta Trehan. She stated that she does not claim any right, title or interest in the said properties and had no objection to the grant of probate to the Petitioners. She further stated that she would like to assist if required in any way so that the Petitioners, who are ageing, get their respective shares under the Will. Mr. Sunil P. Nanda, the nephew of Ms. Chander Kanta, also filed his affidavit to the same effect.

10. The court has perused the documents and the evidence on record. The Will has been proved both by the attesting witness as also the official from the Sub-Registrar's office who has confirmed that the same is duly registered. There is no objection from any quarter against grant of probate. Accordingly, the Petition is allowed and letters of administration is granted in respect of Will dated 28th June, 1999 of Ms. Chander Kanta in favour of Petitioners No.1, 2 and 3 as per the amended memo of parties dated 16th April, 2018. The shares of the said three heirs would be as under:

- Mrs. Shanta Trehan – 50%
- Mrs. Seema and Mrs. Neelam Seth – 25% each

11. The Registry is directed to issue letters of administration without seeking any surety of property on the basis of their personal undertakings and affidavit.

12. The petition is disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 02, 2018

Rahul