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

+ TEST.CAS. 32/2007

PAWAN PURI

..... Petitioner

Through: Mr. Abhijat, Mr. Pratyush Sharma,
and Mr. Shaashwat Jindal, Advs.

Versus

THE STATE & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

22.05.2019

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1. This petition under Section 272 of the Indian Succession Act, 1925 was filed seeking Letters of Administration with copy annexed of the document dated 21st April, 1994, claimed to be the validly executed last Will with respect to the estate of Sadhu Ram Puri son of late Narain Dass Puri ordinary resident of B-61, N.D.S.E., Part-II, New Delhi who died on 20th October, 2005.

2. The counsel for the petitioner states that as per the document dated 21st April, 1994, the petitioner is the named executor and thus entitled to estate.

3. It was pleaded in the petition, (i) that the deceased Sadhu Ram Puri left behind, petitioner Pawan Puri, respondent No.2 Ramesh Puri @ Ramesh Chand Puri, respondent No.3 Naresh Puri @ Naresh Kumar Puri and respondent No.4 Raj Kumar Puri, as his sons and respondent No.5 Sarvesh Kumari and respondent No.6 Vijay Kumari as his daughters, as his only

natural heirs; (ii) that though under the document dated 21st April, 1994, the deceased Sadhu Ram Puri had also bequeathed his property bearing No.11941/2 to 1197, Bahadurgarh Road, Bara Hindu Rao, Sadar Bazar, Delhi but in his lifetime had sold the same; (iii) that vide the document dated 21st April, 1994, the entire moveable and immoveable properties of the deceased Sadhu Ram Puri including property No.B-61, N.D.S.E., Part-II, New Delhi are bequeathed to the petitioner; and, (iv) that the petitioner undertakes to comply with the last wishes of the deceased Sadhu Ram Puri in terms of the document dated 21st April, 1994.

4. On enquiry, the counsel for the petitioner states that citation of the petition was not issued though notice issued to all the respondents.

5. The respondent No.4 Raj Kumar Puri and the respondent No.6 Vijay Kumari gave their no objection to the grant of probate.

6. The respondent No.5 Sarvesh Kumari died after the institution of the petition and her heirs were substituted, who filed objections to the grant of Probate / Letters of Administration and to which reply was filed by the petitioner.

7. The counsel for the petitioner, on enquiry states that respondents No.2&3 Ramesh Puri and Naresh Puri also filed objections to the grant of Probate / Letters of Administration.

8. The respondent No.2 Ramesh Puri and respondent No.3 Naresh Puri also died during the pendency of the proceedings and their heirs were substituted and who pursued the objections filed by their respective predecessors.

9. IA No.6465/2008 was filed by one of the objectors stating that the respondent No.4 Raj Kumar Puri was suffering from psychopathic disorder and the provisions of Order XXXII of the Code of Civil Procedure, 1908 applied to him. The said application came up before this Court on 17th November, 2008, when the counsel for the petitioner did not dispute the said position. Vide order of the said date, the petitioner was appointed as the Guardian *ad litem* of the respondent No.4 Raj Kumar Puri for the purposes of the present proceedings. Vide subsequent order dated 4th December, 2009, examination of respondent No.4 Raj Kumar Puri by the Doctors of VIMHANS was ordered.

10. Vide order dated 14th August, 2014, on the pleadings of the parties, the following issues were framed:

- “(i) Whether the registered WILL dated 21.04.1994 is a validly executed last WILL and testament of late Sh. Sadhu Ram Puri superseding WILL dated 20.11.1989? OPP*
- (ii) Whether the registered WILL dated 21.04.1994 is a forged and fabricated document? OPD*
- (iii) What relief(s), if any.”*

and the parties relegated to leading evidence.

11. The order dated 23rd April, 2019 records (i) that the legal heirs of the respondent No.2 Ramesh Puri and the legal heirs of the respondent No.3 Naresh Puri, who were the only contesting respondents had already withdrawn their objections and given their no objection; (ii) that the legal heirs of respondent No.5 Sarvesh Kumari had been proceeded against *ex-parte* vide order dated 18th July, 2018; (iii) that the respondent No.6 Vijay Kumari, though had given her no objection but died thereafter and though

her heirs were substituted and brought on record but had not joined the proceedings; and, (iv) that the petitioner had already been appointed as the Guardian *ad litem* of respondent No.4 Raj Kumar Puri.

12. I have enquired from the counsel for the petitioner, whether the petitioner in the evidence led has proved the document dated 21st April, 1994 as the Will.

13. The counsel for the petitioner states that the petitioner has examined himself as PW-1 and though he was cross-examined by the counsel for the legal heirs of respondents No.2&3 Ramesh Puri and Naresh Puri but upon the legal heirs of respondents No.2&3 Ramesh Puri and Naresh Puri withdrawing their objections, cross-examination of PW-1 was abandoned. The counsel for the petitioner further states that the petitioner has also examined Naresh Bajaj as PW-2, who is the attesting witness to the document dated 21st April, 1994 claimed to be the Will.

14. It is not in dispute that the deceased Sadhu Ram Puri was a ordinary resident of Delhi and died at Delhi, leaving *inter alia* property No.B-61, N.D.S.E., Part-II, New Delhi within the territorial jurisdiction of this Court.

15. PW-2 Naresh Bajaj in his uncontroverted examination-in-chief has proved (i) that deceased Sadhu Ram Puri was a friend of his father since pre-partition days and he could identify the signatures of the deceased Sadhu Ram Puri as he had seen him writing and signing; (ii) that he recognised the signatures of the deceased Sadhu Ram Puri at points B-1 to B-6 on the document dated 21st April, 1994 on which Ex.P-2 had been put; (iii) that he was contacted by the deceased Sadhu Ram Puri and asked to bear witness to execution of a document; (iv) that he had accompanied deceased Sadhu Ram

Puri to the office of the Sub-Registrar and deceased Sadhu Ram Puri signed the original of Ex.P-2 in his presence and he also signed Ex.P-2 along with the other attesting witness and that his presence was also marked in the office of Sub-Registrar; and, (v) that the deceased Sadhu Ram Puri was healthy and in normal condition at that time.

16. On the basis of evidence led, I am satisfied that the document dated 21st April, 1994 has been proved as the validly executed last Will of the deceased Sadhu Ram Puri.

17. Though beyond the domain of the Testamentary Court but finding the respondent No.4 Raj Kumar Puri to be a person incapable of looking after his own interest, I have perused Ex.P-2. The deceased Sadhu Ram Puri thereunder has bequeathed property No.B-61, N.D.S.E., Part-II, New Delhi to the petitioner but subject to respondent No.2 Ramesh Puri, respondent No.3 Naresh Puri and respondent No.4 Raj Kumar Puri having possession and occupation of the portions of the said property as described therein, in their lifetime and with no right of any kind to their respective legal heirs, after their demise.

18. The counsel for the petitioner states that the respondent No.4 Raj Kumar Puri is unmarried and has no children, though presently is residing in Ashram but from time to time comes and resides in property No.B-61, N.D.S.E., Part-II, New Delhi as member of the family of the petitioner.

19. The counsel for the petitioner states that the petitioner, under the Probate shall not do anything detrimental to the interest of the respondent No.4 Raj Kumar Puri.

20. On further enquiry, it is stated that the heirs of respondents No.2&3 Ramesh Puri and Naresh Puri are no longer in occupation of property No.B-61, N.D.S.E., Part-II, New Delhi.

21. Though citation has not been issued of this Test.Cas., as should have been issued, but now, after more than 12 years of the institution of the Test.Cas., it is not deemed appropriate to dismiss the petition on the said technical ground or to now order citation, since the other natural heirs of the deceased had opportunity to contest the petition and in fact did contest the petition and have only now abandoned their contest. From the contest by the other natural heirs of deceased Sadhu Ram Puri also, no fact has emerged which would necessitate citation to be issued at this stage.

22. The petition is thus allowed. Probate is ordered to be issued in favour of the petitioner Pawan Puri with respect to Ex.P-2, being the document dated 21st April, 1994, declaring the same to be the validly executed last Will of the deceased Sadhu Ram Puri.

23. Upon the petitioner Pawan Puri furnishing the requisite court fees/ stamp duty for drawing of the Probate and furnishing administration bond with one surety in the like amount, Probate be drawn up and be issued to the petitioner Pawan Puri.

24. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

MAY 22, 2019

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