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

+ TEST.CAS. 81/2013

SHRI ARUN KUMAR MANOCHA Petitioner
Through: Mr. Abhishek Paruthi, Advocate

Versus

STATE & ORS Respondents
Through: Mr. Rupesh Sharma, Advocate for
respondent No.4.

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Reserved on: 07th February, 2018
Date of Decision: 19th February, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. 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 December, 2009 of the deceased Shri. Kasturi Lal Manocha.
2. It has been averred in the petition that the petitioner is the son of the testator Shri Kasturi Lal Manocha, who expired on 12th November, 2012. The deceased is stated to have executed a Will dated 21st December, 2009, which was duly attested by Shri Ashok Kumar Sharma and Shri Yograj Chawla. The Will dated 21st December, 2009 is reproduced hereinunder:-

“I KASTURI LAL MANOCHA aged about 84 years, son of Late Shri Munshi Ram Manocha, R/o A-128, Shivalik Colony, New

Delhi-110017, hereby revoke my previous Will and Testament (if any) and make this Will at New Delhi, on this 21st day of December, 2009, to be my last Will.

Whereas I am possessed of considerable movable and immovable properties, which are my self acquired and which were acquired without any detriment to the ancestral property or to the family funds and thus I have absolute power of disposal over the same.

And whereas I am anxious to make necessary arrangements in respect of the ownership and enjoyment of all my properties, moveable and immovable, after my life time so that unnecessary misunderstanding and consequential wasteful disputes and differences between the members of my family may be avoided. Therefore, I am executing this last Will and Testament of mine of my own free and sweet volition voluntarily without any compulsion or pressure of any kind or from any one as also with a sound disposing mind, while enjoying good health.

And whereas till I am alive, I shall be the sole owner of all my properties (held, owned and enjoyed by me) and I shall have the absolute power to dispose of the same in any manner, I may feel proper. My Will shall take effect and acted upon only after my death.

And whereas the properties, both moveable and immovable, which I own and possess at present are as under:

- i) I am the co/joint and in join possession of the built-up House/Property bearing No.A-128, comprising of Basement, Ground Floor, First Floor and Second Floor, erected on a Plot admeasuring about 208 sq. yds., situated at Shivalik Colony, New Delhi, to the extent of half (50%) undivided share. Another half (50%) undivided share is owned and possessed by my younger son Mr.Arun Kumar Manocha.*
- ii) I am running a business/shop of Sarees and Shawls in the name and style of "Manocha Saree Centre" at 5/38, WEA*

Karol Bagh, New Delhi, which is seized and possessed by me being lawful statutory tenant. The entire business, capital, assets as well as stock-in-trade in the shop/business belongs to the firm "M/s Manocha Saree Centre" which is a partnership concern and in which my self and my son Shri Arun Kumar Manocha are the partners having 50% share each.

iii) I have following Bank Accounts:

- A. Saving Accounts with Syndicate Bank, Bank of Maharashtra and State Bank of India.*
- B. Fixed Deposit with State Bank of India and Bank of Maharashtra.*
- C. PPF Account with State Bank of India.*

And Whereas I have two sons, namely 1) Shri Ashwani Kumar Manocha and 2) Shri Arun Kumar Manocha and three daughters namely, 1) Mrs.Lalita Bhatiani wife of Shri Balvinder Kumar Bhatiani, 2) Mrs.Savita Khanna wife of Shri Vinod Kumar Khanna and 3) Mrs. Sudha Narang wife of Shri Sudhir Kumar Narang who are jointly entitled to succeed to my properties under the law of succession in the normal course.

And whereas I had already given to my elder son Shri Ashwani Kumar Manocha, who has already taken his share in all my properties at the time of settlement arrived at in Suit entitled Kasturi Lal Manocha Vs. Ashwani Kumar Manocha and recorded in the Court on 31.05.2004 in the Court of Shri Babu Lal, ADJ, Delhi. Therefore, he is left with no rights, interests, share or lien in my moveable and immovable properties including aforesaid shop and business. My daughter Mrs. Lalita Bhutani had also taken a loan of Rs.8,00,000/- (Rupees Eight Lac only) from me.

I hereby bequeath and devise my movable and immovable properties, assets and other effects in the following manner, effective only after my death, absolutely and forever and without any objections of any of my heirs.

1. *I bequeath all my rights, interest, share (50% undivided share) and title in the above mentioned built-up house/property bearing NO.A-128, comprising of Basement, Ground Floor, First Floor and Second Floor, erected on a Plot admeasuring about 208 sq. yds., situated at Shivalik Colony, New Delhi to my grandson Mr. Nitin Manocha son of Shri Arun Kumar Manocha, to the exclusion of my other legal heirs absolutely to be held and enjoyed by him, will full and absolute powers of alienation. He shall have the absolute power to use and enjoy the same as absolute owner and to sell and transfer the same.*

2. *I bequeath all my rights and interests in the tenancy of above mentioned shop at 5/38, WEA Karol Bagh, New Delhi and entire business and goodwill of "Manocha Saree Centre", together with all its business, capital, assets, stock-in-trade, incomes and proceeds as well as liabilities to my younger son Shri Arun Kumar Manocha, absolutely and forever, to the exclusion of my other legal heirs, with full and absolute powers of alienation. He shall have the absolute rights to have and to hold the said shop and its business together with whatsoever belonging thereto and income accrued therefrom.*

3. *As regards to my Daughters, I have given lot of gifts and other assets including cash and jewellery in their marriages and there after on several occasions. However, I hereby bequeath and devise all my monies deposited and/or found (at the time of my death) in the saving accounts, fixed deposits and PPF account with the above mentioned Banks to all my three daughters in equal shares, but the amount of Rs.8,00,000/- (Rupees Eight Lac only) already given to Mrs. Lalita Bhatiani shall be deducted from her share and disbursed to my other two daughters equally. All my three daughters shall have no right, interest and share in my aforementioned immovable property, shop and business.*

Till I alive, I will be the sole owner of every thing and I will remain in possession of the aforesaid movable and immovable properties/assets. This Will will take effect only after my death.

This is my last and final Will regarding all my movables and immovables properties/assets.

I hereby appoint my younger son Shri Arun Kumar Manocha to be the sole executor of this Will.

That the contents of this Will have been explained to me which I have understood and are correct.

Any objection raised by any of my legal heirs shall deemed to be null, void and in-effective.

In witness where of I have executed this Will, voluntarily, without any outside pressure and in my full senses in the presence of the following witnesses.

*Sd/-
TESTATOR
(KASTURI LAL MANOCHA)*

We the marginal witnesses have signed this Will on the request of the Testator, who has also signed this Will in our presence after understanding the contents of this Will and as such we each of us have signed this Will in the presence of each other at the place, day, month and year as first above written.

Witnesses:

- 1. Ashok Kumar Sharma
S/o M.R.Sharma
R/o 121/13, Govind Puri, N.D
D/L No.97080373*
- 2. Yograj Chawla S/o Gopal Das
R/o 80/77B-Block-80, Malviya Nagar
N.D., Voter ID TZD 0890541*

*Sd/-
TESTATOR
(KASTURI LAL MANOCHA)”*

3. It is stated that the deceased has left behind five legal heirs, i.e. two sons, Petitioner and Respondent No. 2 and three daughters, Respondent nos. 3 to 5.

4. Notice was issued on the present petition on 13th November, 2013. 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. Despite appearance, no objections have been filed by Respondent no.2. Valuation report has been filed by the state.

6. The Respondent nos. 3 to 5 (daughters of the deceased) filed identical objections. The mains objections were: (a) the property of the deceased is ancestral property (b) the property of the deceased was of HUF (c) an oral partition during the life time of the deceased and (d) the will was not the product of the deceased’s mind and was brought about by coercion.

7. Vide order dated 09th October, 2014, the following issues were framed in the present petition:-

(1) *Whether the Will dated 21.12.2009 is the last lawful and valid Will executed by Shri K.L. Manocha? OPP*

(2) *Relief*

8. Respondent Nos.1 and 2 did not lead any evidence. Since Respondent nos. 4 and 5 did not appear and failed to lead any evidence, their right to lead evidence was closed vide order dated 03rd March, 2017. Vide order dated 7th February, 2018, respondent no. 4's application seeking permission to file evidence was dismissed.

9. Respondent No.3 filed her evidence by way of affidavit dated 07th October, 2016 and was partly cross-examined on 19th May, 2017. However,

since respondent no. 3 did not appear for further cross-examination despite various opportunities, her right to lead evidence was closed vide order dated 12th December, 2017. Consequently her evidence is irrelevant and the respondents have failed to prove that the property in question was either ancestral or HUF. Further, the allegation of coercion or oral partition during the lifetime of the deceased has not been proved.

10. Petitioner adduced evidence by filing the affidavit which is marked as Ex.PW-1/A. The petitioner deposed that the deceased actively participated in his business till October 2012 and handled accounts which he wrote in his own hand, made pay-in-slips and signed the balance sheets and other tax returns. He further stated that the deceased took major decisions of the business, that the sisters of the petitioner frequently visited them and Ms. Lalita Bhatiyani (Respondent no. 3) frequently came and stayed with the family. It was also stated that Ms. Lalita Bhatiyani (Respondent no. 3) in her legal notice dated 19th June, 2013 asserted that she *“used to stay with her father in his house...to help and serve her ailing father more so after the demise of her mother...”* The said legal notice dated 19th June, 2013 is marked as Ex. DW1/D.

11. In cross-examination, the PW1 reiterated that *“My father was healthy before his death. It is wrong to suggest that he was not coming to the shop for about 2-3 years before his death...It is wrong to suggest that the will Ex. PW2/1 has been executed by our father under duress and threat.”*

12. No further cross-examination on Issue No. 1 was conducted.

13. Shri Yograj Chawla, one of the attesting witnesses, appeared as PW2 and filed his affidavit dated 28th November, 2014. In his affidavit, he deposed as under:-

1. Shri Kasturi Lal Manocha was my Mausa jji. We were on good family terms. We usually discussed our family matters with each other. I had helped Shri Kasturi Lal Manocha in the sale of Soami Nagar house and purchase of Shivalik Property.
2. Sometime in December 2009, Shri Kasturi Lal Manocha called me to his residence. I went to meet him. He told me that he wanted to make his will. I was aware that the Shivalik property was purchased jointly by Shri Kasturi Lal Manocha and Shri Arun Kumar Manocha. Shri Kasturi Lal Manocha wanted to leave his share in the Shivalik Property to his grandson Nitin Manocha. I agreed with the idea.
3. Shri Kasturi Lal Manocha again called me sometime in the end of December 2009 and said that he got his will prepared and requested me to come to his house in the next morning. He told me that I will have to go with him to the office of Sub Registrar for execution of the will.
4. Accordingly, I reached the Shivalik Residence of Shri Kasturi Lal Manocha on the next morning. I along with Shri Kasturi Lal Manocha went to the office of Sub-Registrar at Mehrauli.
5. Outside the office of the Sub-Registrar, Shri Kasturi Lal Manocha introduced me with his counsel Shri Sachdeva. Shri Sachdeva delivered a typed copy of the will of Shri Kasturi Lal Manocha. Shri Kasturi Lal Manocha signed the will in my presence. Shri Sachdeva had a gentleman with him Shri Ashok Kumar Sharma. Shri Ashok Kumar Sharma then signed the will. Thereafter Mr. Manocha requested me to sign his will as a witness. On his request, I signed the will as a witness.
6. Shri Sachdeva deposited the will with some employee. Our signatures were also taken on the back of the will. Our thumb impressions were also got affixed on the backside of the will. The staff took a photo of Shri Kasturi Lal Manocha and another photo of myself with Shri Ashok Kumar Sharma.
7. After some time, we were called to the Sub-Registrar. The Sub-Registrar asked Mr. Kasturi Lal Manocha if it was his

will and was prepared as per his instructions. Shri Manocha affirmed that it was his will and was made as per his instructions. The Sub-Registrar then asked for a witness and confirmed our identity.

8. *Thereafter, Shri Sachdeva told us that our job has been done and we came back.*

(emphasis supplied)

14. In cross-examination, PW2 confirmed, "*my signatures on the Will Ex.PW2/1 are at Point 'A' on page 3. I signed the Will at the instance of late Shri Kasturi Lal. I signed the Will at Mehrauli. It is wrong to suggest that late Shri Kasturi Lal did not sign the Will in my presence*".

15. PW3 Shri Ashok Kumar Sharma from the office of Sub-Registrar IV, Mehrauli proved the registration of the Will marked as Ex.PW2/1.

16. In the opinion of this Court, the Will dated 21st December, 2009, marked as Ex.PW2/1 complies with the requirements of Section 63 of the Indian Succession Act, 1925. It has been duly signed by the deceased and his signatures are so placed that it is clear that it was intended thereby to give effect to the writing of the Will. The Will dated 21st December, 2009 has been attested by two witnesses. As per evidence of PW2 dated 28th November 2014, each of them had seen the deceased signing the Will in their presence and each of the witnesses has signed the Will in the presence of the deceased. There is no evidence whatsoever that the Testator did not have the capacity or that he made his Will under any duress or coercion.

17. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Shri Kasturi Lal Manocha had executed the Will dated 21st December, 2009 in good health and the said Will was his last Will and testament.

18. Consequently, the present petition is allowed. The probate in respect of the Will dated 21st December, 2009 annexed thereto is granted in favour of the petitioner, subject to his furnishing the requisite Court fee in terms of the valuation report and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

FEBRUARY 19, 2018

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