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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20th August, 2019

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TEST.CAS. 21/2015

MRS KIRAN KAPOOR

..... Petitioner

Through: Mr. Manish Aggarwal, Advocate with
petitioner in person (M: 9811127047).

versus

THE STATE & ORS

..... Respondents

Through: Mr. Rakesh Singh, Advocate for R-1
(M: 8750443433).

Mr. Ravi Kapoor, present in person
(M: 9873131819).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Petitioner, Mrs. Kiran Kapoor has filed the present petition under Section 276 of the Indian Succession Act, 1925 for grant of probate of Will dated 8th November, 1996 of the moveable and immovable assets of her late husband, Sh. Raj Kumar Kapoor, son of Late Sh. K.N. Kapoor. The deceased left behind four heirs, the petitioner who is the wife, the mother of the deceased i.e. Respondent No. 2 - Mrs. Krishna Kapoor and two sons, Sh. Rajat Kapoor – Respondent No. 3 and Sh. Ravi Kapoor – Respondent No. 4.

2. As per the Will dated 8th November, 1996, the deceased had bequeathed all his assets and properties in favour of his wife i.e., the Petitioner. The Petitioner has therefore sought probate of the said Will. The Respondent Nos. 2, 3 and 4 i.e. the mother and the two sons have placed on record their reply in which they have clearly stated as under: -

“It is, therefore, most respectfully prayed that the answering Respondents have no objection if the petition is allowed as per the terms of prayer pleaded in the petition.”

3. The said reply where the Respondent Nos. 2 to 4 have given their no objection, is accompanied by the affidavits of all the three Respondents.
4. The Respondent No. 2 i.e. the mother has passed away during the pendency of the present petition on 4th January, 2017.
5. The Petitioner has filed two affidavits in evidence, one of herself as PW-1 and secondly of PW2 - Ms. Achla Dhawan, who is the attesting witness to the Will.
6. In the affidavits filed, PW1 has exhibited the various documents of title in respect of the following properties: -
 - I. *Property No. 62-B, Najafgarh Road, New Delhi.*
 - II. *Property No. 62-C, Najafgarh Road, New Delhi.*
 - III. *Property No. A-166, New Friends colony. New Delhi.*
 - IV. *Property No. C-220, (IInd Floor) G.K.-I, New Delhi-48.*
 - V. *Flat No. A/44A, DDA FLAT, Munirka, New Delhi.*
7. The title deeds of all these documents and the mutations have been exhibited on record. The manner in which the Will was discovered has also been explained in paragraph 6 of the affidavit of PW1. The Respondent Nos. 2, 3 and 4 have issued no objections in respect of the Will and the same have been exhibited as PW1/11.
8. Ms. Achla Dhawan - PW2 has also filed her affidavit in evidence

where she has stated that she is also known as Ms. Achla Mohan. She has deposed that she was also present at the residence of the testator on 8th November, 1996 at A-286, New Friends Colony, New Delhi and it was in her presence that the deceased had executed the Will. The Will is also exhibited as PW1/10.

9. In the present petition, the concerned SDM and Tehsildar have placed the valuation reports for all the properties.

10. The court has perused the documents and the affidavits in evidence. The only legal heirs of the deceased are the Petitioner and Respondent Nos. 2 to 4. Respondent No. 2 is also since deceased, leaving behind the Petitioner and Respondent Nos. 3 and 4. The Respondents have already given their no objection for the probate being issued in favour of their mother. The Court has heard ld. counsels for the parties. The original Will (PW1/10) was placed before the Court in a sealed cover. The Court has perused the Will. The Will, clearly bequeaths in favour of the wife as under:

“I, therefore, bequeath all my assets and properties including all my bank balances, moveable as well as immovable, all my business of every kind, all rights, privileges and claims to my wife Kiran Kapoor exclusively. After my death, she will be the sole owner of all my moveable and immovable assets and properties, all my bank balances, all my business of every kind, all my rights, privileges and claims, all my shares in all and every kind of properties and shall be entitled to enjoy fully and exclusively all rights and privileges belonging to me as their exclusive owner and shall be entitled to recover my claims and debts and amounts due to me as her own claims, debts and assets and amounts.”

11. In view of the above, and in view of the statements made by the two

witnesses PW1 and PW2, one of whom is the attesting witness, the probate, as prayed for, is granted. The petition is, accordingly, allowed. Since all the legal heirs are present, exemption from furnishing sureties is granted to the Petitioner. Let the probate in respect of Will dated 8th November, 1996 be issued expeditiously in favour of the Petitioner.

12. The original Will be kept in the custody of the Deputy Registrar (Original) of this Court in a sealed cover.

13. The Test. Case along with any pending I.As (if any) is disposed of.

**PRATHIBA M. SINGH
JUDGE**

**AUGUST 20, 2019
MR**

