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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 88/2015

AMIT SAXENA

..... Petitioner

Through: Ms.Mukti Chaudhry, Advocate with
Ms. K. Megha, Advocate.

versus

STATE AND ORS.

..... Respondents

Through: Mr. Nitin Gupta, Advocate for
respondents No.2 and 3.

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Date of Decision : 27th April, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present petition has been filed under Section 276 of the Indian Succession Act for grant of probate of Will dated 15th February, 2012 of deceased Mr. Gyan Prakash Saxena, S/o Late Sh. P.N.Saxena.
2. In the petition it has been averred that the petitioner is the son of late Mr. Gyan Prakash Saxena, who expired on 22nd October, 2012 at Marietta, Georgia State, United States of America. The deceased is stated to have executed a registered Will dated 15th February, 2012, which was duly attested by Ms. Joanna Kaszuba and Ms. Mamta Rajpuri. The Will dated 15th February, 2012 executed by the deceased is reproduced hereinbelow:-

“WILL”

I, Mr. Gyan Prakash Saxena S/o Mr. P.N. Saxena and resident of D-5, Prasad Nagar, New Delhi-110 005 hereby declare this to be my last will, notwithstanding any Will made by me at any time heretofore made. It will be effective after my death.

WHEREAS

A. I have the following legal heirs:

- i) Mr. Amit Saxena (Son)*
- ii) Ms. Neeta Prasad (Daughter)*
- iii) Ms. Deepa Srivastav (Daughter)*

B. I hereby state that I own and possess movable and immovable properties either individually in my name or jointly with my aforesaid Son.

C. I, now, wish to make the following Will in respect of my aforesaid properties in order to maintain harmony amongst my legal heirs after my demise.

NOW THIS WILL WITNESSETH AS UNDER

- (i) I leave, bequeath and give all my movable properties including but not limited to bank accounts deposits, term deposits, bank lockers, cars and vehicles etc. and all my future movable assets to my Son, Mr. Amit Kumar Saxena, resident of D-5 Prasad Nagar, New Delhi -110005.*
- (ii) I leave, bequeath and give the immovable properties, as described in detail under Schedule I hereto, to my Son, Mr. Amit Kumar Saxena, resident of D-5 Prasad Nagar, New Delhi- 110005.*
- (iii) I leave, bequeath and give the immovable properties, as described in detail under Schedule II hereto, to my daughter Ms. Deepa Srivastav, resident of B-1, Flat No.304, Uniworld City, South City 1, Near Sector 30, Gurgaon, Haryana.*

(iv) *I nominate my Daughter-in-law, Ms. Smita Pawar (the wife of Mr. Amit Saxena), resident of D-5, Prasad Nagar, New Delhi – 110005 to be admitted, in the event of my death, to the partnership of the partnership firm by the name 'M/s. Sarus' as described in detail under Schedule III hereto, and to succeed to my share and interest in the aforesaid partnership firm.*

I hereby appoint Neeta Prasad, d/o Gyan Prakash Saxena and resident of 103 Barclay DR, Nutley, NJ 07110 as executor of this Will who shall be entitled to obtain probate without being required to furnish any security.

IN WITNESS whereof, I have, hereunto, set and subscribed my hand and signature on this the 15th day of February, 2012.

Signature

Sd/-

(Mr. Gyan Prakash Saxena)

Witnesses

1. Name : Joanna Kaszuba

Signature

2. Name: Mamta Rajpuri

Signature”

3. It is averred in the petition that the late Mr. Gyan Prakash Saxena appointed his daughter Ms. Neeta Prasad, respondent no.3 as an executor of the Will dated 15th February, 2012. It is stated in the petition that due to personal difficulties, the respondent no.3, vide letter dated 01st August, 2015, sought renunciation from the executorship of the Will of late Mr. Gyan Prakash Saxena.

4. Learned counsel for the petitioner states that the executor of the Will, Ms. Neeta Prasad, has renounced her executorship in terms of Section 230

of the Indian Succession Act, 1925 vide letter 01st August, 2015. She submits that in terms of Section 231 of the Indian Succession Act, 1925, when an executor renounces his/her executorship, the Will is required to be proved and Letters of Administration with copy of the Will annexed is required to be granted to the person who would be entitled to administration in the case of intestacy. She therefore prays that in terms of Section 231 of the Indian Succession Act, 1925, Letters of Administration with the Will annexed be granted to the petitioner, with respect to the immoveable properties of the deceased testator Mr. Gyan Prakash Saxena.

5. Notice in the present petition was issued on 05th October, 2015. Citation has been published in the English newspaper 'Statesman' and Hindi newspaper 'Navbharat Times' Delhi Edition.

6. Since four properties belonging to the deceased were located outside Delhi, this Court, vide order dated 17th August, 2016, had directed the petitioner to have citations published in one English newspaper and one newspaper in the local language having circulation in the respective area where the properties were located.

7. In terms order dated 17th August, 2016, citations were published in the Hindi daily newspaper 'Navshakti' and English daily newspaper 'Freepress' both having circulation in Malad(W), Mumbai; the English daily newspaper 'Indian Express' and a local newspaper published in the vernacular language of the District Krishnagiri, Tamil Nadu; and the English daily newspaper 'Hindu' and Hindi newspaper 'Rashtriya Sahara', both Ghaziabad Edition and having circulation in the respective district in Uttar Pradesh.

8. No objections have been received to the Will after publication of the citations. Notices were duly served on the State and the other respondents.

Valuation reports have been filed by the state.

9. Respondent Nos. 2 and 3, the sisters of the petitioner, have filed their No Objection supported by an affidavit. The affidavits of respondent nos.2 and 3 are reproduced hereinbelow:-

A. No Objection of Respondent No.2

“I, Ms. Deepa Srivastav D/o Late Shri Gyan Prakash Saxena R/o B-1, Flat No.304, Uniworld City, South City-1, Near Sector 30, Gurgaon, Haryana, presently in Delhi aged about 51 years, do hereby solemnly affirms and declare as under:-

- 1. I say that above mentioned Probate Petition is pending disposal before this Hon’ble Court.*
- 2. I say that my father late Shri Gyan Prakash Saxena had executed his last Will dated 15.02.2012.*
- 3. I say that I have no objection to the grant of probate of Will dated 15.02.2012 executed by my father late Shri Gyan Prakash Saxena.”*

B. No Objection of Respondent No.3.

“I, Ms. Neeta Prasad D/o Late Shri Gyan Prakash Saxena R/o 103 Barclay DR, Nutley, NJ -07110, USA aged about 48 years, do hereby solemnly affirms and declare as under:-

- 1. I say that above mentioned Probate Petition is pending disposal before this Hon’ble Court.*
- 2. I say that my father late Shri Gyan Prakash Saxena appointed me as the executor of the Will dated 15.02.2012 and due to my personal difficulties, I sought renunciation from executorship of Will dated 15.02.2012 vide letter dated 01.08.2015.*
- 3. I say that I have no objection to the grant of probate of Will dated 15.02.2012 executed by my father late Shri Gyan Prakash Saxena.”*

10. Respondent no. 4, daughter in law of the deceased, has also filed her No Objection supported by an affidavit. The affidavit of respondent no.4 is reproduced hereinbelow:-

“I, Ms. Smita Pawar W/o Mr. Amit Saxena R/o A-262, Prestige Ozone, Near Varthur Kodi, Whitefield, Bangalore -560066 aged about 48 years, do hereby solemnly affirms and declare as under:-

- 1. I say that above mentioned Probate Petition is pending disposal before this Hon’ble Court.*
- 2. I say that I have no objection to the grant of probate of Will dated 15.02.2012 executed by my father-in-law late Shri Gyan Prakash Sharma.”*

11. Ms. Joanna Kaszuba, one of the two attesting witnesses, 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 witness in her affidavit that the Testator was in a sound disposing mind at the time of signing the Will which was duly executed by him in the presence of the witnesses. It is further stated that the will executed by the Testator was his last will and testament dated 15th February, 2012.

12. Ms. Mamta Rajpuri, the second attesting witness, has also filed an affidavit by way of evidence and the said affidavit has been marked as Ex.PW2/X. It has been stated by the witness in her affidavit that the Testator was in a sound disposing mind at the time of signing the Will which was duly executed by him in the presence of the witnesses. It is further stated that the will executed by the Testator was his last will and testament dated 15th February, 2012.

13. Mr. Amit Saxena, the petitioner and the third attesting witness has filed his affidavit by way of evidence and the said affidavit has been marked as Ex.PW3/X. The petitioner has proved the Death Certificate of the Testator as Ex.PW3/3 and the renunciation letter of Ms. Neeta Prasad as Ex.PW3/4. In the said affidavit, he has deposed as under:-

- “1. That I am the Petitioner in the present matter and also the son of the deceased Late Shri Gyan Prakash Saxena, as such I am aware and competent to file the present affidavit.*
- 2. The testator Late Shri Gyan Prakash Saxena was permanently resident at D-5, Prasad Nagar, New Delhi which was his fixed place of abode. The passport showing Delhi as permanent place of abode of Late Shri Gyan Pakash Saxena is exhibited as Ex.PW3/1.*
- 3. I say that testator went to USA to visit his son on 24.01.2012. The USA Visa is attached herewith as Ex.PW3/2.*
- 4. I say that the Late Shri Gyan Prakash Saxena executed Will dated 15.02.2012 which is an unregistered Will which is already exhibited as Ex.PW1/1, which was duly attested by Ms. Joanna Kaszuba PW-1, R/o 1974 Kimberly Village L.N., Apt G Marietta GA 30067, U.S.A. and Ms. Mamta Rajpuri PW-2, R/o 101 Paddock Court SE Marietta GA 30067, U.S.A. as witnesses.*
- 5. I say that the Testator expired on 22.10.2012 at Marietta, Georgia State, U.S.A. & the death certificate to this effect was issued by Local Custodian Country of Fulton, Atlanta, Georgia with registration No.06028 dated 15.11.2012. The death certificate is exhibited as EX PW3/3.*

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7. *I say that Late Shri Gyan Prakash Saxena appointed his daughter Ms. Neeta Prasad, R/o 103, Barclay Dr, Nutley, NJ07110, U.S.A. as the executor of the Will dated 15.02.2012. Ms. Neeta Prasad is permanently residing at U.S.A. and to pursue the execution at Delhi was difficult due to her personal difficulties, as such she sought renunciation from the executorship of Will dated 15.02.2012 vide letter dated 01.08.2015. The original letter dated 01.08.2015 is exhibited as EX PW3/4.*”

14. In view of the above, the Court is satisfied that the petitioner has succeeded in proving that the deceased Mr. Gyan Prakash Saxena, s/o Late Sh. P.N.Saxena, had executed the Will dated 15th February, 2012 and the said Will was his last will and testament.

15. Consequently in terms of Section 232(b) of the Indian Succession Act, 1925, the present petition is allowed and the Letters of Administration with a copy of the Will dated 15th February, 2012 annexed thereto is granted in favour of the petitioner enabling him to administer the estate of deceased Mr. Gyan Prakash Saxena, subject to the petitioner filing the requisite Court fee in terms of the valuation reports and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

APRIL 27, 2018

js/rs