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

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Date of Decision: 12.07.2018

+ TEST.CAS. 24/2017

SMT. SUNITA JAIN

..... Petitioner

Through

Mr. Ankit Gupta, Advocate

versus

THE STATE

..... Respondent

Through

None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The petitioner filed this present petition under section 278 of the Indian Succession Act for grant of letter of administration with respect to the estate left behind by the deceased Late Shri Anil Kumar Jain (*hereinafter referred to as "the deceased"*).
2. Brief facts leading to this petition are that the deceased died intestate on 17.03.2017 and is survived by his wife i.e. the petitioner and two sons, namely, Anurag Jain and Devanshu Jain.
3. It is stated that the deceased was the owner of the property being no. 5, Arihant Nagar, Village Madipur, Near Punjabi Bagh, Rotak Road, New Delhi-110026 (measuring 225.55 sq. yards)(*hereinafter referred to as "the said property"*).
4. A perusal of the petition shows that the said property was originally

allotted to Sh. Vakil Chand Jain i.e. father of the deceased, vide perpetual sub-lease deed dated 17.05.1983 by Delhi Development Authority in the layout of Vardhman Co-operative House Building Society and was further registered in favour of Sh. Vakil Chand Jain vide registered conveyance deed dated 01.05.1999 after getting it free hold by Sub-Registrar-II, Janak Puri, Delhi.

5. It is further stated that Sh. Vakil Chand Jain died intestate on 05.02.2004 leaving behind his wife Smt. Kamlawati Jain, his married son Sh. Anil Kumar Jain and two married daughters namely Abhilash Jain and Asha Jain.

6. On 04.03.2004, Abhilash Jain and Asha Jain relinquished their rights to the said property in favour of their mother Smt. Kamlawati Jain vide registered relinquishment deed dated 04.03.2004. Subsequently Smt. Kamlawati Jain executed a Will with respect to her share in the said property in favour of her son i.e. the deceased vide registered will dated 04.03.2004.

7. It is further pleaded that Smt. Kamlawati Jain expired on 09.12.2015 and the deceased became the owner of the said property by virtue of the said registered will.

8. That on 17.03.2017 the deceased expired intestate leaving behind his wife i.e the petitioner herein and his two sons.

9. The said petition came up for hearing before this court on 24.04.2017, whereby this court was pleased to issue notice to the State, Govt. NCT Delhi through Chief Controlling Revenue Authority (CCRA) to file the valuation report of the said property. It further issued notice to IDBI Bank, Rajouri Garden, Delhi, to inform this court about the outstanding loan amount due by the deceased. Citations were also published in the newspaper 'Hindustan

Times' and 'Hindustan' Delhi Edition.

10. Learned counsel entered appearance for the state and submitted the valuation report of the said property dated 07.07.2017. Further on 21.09.2017, this court directed IDBI bank to produce original documents of the said property and certified copy of account details relating to Mr. Vakil Chand Jain. As there were no contesting respondents, evidence was recorded of the petitioner and arguments have been heard in this petition.

11. The petitioner has tender her affidavit Ex. PW 1/A in evidence wherein she has deposed that she is the wife and one of the Class I legal heirs of the deceased along with her two sons. The deceased Death Certificate is marked as Ex. PW1/7. She has further deposed that the said property was allotted to Shri Vakil Chand Jain by DDA vide perpetual sub-lease deed is marked as Ex.PW 1/1. The said property made was free hold on 01.05.1999, conveyance deed was registered by the Sub-Registrar-II, Janak Puri, Delhi marked as Ex. PW 1/2. It is also deposed that the Sh. Vakil Chand Jain died intestate leaving behind his wife, the deceased and two married daughters. The death certificate of Sh. Vakil Chand Jain is marked and exhibited as Ex. PW 1/3. Both the daughters of Sh. Vakil Chand Jain have relinquished their rights in favour of their mother Smt. Kamlawanti Jain vide registered relinquishment deed by Sub- Registrar-II Jank Puri, Delhi vide registration No. 3933, Vol- I, Book No. 11411 page No. 164-167 on 04.03.2004 and is exhibited as Ex PW-1/4. Subsequently, Smt. Kamlawanti Jain executed a will dated 04.03.2004 registered by Sub-Registrar-II, Janak Puri, Delhi vide registration No. 12522, Addl Book no. 3, Vol No. 7054, page No. 180-181 in favour of the deceased which is marked and exhibited as Ex. PW- 1/5. Smt. Kamlawanti Jain died due to illness and

her death certificate is marked and exhibited as Ex. PW 1/6. The petitioner has also stated that her two sons have filed two separate affidavits by way of no objection certificate to issue of a letter of administration with respect to the said property in favour of the petitioner. The said affidavits are marked and exhibited as PW 1/10 and PW 1/11. The petitioner has further deposed that M/s Vakil Chand Jain was under the sole proprietorship of Shri Vakil Chand Jain and after his death it was transferred to the deceased and thereafter to the petitioner. The GST certificate is marked as Mark B to support her transfer. It is further stated that the deceased during his lifetime mortgaged the said property to IDBI Bank, Rajouri Garden, Delhi and the original documents are with the said bank. The letter dated 24.08.2017 by IDBI Bank admitting these documents in their possession is marked and exhibited as Ex PW 1/13.

12. It is also noted that Smt. Abhilash Jain who is said to be the daughter of Sh. Vakil Chand Jain has also tendered her affidavit Ex. PW 2 by way of evidence to support the case of the petitioner. She has deposed that she is the daughter of Sh. Vakil Chand Jain and real sister of the deceased. She has further deposed that her father died intestate on 05.02.2004 and she and her sister namely, Smt. Abha Jain had relinquished their right with respect to the said property to their mother namely, Smt. Kamlawanti Jain. Registered relinquishment deed is marked and exhibited as Ex. PW 2/1. Smt. Kamlawanti Jain thereafter executed a registered will in favour of the deceased the same will has been marked and exhibited as Ex. PW 2/2. It is further deposed that the deceased was the absolute owner of the said property after the death of Smt. Kamlawanti Jain. Smt. Abha Jain has also tendered her affidavit Ex. PW 3 by way of evidence to support the case of

the petitioner.

13. The petitioner has filed the present petition for the grant of Letter of Administration in respect of the said property left behind by deceased.

14. I have perused the statements of the petitioner, Smt. Abhilash Jain and Smt. Abha Jain. They have proved that the deceased expired intestate and that the petitioner and her two sons were the only legal heirs left behind. They have also proved that the deceased was the absolute owner of the said property by virtue of the Will executed by Smt Kalawanti Jain.

15. Hence, there is no impediment to the case of the petitioner. The petition is allowed. Letter of administration is issued in favour of the petitioner as per the details given in the above para on furnishing court fees and execution of administration and surety bond.

16. No orders as to cost. Petition is disposed off.

JAYANT NATH, J.

JULY 12, 2018/ss

Corrected and released on 23.7.2018