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

+ **TEST.CAS. 89/2019**

MONA NANDA

..... Petitioner

Through: Mr. Muneesh Malhotra and Ms.
Manpreet Kaur, Advs.

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.11.2019

IA No.16477/2019 (for exemption).

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. The petitioner, being the wife of the deceased, seeks probate of a document pleaded to be the validly executed last Will of the deceased.
4. The deceased is claimed to have left the respondents no.2 to 4 as his daughters and respondent no.5 as his brother. The respondent no.5, though not a natural heir, has been impleaded since bequest in his favour is stated to have been made under the document claimed to be the Will.
5. Probate, vide Section 222 of the Indian Succession Act, 1925 can be granted only to an executor appointed by the Will. There is no statement in the document claimed to be the Will, that the petitioner is the named executor thereunder. A perusal of the document claimed to be the Will also does not show so, rather the same shows the deceased to have appointed the respondent no.2 or respondent no.4 as executor of the Will.

6. The petition as filed is thus misconceived and liable to be rejected.
7. Though under Section 232 of the Indian Succession Act Letters of Administration on proof of Will can be granted to another, but only when the Will does not appoint an executor or on pleading and showing that the executor appointed under the Will has refused to act. There is no pleading to the said effect also.
8. The counsel for the petitioner seeks to withdraw the petition with liberty to file an appropriate petition.
9. In the fresh proceedings if any, the valuation of the movable assets as well as immovable assets be also set out with supporting documents, to avoid delays in disposal of the petition especially when none has stated to be having any objection to the document.
10. The petitioner has also claimed exemption from production of original Will and which cannot be granted in such a proceeding.
11. The said aspects be also cured in the fresh proceeding if any.
12. Dismissed as withdrawn with liberty aforesaid subject to production of this order along with fresh proceeding.

RAJIV SAHAI ENDLAW, J

NOVEMBER 25, 2019

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