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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS.19/2015

MISS RAJ ZUTSHI

..... Petitioner

Through: Ms.Aachal Aggarwal, Advocate

versus

STATE & ORS.

..... Respondents

Through: None

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Date of Decision: 26th July, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Today in Court, learned counsel for petitioner has handed over a certified copy of the valuation report of Kasauli property Himachal Pradesh. The same is taken on record.
2. It is pertinent to mention that the 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 21st January, 2011 of the deceased Shri Makhan Lal Zutshi.
3. It has been averred in the petition that the petitioner is the executor of the Will dated 21st January, 2011 and the sister of the testator Shri Makhan Lal Zutshi, who expired on 24th June, 2011. The deceased is stated to have

executed a Will dated 21st January, 2011, which was duly attested by Shri M.K. Kaul and Shri Bhajan Singh. The Will dated 21st January, 2011 is reproduced hereinunder:-

“WILL

This is the LAST WILL and TESTAMENT executed at New Delhi on this 21st day January 2011 by me Makhan Lal Zutshi S/o Shri Prem Nath Zutshi R/o A-59 Defence Colony, New Delhi, hindu out of my own free will and in a full disposing state of mind without any coercion, undue influence from anybody.

I am now aged about 71 years old and I am anxious that after my life time all my properties whether movable or immovable and my interest in the business concern belonging to me should devolve smoothly according to my desires set out in this Will so that there may not be any complications.

I acquired properties more fully described in the schedule hereunder from my brother namely Late Wing Commander A.N. Zutshi. Though his last and final Will dated 10.08.1990 & probate was also granted by the Hon'ble court of Shri S.N. Dhingra, Ld. District Judge Delhi (as His Lordship then was) on 07.01.2006 in my favour and since then the said properties have been in my exclusive enjoyment and I have been enjoying without any interruption from anybody.

I give, devise and bequeath the movable and immovable properties more fully described in the annexed schedule "A" herewith to my sister Miss Raj Zutshi Aged about 62 years who is a spinster (unmarried) & is residing with my another brother Shri Nanaji Jotshi who is aged about 67 years and is also unmarried at F-88 Green Park Main New Delhi-16. My brother is a care free person and is simpleton therefore I do not bequeath anything in his favour but expect that my sister Miss Raj Zutshi shall take good care of him and she will be the exclusive owner of all my properties mentioned in Schedule "A" and the said Miss Raj Zutshi shall be the absolute owner of all

the properties after my life time.

I appoint my sister Miss Raj Zutshi as the Executor of this Will.

This Will shall come into effect after my death.

I reserve my right to alter or revoke this Will.

Thus I have executed this Will as set out above out of my own free Will and with a full disposing state of mind.

Signed by the TESTATOR and acknowledged by him to be his last Will and Testament in the presence of both of us being present at the same time, who at his request, in his presence and in the presence of each other, have subscribed our signatures as witnesses.

TESTATOR
(M.L. ZUTSHI)

WITNESSES:

Sd/-

1. Sh. M.K. Kaul

S/o Sh. R.N. Kaul

*R/o C-42, P:amposh Enclave
GK-1, New Delhi-110048*

Sd/-

2. Sh. Bhajan Singh

S/o Sh. Bhagat Singh

*R/o 210/1 Neb Sarai,
Anupam Garden,
New Delhi-110068"*

3. It is stated that the deceased has left behind five legal heirs, i.e. one petitioner-sister, respondent Nos.2 and 5-two nephews, respondent Nos.3 and 4- two nieces and respondent No.6- brother.

4. Notice was issued on the present petition on 23rd March, 2015. Citations were 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 “Veer Arjun”.

5. No objection has been received to the Will after publication of the citations. Notices were duly served on the State and the other respondents. Valuation reports are on record.

6. Since none appeared for Respondent nos. 2 to 4 and 6, despite service, they were proceeded *ex-parte* vide order dated 09th August, 2017. Respondent No. 5 has filed a letter dated 11th September, 2017 giving his no objection to the probate.

7. Miss Raj Zutshi, the sister of the deceased has filed an affidavit by way of evidence and the said affidavit has been marked as Ex.PW1/X. It has been stated by the petitioner that she is the executor and sole beneficiary of the Will which was duly executed by the Testator in the presence of the witnesses. It is further stated that the Testator expired on 24th June, 2016 at New Delhi leaving behind his last will and testament dated 21st January, 2011. The petitioner has proved the death certificate of the Testator as Ex.PW1/2.

8. Shri M.K. Kaul, attesting witness has filed his affidavit dated 15th November, 2016. In the said affidavit, he has deposed as under:-

"1. I am one of the attesting witnesses of the last Will and testament of Late Shri Makhan Lal Zutshi.

2. I say that I was present on 21.01.2011 at A-59, Defence Colony, New Delhi along with another attesting witness Shri Bhajan Singh and the testator Shri Makhan Lal Zutshi. All of us signed the Will in the presence of each other and I saw myself Shri Makhan Lal Zutshi affixing his hand and his signature to the said Will on 21.01.2011.

3. I say that I have also signed the present Probate Petition as one of the attesting witnesses to the Will and have gone

through the contents of the petition which are true and correct to my knowledge.

4. That in view of the fact that no objections have been filed by anyone there is no impediment in grant of the probate in favour of the Petitioner."

9. In view of the above, the Court is satisfied that the petitioner has succeeded in proving that the deceased Shri Makahan Lal Zuthshi, had executed the Will dated 21st January, 2011 and the said Will was his last Will and testament.

10. Consequently, the present petition is allowed. The probate in respect of the Will dated 21st January, 2011 of deceased Shri Makahan Lal Zuthshi annexed thereto is granted in favour of the petitioner, subject to her furnishing the requisite Court fee in terms of the latest valuation reports and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

JULY 26, 2018

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