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

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Date of Decision: 31st October, 2018

+ TEST.CAS. 60/2011 & I.A.12789/2011

23 SUDHA JHANWAR

..... Petitioner

Through: Mr.Ambar Qamaruddin, Mr.Ajay
Talesara, Ms.Simmi Kaur Bagga,
Advocates

versus

STATE & ANR

..... Respondents

Through: Mr. R.Y. Kalia, Mr.S.F. Kalia,
Advocates for respondent No.2

+ TEST.CAS. 51/2012

24 RAJIV KUMAR

..... Petitioner

Through: Mr. R.Y. Kalia, Mr.S.F. Kalia,
Advocates

versus

STATE & ORS

..... Respondents

Through: Mr.Ambar Qamaruddin, Mr.Ajay
Talesara, Ms.Simmi Kaur Bagga,
Advocates for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. Late Shanti Swarup Gupta and Rattan Kumari executed a joint Will dated 21st July, 2002 whereby they bequeathed their estate to their son, Rajiv Kumar and daughter, Sudha Jhanwar. Rattan Kumari expired on 27th August, 2008 and Shanti Swarup Gupta expired on 14th April, 2011.

2. The daughter, Sudha Jhanwar has filed Test. Cas.60/2011 for grant of Letters of Administration in respect of the joint Will dated 21st July, 2002. The son, Rajiv Kumar has filed Test.Cas.51/2012 for grants of Letters of

Administration in respect of the subsequent joint Will dated 08th April, 2008 executed by their parents, late Shanti Swarup Gupta and Rattan Kumari.

3. Rajiv Kumar (petitioner in Test.Cas.51/2012) admits the Will dated 21st July, 2002 but is claiming the Will dated 08th April, 2008 to be the subsequent Will whereas, Sudha Jhanwar (petitioner in Test.Cas.60/2011) is disputing the subsequent Will dated 08th April, 2008 to be forged and fabricated.

4. Both the parties have led their evidence. Vide order dated 19th March, 2015, this Court referred both the Wills for the opinion of CFSL in pursuance to which CFSL submitted their report dated 07th February, 2017.

5. Learned counsel for the petitioner in Test.Cas.60/2011 submits that according to the report of the CFSL, the subsequent Will dated 08th April, 2008 is not a genuine Will which is disputed by learned counsel for the petitioner in Test.Cas.51/2012.

6. Both the parties are present in Court with their respective counsels. Rajiv Kumar (petitioner in Test Cas.51/2012) submits that he has no objection to the joint Will dated 21st July, 2002 being declared as the last Will of his parents and he seeks permission to withdraw Test.Cas.51/2012.

7. Learned counsel for the petitioner in Test.Cas.60/2011 submits that the statement of Rajiv Kumar be recorded on oath so that there is no controversy left relating to the Will dated 08th April, 2008. The statement of Rajiv Kumar has been recorded separately on oath. Rajiv Kumar has stated on oath that without prejudice to his rights and contentions and to put an end to the family dispute, he has no objection to the joint will dated 21st July, 2002 being declared as the last will of his parents. He further stated on oath that he wish to unconditionally withdraw Test Cas.51/2012 and not to seek

any claim on the basis of the will dated 08th April, 2008.

8. In view of the statement made by Rajiv Kumar before this court today, Sudha Jhanwar (petitioner in Test.Cas.60/2011) agrees not to file any case or proceedings against Rajiv Kumar relating to the Will dated 08th April, 2008. The statement of Sudha Jhanwar is taken on record.

9. The Will dated 21st July, 2002 executed by late Shanti Swarup Gupta and Rattan Kumari has been proved by the witness, RW-2 Virender Kumar Goel. In his affidavit by way of evidence, RW-2 has deposed that he was invited by the father of Sudha Jhanwar and Rajiv Kumar to witness the joint will dated 21st July, 2002 and the will was duly signed by RW-2 and the other witness after signing of the joint will dated 21st July, 2002 by the parents of Sudha Jhanwar and Rajiv Kumar. This Court is satisfied that the Will dated 21st July, 2002 is the last Will of late Shanti Swarup Gupta and Rattan Kumari. Rajiv Kumar (petitioner in Test.Cas.51/2012) has not disputed the valid execution of the Will dated 21st July, 2002 and has voluntarily withdrawn the subsequent Will dated 08th April, 2008.

10. The public notice of Test.Cas.60/2011 was issued and no objections have been received.

11. This Court is not required to go into the question of title of the deceased in respect of the 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 dated 21st July, 2002.

12. Test.Cas.51/2012 is dismissed as withdrawn. Test.Cas.60/2011 is allowed and the Letters of Administration with the Will dated 21st July, 2002 annexed of late Shanti Swarup Gupta and Rattan Kumari is granted in favour

of the petitioner in Test.Cas.60/2011, subject to the petitioner furnishing the requisite Court fees and bonds.

13. Rajiv Kumar present in Court undertakes to handover the first floor and servant quarter on the terrace along with 28% land rights of the subject property No. D-6/24, Vasant Vihar, New Delhi to Sudha Jhanwar in terms of the Will dated 21st July, 2002 within one month from today. The undertaking of Rajiv Kumar is hereby accepted.

14. Learned counsels for both the parties submit that the account has to be settled between the parties with respect to the amounts paid by Rajiv Kumar to Sudha Jhanwar and the rent received by Rajiv Kumar in respect of first floor of the subject property which has fallen to the share of Sudha Jhanwar.

15. List before Delhi High Court Mediation and Conciliation Centre on 12th November, 2018 with respect to the settlement of accounts.

16. The Mediation Centre shall appoint a senior mediator to mediate between the parties.

17. In the event of the failure of the mediation, the parties would be at liberty to initiate appropriate legal remedies for the rendition of accounts.

18. Both the petitions are disposed of in the above terms.

19. This Court appreciates the assistance rendered by learned counsel for the parties in this matter.

20. The pending applications are disposed of.

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

OCTOBER 31, 2018/dk

J.R.MIDHA, J.

Test.Cas.60/2011 & Test Case.51/2012

**Statement of Mr.Rajiv Kumar, S/o Late Sh. S.S. Gupta, Aged 47 years,
R/o 444, Sector A, Pocket-C, Vasant Kunj, New Delhi on S.A.:**

Without prejudice to my rights and contentions and with a view to put an end to the family dispute I have no objection to the Will dated 21st July, 2002 of my parents late Mr.Shanti Swaroop Gupta and Mrs.Ratan Kumari to be declared as their last Will. I seek permission to unconditionally withdraw Test Case.51/2012. I undertake not to seek any claim on the basis of the Will dated 08th April, 2008. I further undertake not to file any further proceedings relating to the Will dated 08th April, 2008. I have no objection to the grant of Letters of Administration in respect of Will dated 21st July, 2002 of my parents.

RO&AC

**J.R. MIDHA, J.
31.10.2018**