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

+ TEST.CAS. 90/2015

SMT. BINA

..... Petitioner
Through: Mr. Sidharth Joshi with Ms. Tanya
Joshi, Advocates

Versus

STATE & ORS.

..... Respondents
Through: None

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Date of Decision: 28th November, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present petition has been filed by the petitioner under Section 276 of the Indian Succession Act for grant of probate in respect of registered Will dated 11th May, 2009 of the deceased Smt. Kasturi Jain.
2. It is averred in the petition that the petitioner is the niece of the Testatrix Smt. Kasturi Jain, who expired on 30th November, 2014. The deceased is stated to have executed a Will dated 11th May, 2009, which was duly attested by Shri Vinay Awasthi and Shri Prahlad Singh Saini. The Will dated 11th May, 2009 is reproduced hereinunder:-

“WILL

This is the last “WILL” and Testament of me, Kasturi Jain wife of Late Shri Bhim Singh Jain R/o H.No.B-1/1, Ashok Vihar, Phase-II, Delhi-110052.

That I am making this “WILL” with my free consent, will, sound health, disposing mind and without any undue influence or pressure from anybody.

That I am the owner of 1/4th undivided share of Built-up property bearing No.B-1/1 (Plot No.1 Block No.B-1) with freehold land measuring 620 sq.yds. or 518.44 sq. mtrs. Situated at Ashok Vihar, Phase-II, Delhi of which I am the owner on the basis of Conveyance Deed regd. As document No.2125 in Addl. Book No.I Volume No.3293 on pages 128 to 130 on 9.2.2009 in the office of Sub-Registrar-VII, INA, Delhi

That my husband, Shri Bhimsingh Jain has already expired. The God has not blessed me and my husband with any son or daughter. Till date I have not adopted any son or daughter.

That Mr. Bina Jain, my niece (Husband's Brother's daughter) and her family has been serving me in my old age. I am very much happy with the services being rendered by my said niece, Mrs. Bina Jain and her family. Therefore, I am executing this Will bequeathing my above said 1/4th undivided share in the above said property in favour of my niece.

That I hereby devise and bequeath that after my death my above said 1/4th undivided share of said property with all its rights, title, interests, fixtures, fittings, connections, terrace/roof rights land underneath etc. shall go and devolve upon my niece, Mrs. Bina Jain wife of Shri Pramod Kumar Jain R/o B-1/1, Ashok Vihar, Phase-II, Delhi-110052 to the exclusion of my legal heirs, successors etc. and if the said beneficiary pre-deceases me, then the same shall go and devolve upon her legal heirs, successors etc.

This in case anyone raises any objection regarding this WILL the same shall be considered as null & void in the court of law.

IN WITNESS WHEREOF, I have set my hand on this WILL after understanding the contents of the same in the presence of the following witnesses at Delhi on this 11th day of May, 2009.

*Sd/-
(KASTURI JAIN)
TESTARIX*

WITNESSES:

Sd/-

1. *Vinay Aswasthy
S/o Sh. Ram Saroop Awasthy
R/o B-7/29, Krishna Nagar,
Delhi-110051
NBJ0490508 dt. 20.10.2008*

Sd/-

2. *Prahlad Saini
S/o Sh. Laxmi Narain,
R/o 67-A, Saini Wali Gali,
Rampura, Delh-35,
URU0763938 dt. 18.10.08*

3. Notice was issued in the present petition on 16th February, 2016. Citations were also directed to be issued, which came to be published in the English edition of the daily newspapers "Indian Express" and Hindi edition of daily newspaper "Jansatta". Notices were duly served on the State.
4. Valuation report has been filed by the State/Government approved Valuer.
5. Vide order dated 19th January, 2018, the following issues were framed

in the present petition:-

(1) *Whether the Will dated 11th May, 2009 is the last legal and valid Will of late Smt. Kasturi Jain? OPP*

(2) *Relief.*

6. It is stated that the Testatrix expired leaving behind no Class I legal heirs. In any event, No Objection Affidavits have been filed by sister-in-law of the testatrix Smt. Kanta Devi and her two daughters Smt. Neena Jain and Smt. Rina Shakkarwal. The petitioner has filed an affidavit declaring that the sister-in-law's other daughter, Smt. Mina Jain is not traceable and has been debarred and disinherited vide a public notice dated 05th February, 2009 issued by the Testatrix in the newspaper Virat Vaibhav. However, the present petition is for probate of Will dated 11th May, 2009 and no objections have been received to the Will after publication of the citations.

7. Smt. Bina Jain, the petitioner and niece of the Testatrix has filed an affidavit by way of evidence dated 27th February, 2018. The said affidavit has been marked as Ex.PW1/X. It has been stated by the PW-1 that the Testatrix was in a sound state of mind and good health at the time of signing the Will which was duly executed by her in the presence of the witnesses. It is further stated that the Testatrix expired on 30th November, 2014 at New Delhi leaving behind her last Will and testament dated 11th May, 2009. The petitioner has proved the Death Certificate of the Testatrix as Ex.PW1/6. In the said affidavit, she has deposed as under:-

“3. That I say that Late Smt. Kasturi Jain was the absolute owner of the self-acquired property Bearing No.B-1/1 (Plot No.1 Block No.B-1) Ashok Vihar, Phase-II, Delhi-110052 by virtue of

Registered Conveyance Deed dated 09.02.2009 having Reg. No.2125 in additional Book No.1, Vol. No.3293 with the Sub Registrar VII, New Delhi.(hereinafter to be referred as the 'property').

4. *That I say that Late Smt. Kasturi Jain during her lifetime with her full consent and wish executed a registered Gift deed dated 11.05.2009 duly Registered in the office of Sub-Registrar-VI-A, Delhi vide Registration No.3702, in additional Book No.1, Vol.No.2246, on Page 116 to 121 Registered on dated 14/5/2009, thereby 3/4th undivided share of the said "Property" transferred in favour of the Petitioner herein along with Dr. Neena Jain W/o Dr. P.K. Jain R/o 42, Birla Hospital Pilani (Rajasthan) & Mrs. Rina shakkarwal w/o Shri Kailash Shakkarwal R/o J-11/93, Rajouri Garden, New Delhi-110027. That Late Smt. Kasturi Jain (donor) vide her Gift Deed dated 11.05.2009 had left 1/4th of the undivided share of the said "Property" with her.*

5. *That I say that the Petitioner was the niece of the "Testator" (Husband's Brother's daughter) and the "Testator" having had a great love and affection with the Petitioner and her family members. The petitioner and her family was serving the testator. The testator was happy with the service being rendered by the niece (petitioner) and her family.*

6. *That I say that deceased Smt. Kasturi Jain for showing her love and affection towards the Petitioner duly executed her last and final Will dated 11.05.2009 which is duly registered with the Sub Registrar VIA, Delhi vide registration No.953, in additional Book No.3 Vol.No.60, on pages 154 to 155, Registered o 14.05.2009, in favour of the Deponent without any undue influence, coercion, and duress and with free consent and after understanding the contents of the WILL. The said WILL was witnessed by two witnesses namely Sh. Vinay Awasthi S/o sh. Ram SaroopAswasthi R/o House No.B-7/29, Krishna Nagar, Delhi-110051 & Sh. Prahlad Singh Saini S/o Sh. Laxmi Narayan R/o House No.67A, Saini WaliGali, Rampura, Delhi-35*

where the Sub-Registrar was also present and saw the testator namely Smt. Kasturi Jain affix her signature thereto after understanding the entire contents of the Will.

7. *That I say that as per the Will dated 11.05.2009 remaining 1/4th undivided share of the testator property with all its rights, title, etc. shall devolve upon the petitioner after the death of the testator of the Will. Thus the petitioner is the sole executor of the Will."*

8. Mr. Vinay Awasthi, the attesting witness has filed his affidavit dated 27th February, 2018 and the same is exhibited as Ex.PW2/1. In the said affidavit, he has deposed as under:-

"4. That I say that deceased Smt. Kasturi Jain had put her signature in Will dated 11.05.2009 in the presence of deponent and one Sh.Prahland Singh Saini S/o Laxmi Narayan R/o House No.67A, Saini Wali Gali Rampura, Delh-110035 before Sub-Registrar-VII-A Delhi. That deponent states that deponent can identify signature of the deponent, Late Smt. Kasturi Jain and other witness namely Prahlad Singh Saini on the said Will.

5. *That I say that at that time deceased Smt. Kasturi Jain was fully conversant about the facts written in the Will, and having full knowledge and understanding of the contents of the Will. The deceased late Smt. Kasturi Jain read and understood contents of her Will and admitted the correctness of the Will and it was her last Will testament.*

6. *That I say that the Will was executed before Sub-Registrar VII-A on 11.05.2009 and the registration no. and certificate provided by the Registrar on 14.05.2009. That when the said Will was prepared, drafted, framed, the testator was of sound mind, good health and without any coercion, duress without of any sort of pressure and influence etc. Further the said Will was prepared with the consent, free will and desire of the testator*

namely Smt. Kasturi Jain.

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8. *That I say that the Exhibit PW1/1 is the same Will which was executed by Smt. Kasturi Jain & it bears my signatures at point "A" & signature of Kasturi Jain are at point "B" & signature of Prahlad Saini at point "C".*

9. Mr. Prahlad Singh Saini, another attesting witness has filed his affidavit dated 27th February, 2018 and the same is exhibited as Ex.PW3/X. In the said affidavit, he has deposed as under:-

"5. That I say that the Will was executed before Sub-Registrar VII-A on 11.05.2009 and the registration no. and certificate provided by the Registrar on 14.05.2009. That when the said Will was prepared, drafted framed, the testator was of sound mind, good health and without any coercion, duress without of any sort of pressure and influence etc.. Further the said Will was prepared with the consent, free will and desire of the testator namely, Smt. Kasturi Jain.

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7. *That I say that the Exhibit PW1/1 is the same Will which was executed by Smt. Kasturi Jain & it bears my signatures at point "C" & signature of Kasturi Jain are at point "B" & signatures of Vinay Awasthy at point "A".*

10. In view of the above, the Court is satisfied that the petitioner has succeeded in proving that the deceased Smt. Kasturi Jain had executed the Will dated 11th May, 2009 and the said Will was her last Will and testament. Consequently, the present petition is allowed. The probate in respect of the Will dated 11th May, 2009 of deceased Smt. Kasturi Jain annexed thereto is

granted in favour of the petitioner, subject to her furnishing the requisite Court fee in terms of the latest valuation reports and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

NOVEMBER 28, 2018

as/mn

