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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ TEST.CAS. 12/2013

NAVIN SOI

..... Petitioner

Through

Ms. Sonia A. Menon, Advocate
with Mr. S.Krishna Murthy,
Advocate.

versus

STATE & ORS

..... Respondents

Through

Mr. Jagjit Singh, Advocate for
respondent No.2.

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Date of Decision: 14th February, 2019

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, 1925, for grant of probate of Will dated 11th March, 2010, executed by late Mrs. Pushpa Kumari Soi.
2. In the petition it has been averred that the petitioner is the executor of Will dated 11th March, 2010 and son of the testatrix, late Mrs. Pushpa Kumari Soi, who expired on 24th May, 2012 in New Delhi. The testatrix is stated to have executed a registered Will dated 11th March, 2010, which was duly attested by Mr. Anil Sapru and Mr.

Ashok Kumar. The Will dated 11th March, 2010 executed by the testatrix is reproduced herein below:-

“WILL

I, MRS. PUSHPA KUMARI SOI, D/O Late Shri Hira Lal Malhotra W/O Shri Jiwan Lal Soi, aged about 84 years, R/O Y-34, Hauz Khas, New Delhi-1100016, do hereby make this as my “LAST WILL and Testament” by revoking all my previous wills, Codicils and other testamentary dispositions, if any, made by me hereto before.

WHEREAS, I have attained the age of about 84 years and the life is uncertain and one does not know when the death will snatch away one’s life. I wish that after my demise let there be no dispute amongst my legal heir/s or any other person/s regarding the division of my immovable and moveable assets left behind by me or found in my possession on the date of my demise.

WHEREAS I have two children, Son – Shri Navin Soi, aged about 55 years and a daughter Mrs. Parveen Kapila W/O Shailendra Kapila, aged about 57 years.

AND WHEREAS I have thought fit expedient to write down the manner in which all my assets immovable or moveable found in my possession on my demise, shall devolve upon my legal heirs as under:-

NOW THEREFORE MY LAST WILL READETH AS UNDER:

That I am the legal and absolute owner to the extent of 50% share in residential house no.Y-34, Hauz Khas, New Delhi-110016. The Ground Floor of the said house is under my legal possession and the 50% share in 2nd Floor constructed on the said house ins also occupied by me. The balance 50% share in the said house belongs to my sister late Mrs. Krishna Kapoor. The plot Y-34, Hauz Khas, New Delhi-

110016 was jointly purchased by us and house was also jointly constructed by me and my sister as co-owners. As per a mutual arrangement between myself and my sister, the Ground Floor (100%) became my property and First Floor became property of my sister.

The 50% second floor of the property, as per the arrangement, belongs to me and the rest of the 50% belongs to my sister. There is a clear understanding in the mutual arrangement that the arrangement of sharing 50% of the portion would be carried out with respect to any future constructions as well.

The investment in the acquisition and construction of the house to the extent of 50% was out of my personal Funds, Savings and Resources and thus 50% share in the said house is my Self-Acquired Immoveable Property and I have thus every and absolute right to transfer or bequeath my share in the said house in favour of my legal heir or any person/s in any manner I like.

That I do hereby bequeath my 50% share in the said residential house No.Y-34, Hauz Khas, New Delhi-110016 consisting at presently entire Ground Floor and 50% share of the 2nd floor and 50% share thereafter in all the floors that may be constructed on the said plot as on date of my demise in favour of my only son Shri NAVIN SOI R/O Y-34, Hauz Khkas, New Delhi-110016 absolutely without any claims, demands or objections of any kind from my daughter or any other person or persons whatsoever.

That I am also the legal and absolute owner of the residential plot No.2725, Block H, Sainik Colony Extension No.I, Sector 49, Faridabad. Keeping in view my advancing age I had purchased that plot in the joint name of myself along with my daughter Smt. Parveen Kapila, W/o Shri Shailender Kapila, R/o D-2333, FF Sarvodaya Enclave, New Delhi. I bequeath my share of the property in favour of my son, Shri Navin Soi, who would be the sole owner of my share

and would have the right to deal with the property in whatsoever manner he wishes to, without any claims, demands or objections from any other person.

That I also own various moveable properties i.e. Bank balances, Fixed Deposits, Mutual Funds, Shares, etc. and all my moveable properties have been made by me on Either or Survivor basis or otherwise I have made nomination in all my moveable assets and I wish that after my demise all my moveable properties shall go absolutely in favour of that joint investments on either or survivor basis and otherwise as per the nomination I have done in all my moveable properties. These joint holders of my moveable assets or the nominated persons shall enjoy these moveable properties as per my last wish without any objection or demand or claim by any person or persons whatsoever. In case of other movable or immovable assets which I could acquire in future out of my persons funds and savings, I desire that after my demise my SON Shri NAVIN SOI should be the sole owner of these assets without any claims, demands or objections of any kind from my daughter or any other person whatsoever.

That I have made this WILL out of my free and in full possession of my mental faculties and without any stress or strain, or under pressure or intimidation of any kind whatsoever. The contents of this my "Last Will" are absolutely in accordance with my last desire.

That I do hereby appoint my son Shri NAVIN SOI as the Executor of my this LAST WILL.

IN WITNESS WHEREOF, I have put my signature to this WILL on this 11th day of March, 2010 in the presence of following witnesses.

*Sd/-
(PUSHPA KUMARI SOI)
TESTRARI*

The above mentioned testator MRS PUSHPA KUMARI SOI has signed this WILL as her "LAST WILL AND TESTAMENT" in our presence and we, in the presence of testator and in the presence of each other have here up to subscribed our names as witnesses:

<u>S.No.</u>	<u>NAME</u>	<u>ADDRESS</u>	<u>SIGNATURE</u>
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1.	Mr. Anil Sapru S/o Sh. H.K. Sapru R/o C-2/308, Capital Apts. Plot No.3 Vasundhara Encl. Delhi P.P. No.F5481439		
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2.	Mr. Ashok Kumar S/o Sh. Brij Mohan R/o 120, BlockNo.6 Subash Nagar, Delhi EIC No.NCJO639302"		
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3. It is stated that the deceased left behind two legal heirs, i.e. her son (petitioner) and daughter (respondent no. 2).
4. Notice was issued on the present petition on 27th February, 2013. Citations were also directed to be issued, which came to be published in the newspapers "The Statesman" and "Dainik Bhaskar".
5. Notices were duly served on the State and the other respondents. Valuation reports have been filed by the State.
6. The probate petition is contested by the respondent no. 2, daughter of the testatrix. The gist of the objections filed by the respondent no. 2 is that after execution of the Will dated 11th March, 2010, late Mrs. Pushpa Kumari Soi executed a partition deed dated 12th September, 2011 and relinquished her right in the subject property. Therefore the Will dated 11th March, 2010 became

infructuous, incompetent, redundant and obsolete. In support of his submission, learned counsel for respondent no.2 relies upon the judgment of the Supreme Court in *H. Venkatachala Iyengar vs. B. N. Thimmajamma & Ors.*, AIR 1959 SC 443.

7. On 03rd September, 2013 the following issues were framed:-

- “1. Whether Will dated 11th March, 2010 has been validly executed and registered? OPP
2. If issue No.1 is in affirmative, whether registered partition deed dated 26.02.2013 has any effect on the said Will dated 11th March, 2010. If so, to what effect? OPP & OPD
3. Relief.”

8. Mr. Navin Soi, petitioner and son of the testatrix has filed an affidavit by way of evidence and the said affidavit has been marked as Ex. PW3/A. It has been stated by the petitioner in his affidavit that the testatrix was in a sound disposing mind 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 24th May, 2012 at New Delhi leaving behind her last Will and testament dated 11th March, 2010. The petitioner has proved the original Death Certificate of the testatrix as Ex.PW3/1.

9. Mr. Anil Sapru and Mr. Ashok Kumar, attesting witnesses have filed their affidavits by way of evidence. The said affidavits have been marked as Ex. PW1/A and Ex.PW2/A, respectively. The attesting witnesses have proved the Will dated 11th March, 2010 and have identified their signatures.

10. In view of the above, the Court is satisfied that the petitioner has succeeded in proving the testatrix late Mrs. Pushpa Kumari Soi had executed the Will dated 11th March, 2010 and the said Will was her last will and testament.

11. This Court is also of the opinion that the scope and jurisdiction of this Court in the present proceeding is limited.

12. It is settled law that title disputes cannot be gone into in probate proceedings. In ***Kanwarjit Singh Dhillon Vs. Hardy Singh Dhillon & Ors., AIR 2008 SC 306***, the Apex Court has held as under:-

“10.....It was, therefore, not competent for the Probate Court to determine whether late S. Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his will. The Probate Court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the will were joint ancestral properties or acquired properties of the testator.”

(emphasis supplied)

13. The judgment of the Apex Court in ***H. Venkatachala Iyengar*** (supra) referred to by learned counsel for respondent no.2 does not state that a probate Court is competent to determine the question of title of the suit properties. Accordingly, the said judgment offers no assistance to learned counsel for respondent no.2. Consequently, the legality, validity and the effect, if any, of the partition deed dated 12th September, 2011 cannot be adjudicated upon in the present proceedings.

14. Accordingly, the issue of ownership of the property no. Y-34, Hauz Khas, New Delhi 110016 by the testatrix is left open to be adjudicated upon in appropriate legal proceedings, if so initiated by

either party. The rights and contentions of all parties are with regard to title of the deceased testatrix in property no. Y-34, Hauz Khas, New Delhi 110016 are left open.

15. Consequently, the present petition is allowed. The probate in respect of the Will dated 11th March, 2010 of the testatrix late Mrs. Pushpa Kumari Soi annexed thereto is granted in favour of the petitioner, subject to his furnishing the requisite Court fee in terms of the latest valuation reports and submitting an administrative bond with one surety in accordance with law.

FEBRUARY 14, 2019
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MANMOHAN, J



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