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

+ TEST.CAS. 67/2016

PRITIPAL SIDHU

..... Petitioner

Through: Mr. Puneet Khurana, Adv.

Versus

THE STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW****ORDER**

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29.10.2018

1. This petition under Section 276 of the Indian Succession Act, 1925 seeks probate of a document dated 2nd January, 2016 claimed to be the validly executed last Will of Mohinder Singh Sidhu son of Sant Singh resident of B-11, Mother Apartment, Sector-5, Dwarka, New Delhi who is stated to have died on 6th February, 2016 at Fortis Flt Lt. Rajan Dhall Hospital, Pocket-1, Aruna Asaf Ali Marg, Sector-B, Vasant Kunj, New Delhi.

2. The petition was entertained and notice thereof ordered to be issued to the respondent No.2 Kulvinder Sidhu and citation ordered to be published in Statesman (English Edition) and Dainik Jagran (Hindi Edition) newspapers.

3. The petitioner, in the petition had given the address of respondent No.2 Kulvinder Sidhu, of 3384, Sector-23, Gurgaon, Haryana. However, it was stated in the petition itself that the respondent No.2, being the son of the

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deceased Mohinder Singh Sidhu, at the time he was disowned by the deceased Mohinder Singh Sidhu, was residing at the said address and thereafter the whereabouts of the respondent No.2 were not known to the petitioner. The respondent No.2 could not be served by ordinary process and was ordered to be served by publication. The order dated 8th March, 2018 records that the respondent No.2 had been so served. None appeared for the respondent No.2 and vide order dated 20th July, 2018, the respondent No.2 was proceeded against *ex-parte*.

4. Though there is no order recording that citation ordered to be issued had been affected but the Court Master on enquiry states that it is recorded in the noting file that citation had been so affected.

5. The petitioner was relegated to *ex-parte* evidence and has in *ex-parte* evidence, besides himself, examined one Adesh Kumar, both of whom have tendered their affidavits by way of examination-in-chief in evidence.

6. The counsel for the petitioner has been heard.

7. It is the unrebutted testimony of the petitioner that (i) the deceased Mohinder Singh Sidhu was his father; (ii) that the deceased Mohinder Singh Sidhu died on 6th February, 2016; the Death Certificate of the deceased Mohinder Singh Sidhu has been proved as Ex.PW1/E; (iii) that the mother of the petitioner namely Smt. Nirmal Sidhu had pre-deceased the deceased Mohinder Singh Sidhu on 30th September, 2010; her Death Certificate is Ex.PW1/A; (iv) that the deceased Mohinder Singh Sidhu had only two children namely the petitioner and the respondent No.2 Kulvinder Sidhu and no other children; and, (v) that the deceased Mohinder Singh Sidhu, at the time of his death as well as at the time of executing the document claimed to

be the Will, was in a sound disposing mind.

8. Adesh Kumar examined as PW-2 had deposed (a) that he knew the deceased Mohinder Singh Sidhu for long; (b) that the deceased Mohinder Singh Sidhu in his presence had executed the Will on 2nd January, 2016; (c) that he was present at the time of execution of the Will and had seen the deceased signing the Will; (d) that he also signed the Will as an attesting witness in the presence of the deceased Mohinder Singh Sidhu; (e) that the deceased Mohinder Singh Sidhu at the time of making the Will was in a sound disposing mind. The Will has been proved as Ex.PW1/B.

9. However, a perusal of Ex.PW-1/B sought to be proved as Will shows the same to be attested by only one attesting witness i.e. Adesh Kumar aforesaid.

10. Section 63 of the India Succession Act mandates the Will to be attested by two or more attesting witnesses.

11. The document thus does not qualify as a Will.

12. The counsel for petitioner states that "the deceased, at the time of executing the Will, did not know that he will die soon thereafter".

13. What rather appears is that the petitioner and his counsel did not know the requirement of Section 63 supra.

14. The petition is misconceived and ought not to have been entertained and ought to have been rejected when came up for admission.

15. Dismissed.

RAJIV SAHAI ENDLAW, J.

OCTOBER 29, 2018

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