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

+ TEST.CAS. 63/2012

ANURADHA KUMAR

..... Petitioner

Through: Mr. Arun Dhiman and Ms. Swati
Sharma, Advs.

versus

GAUTAM KUMAR & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.05.2018

1. The petition seeks probate of the document dated 14th March, 2012 stated to be validly executed last Will of Mrs. Praveen Prasad, w/o Shri Sukhdev Prasad, r/o 481, Sector-A, Pocket-C, Vasant Kunaj, New Delhi – 110 070 who is stated to have died at Delhi on 29th July, 2012.
2. The petition was entertained and notice to close relatives of deceased disclosed in the petition and citation thereof ordered to be issued.
3. On 22nd July, 2013, the respondent no.2 Neeraj Kumar appeared in person and stated that he wanted to make a statement and which statement was recorded. The respondent no.2 Neeraj Kumar in his statement stated that he had no objection to the prayer in the petition being allowed and the petitioner being declared entitled to 1/3rd share of the estate of the deceased mother.
4. Similarly, on 18th March, 2014 the Advocate for respondent no.1 Gautam Kumar appeared before this Court and stated that the respondent no.1 Gautam Kumar had no objection to the prayer in the petition being allowed. However, since the *Vakalatnama* of the Advocate was not on

record, the matter was adjourned.

5. Thereafter the Advocate who had earlier appeared for the respondent no.1 Gautam Kumar did not appear and no *Vakalatnama* also was filed but vide order dated 30th April, 2014 it was recorded that there is no opposition to the Will and the petitioner was directed to file evidence.

6. The petitioner examined herself and closed her evidence. However vide order dated 29th May, 2014 the petitioner was given an opportunity to examine an attesting witness to the document claimed to be the Will. The petitioner thereafter, on 21st November, 2016, examined Surinder Kumar in proof of the Will proved as Ex. PW1/2.

7. Having gone through Ex. PW1/2, of which probate is sought and not finding the petitioner to have been appointed as the Executor therein, I have enquired from the counsel for the petitioner as to how the petitioner is entitled to seek probate.

8. The counsel for the petitioner states that since there is no objection, probate may be granted.

9. Merely because the respondents have chosen not to contest the petition, does not entitle the petitioner to a relief which the petitioner is not entitled to in law.

10. The counsel for the petitioner then states that this petition was filed by him six years ago.

11. However, the position remains the same today also. The counsel is unable to state as to whether a person, not appointed as Executor, is entitled to apply for probate. Attention of the counsel for the petitioner has been drawn to Section 222 of the Indian Succession Act, 1925 which provides for

probate to be granted only to the named executor in the Will.

12. However, instead of rejecting the petition for the flaw aforesaid, for the reason that this Court also has entertained the petition, it is deemed appropriate to now treat the petition as one for grant of Letters of Administration with copy of the Will annexed, under Section 228 of the Succession Act. The counsel for the petitioner is however cautioned to be careful in future.

13. I am satisfied that the petitioner, on the basis of unrebutted evidence has been able to prove that the document on which Exhibit PW1/2 has been put, is the validly executed last Will of deceased Mrs. Praveen Prasad. It is also unrebutted that the deceased was a Hindu and was an ordinary resident of Delhi and the demise of the deceased had also been proved by her Death Certificate Exhibit PW1/1.

14. The petition is thus allowed.

15. Letters of Administration with Ex. PW1/2 annexed thereto is ordered to be granted to the petitioner of the estate of the deceased Mr. Praveen Prasad mentioned in the Will Exhibit PW1/2, upon the petitioner depositing the requisite stamp duty as per the valuation effected of the property and upon the petitioner furnishing administration bond in the amount of the said valuation with one surety in the like amount.

16. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

MAY 11, 2018

‘pp/gsr’..