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

Date of decision: 18th December, 2019

+ **CM(M) 477/2018**

RAVI MOHAN KAUL Petitioner

Through: Mr. Ravi Mohan Kaul, Petitioner in person.

versus

STATE & ORS Respondent

Through: Mr. Shlok Chandra, Advocate for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. A probate petition under Section 276 of the Indian Succession Act, 1925 was filed by the Petitioner -Mr. Ravi Mohan Kaul, the son of late Mr. P.N. Kaul. The Respondents, apart from the State, are the wife of Late Mr. P.N. Kaul - Ms. Prabha Kaul; the second son - Mr. Hira Kaul and daughter - Ms. Chandra Kaul Muthoo.

2. The petition sought probate of the Will dated 21st July, 1997 of Late Mr. P.N. Kaul. The said Will reads as under:

“Whereas my family on the date of bequeathing this Will consists of myself, my wife Smt. Prabha Kaul, my elder son Shri Hira Kaul, my younger son Shri Ravi Mohan Kaul, and my daughter Smt. Chandra Kaul, wife of Shri Jawahar Lal Kaul Mahtoo.

And WHEREAS my daughter is married and settled in her family and with the grace of god is living a happy life.

Whatever I wanted to do for my daughter I have done and given to her and therefore I do not wish to give anything more. Hence, nothing is given to her.

AND WHEREAS I have not made any earlier Will or Testament or codicil which might be put forward to have been made by me by any interested person. Even if that be so, this testament is to be considered as my last Will and Testament in supersession of all previous Testaments.

WHEREAS I am the sole and exclusive Owner of the immovable property bearing C-1/20, Vasant Vihar, New Delhi, at present comprising of Ground Floor having three bed rooms, three bath rooms, two small store rooms, one drawing room, one kitchen, one small store room, front yard and back yard, Mezzanine floor between first and second floor having a servant quarter, and terrace above the first floor (hereinafter referred to as the "said immovable property") No other person has any right, title or interests, of any nature whatsoever, in the said property.

AND WHEREAS, besides the said property, I own other movable properties, in the form of thirty (30) Fixed Deposits, joint and individual, in State Bank of India, Central Secretariat, New Delhi.

AND WHEREAS this is my last and final testament in regard to the all my properties, movable and immovable.

NOW, THEREFORE, I hereby bequeath the abovementioned properties, movable and immovable, and the same shall devolve upon and are to be divided amongst my family members as under:

My Wife, Smt. Prabha Kaul, shall after my death, get Rs. 2,00,000.00 (Rupees two lakh only) out of all my fixed deposits mentioned hereinabove. After the payment of Rs. 2,00,000.00 to her from the fixed deposits, the remaining amount, whatsoever it may be, shall be divided in equal shares between my two sons Shri Hira Kaul and Shri Ravi Mohan Kaul.

My wife Smt. Prabha Kaul shall, after my death, take possession of my immovable property and she shall hold

the same throughout her life without any power to alienate, transfer, sell or assign the same. However, she shall be entitle to use and occupy the same as she may feel like throughout her life for her maintenance.

After the death of my wife, the ownership of the said property shall absolutely, for all intent and purposes, go to my two sons Shri Hira Kaul and Shri Ravi Mohan Kaul in the following manner :

To Shri Ravi Mohan Kaul

- (i) Ground Floor of the property bearing no. C-1/20, Vasant Vihar, New Delhi, comprising of one drawing cum dining room, three bed rooms, three bath rooms, two small store rooms, one kitchen back and front yard/baranda.*
- (ii) One Servant Quarter above the Garage between first floor and ground floor.*
- (iii) half portion at rear side of the total unconstructed second floor.*
- (iv) rear terrace over his rear portion of the second floor equivalent to half of the total surface at third floor ; and*
- (v) front half of the garage at ground floor after leaving a common passage of 2 feet x 2 feet in the garage.*

To Shri Hira Kaul

- (i) first floor comprising of two bed rooms, one kitchen, one small store room, three bath rooms, large open area in front at the first floor with right to construct the same.*
- (ii) half (1/2) portion at front side of the total unconstructed second floor; and*
- (iii) One Servant Quarter between first floor and second floor above the existing servant quarter.*

whenever the said servant quarter is constructed, Shri Ravi Mohan Kaul shall, if Shri Hira Kaul requires and

desires, equally contribute to the expenses incurred in the constructing a similar servant quarter to the one above the garage.

(iv) front terrace over his front portion of the second floor equivalent to half of the total surface at third floor and

(v) rear half (1/2) of the garage at ground floor after leaving a common passage of 2feet x2 feet in the garage.

For Common Use

Both my sons shall have a common right to common passage at ground floor and in the garage and stair case leading to all floors and access to common utilities such as electricity , water, water tank, sewer etc. None of them shall interfere and intervene in the peaceful enjoyment of these common facilities by each other.

Both my sons Shri Hira Kaul and Shri Ravi Mohan Kaul shall hold their respective shares described hereinabove in the said immovable property absolutely and shall have the power to alienate, mortgage, transfer, sell or otherwise deal with the their respective shares.

THE TESTATOR willingly make this Will that after his demise all his rights, interest, liens and titles in all Fixed Deposits , and in property bearing no. C-1/20, Vasant Vihar, New Delhi, and the land beneath the same be acquired , possessed and inherited by the EXECUTOR/BENEFICIARY, in the manner described hereinabove, who may get the same transferred and mutated the same in their own name, as owner in the records of the concerned Banks and authorities on the basis of this Will.

THE TESTATOR further declares that if any of the EXECUTOR/BENEFICIARY, predeceases him, all his/her rights, interest, liens and titles in the said properties be acquired, possessed and inherited by the heirs of the EXECUTOR/BENEFICIARY in the above manner ,who

may then get the same mutated and transferred the same in their own names , as owner in the records of the concerned authorities/banks on the basis of this WILL , without any objection from the other heirs of the TESTATOR.

That no other legal heirs, representatives of the TESTATOR shall have any right, title or interest in the said properties, and shall further not have any right to interfere in the operation of this Will.

IN WITNESS WHEREOF, I have signed and executed this testament in the presence of the following witnesses on this 21st day of July 1997.

The above Will was considered by the Id. Trial Court in P.C. No. 44/2014 titled *Ravi Mohan Kaul v State and Ors.* Vide order dated 29th May, 2015, the Id. Trial Court, after considering all the documents and the testimonies of the witnesses, allowed the petition in the following terms:

“21. Resultantly, this petition is allowed in respect of immovable property mentioned in the will dated 21.07.1997 Ex PW 1/A. However, since no executor has been appointed by the testator, letter of administration with will Ex PW 1/A annexed is permitted to be granted in favour of petitioner in respect of the share as described in the will dated 21.07.1997 Ex PW 1/A subject to his paying the requisite court fees and furnishing administration cum surety bond to the satisfaction of the court.

22. Nothing stated herein above shall however be treated as an expression of opinion as to ownership of the deceased over the property in question.

23. Let the file be consigned to Record Room with liberty to petitioner to fulfill formalities by furnishing administration-cum-surety bond and court fees for issuance of formal letters of administration”

3. Thereafter, an application was moved by the Petitioner seeking certain corrections etc, in the probate and exemption was also sought from furnishing the administration-cum-surety bond. The 1d. Trial Court, however, while consider this application, held that the Petitioner cannot treated as a sole surviving beneficiary. The Court rejected the plea for exemption from furnishing-cum-surety bond. The Court held that the Petitioner was not the sole beneficiary and accordingly dismissed the application vide order dated 5th September 2017.

4. Notice was issued in this petition on 25th April 2018. During the pendency of the present petition, on 16th April, 2019, it was recorded that after the filing of the probate, Ms. Prabha Kaul and Mr. Hira Kaul have both expired and the death certificates qua their demise have been filed on record. The Court thereafter, called for notarised affidavits of the Legal Heirs of late Mr. Hira Kaul. The order is relevant and set out below:

“The petitioner has assailed the impugned judgment dated 29.05.2015 of the learned trial Court of the ADJ-02 (South-West) in PC No.44/2014 as also the order dated 05.09.2017 in M. No.54644/2014, vide which an application filed under Sections 151, 152 & 153 of the CPC seeking amendment in the order dated 29.05.2015 to the extent that the petitioner herein sought that he be exempted from furnishing administrative surety bond, was declined. It has been submitted by the petitioner in person that there is an erroneous observation in the judgment dated 29.05.2015 of the learned Probate Court in para 21 thereof observing to the effect that there was no executor appointed qua the will dated 21.07.1997, Ex.PW1/A submitting to the effect that the executors are already mentioned therein as being Smt. Prabha Kaul, Shri Hira Kaul and the petitioner himself

Shri Ravi Mohan Kaul. The petitioner has thus submitted that Smt. Prabha Kaul and Shri Hira Kaul have both since expired and the death certificates qua their demise are on the record and that he is the sole surviving executor and the natural heir of the testator now surviving submitting further to the effect that the respondent nos.2, 3 & 4 have already submitted their no objections which have been placed on record by the petitioner as well.

Taking into account, however, the observations in order dated 05.09.2017 in relation to the aspect that the petitioner had not mentioned qua the legal representatives of the respondent no.3 to the probate petition, the respondent no.3 being Shri Hira Kaul, the notarized affidavits of the legal representatives of Shri Hira Kaul specifying the names of the legal representatives of Shri Hira Kaul be placed on record before proceeding further.

Renotify for 21.08.2019.”

5. The Petitioner has now placed on record the details of the legal heirs of late Mr. Hira Kaul. As per the said affidavit dated 25th July 2019, Ms. Hira Kaul has left behind his wife -Ms. Hansi Kaul, his daughter- Ms. Richa Kaul and his son- Mr. Karam Kaul. The said legal heirs have also given their no objection certificates to the grant of Probate. Since the no objections have been placed on record, and the details of the legal heirs have also been placed on record now, it is clear that there are no other claimants to the estate of late Mr. P.N. Kaul. The probate is accordingly granted in favour of the Petitioner.

6. It is the settled legal position that if the beneficiary is the natural legal heir, exemption can be granted from furnishing the surety and administration bond. In **Anil Bahri Vs. State Test Cas. 64/2014 (Decided on 13th July,**

2018), this Court held as under:

“13. As held in the said judgment Sanjeev Kumar Juneja (Supra) which followed Subhash Chopra v. State, (1989) 39 DLT 297, where the property is bequeathed to the natural heirs, the exemption can be granted. The relevant portion of the said judgment is set out below:—

“4. Heard. In the case of Shambhu P. Jaisinghani v. Kanayalal P. Jaisinghani, reported at 1995 (34) DRJ 704, the Court while relying upon a decision rendered in the case of Subhash Chopra v. State, Probate Case No. 12/87, has held that it would not be necessary for the petitioner therein to furnish the administrative bond as the mother therein had bequeathed the property to her natural heirs. Relevant portion of the judgment reads as under:

“8. The Will is executed by the mother in favour of the sons. As the mother has bequeathed the property to her natural heirs, it is not necessary to order the petitioner to give the administrative bond. This view is taken by this Court in the case of Probate Case No. 12/87 titled as Subhash Chopra v. State, decided on 26.7.1989.”

5. Further in an another decision rendered in the case of Sanjay Suri v. State, reported at 2003 (71) DRJ 446, the Court has exempted the petitioner from furnishing the administrative bond. Relevant portion of the judgment reads as under:

“16. Section 291 of the Act, requires

furnishing of an administration bond. The object of an administration bond is to secure due and proper administration of the estate of the deceased in which the executors and administrators have to discharge multifarious duties in respect of the estate. The administrator is to pay full expenses, duties, legacy, retain the residue of the estate, recover the due to the estate. Once the residue has been determined, the executor or administrator are to pay the residuary legacy in case there is a kin. The administrators or the executors are required to maintain true account and complete inventory of assets of the deceased and to administer the estate of the deceased and to file true and complete account of the administrator.

...

28. Considering the nature of the Testamentary and Intestate succession, the object and purpose sought to be achieved by Section 291 and thus applying the aforesaid principles of interpretation of statutes, it would be seen that Section 291 of the Act is not intended to cover within its ambit the cases of a sole beneficiary and legal heir under a Will being required to furnish administration/surety bond. One cannot administer the estate or his own estate against himself, for which he be required to give an indemnity or administration bond. Besides, none of the purposes and objectives of Section 291 of the Act are covered or fulfilled by the execution of an administration/surety bond by the sole inheritor or beneficiary under the Will duly

proved. Such an exercise would be an exercise in futility. In the instant case if the petitioner's grand son was to mismanage or maladminister, he would be doing so only against his own and personal interests. A right that clearly vests in him by virtue of the bequest. Hence insistence of furnishing the administration bond in the present case would not only be meaningless and without any purpose, but inconsistent with succession. Section 291 in the light of the foregoing principles of interpretation, as noticed, has to be interpreted so as not being applicable to a case of a sole beneficiary and legal heir, under a duly proved Will insofar as requirement of furnishing an administration bond is concerned.”

“6. In the present case, the testator dies leaving behind petitioners herein. No objection was filed in favour of petitioner no. 1. Accordingly, having regard to the submissions made, taking into consideration the statement made by petitioners no. 2 and 3 and in view of the law laid down in Shambhu P. Jaisinghani (supra) and Sanjay Suri (supra), present application is allowed. Petitioner no. 1 is dispensed with from furnishing the surety bond. Application stands disposed of.”

14. In the facts and circumstances narrated above, the Petitioner has proved his case. The attesting witness PW-2 has categorically stated that the Will bears the signature of Smt. Pushpa Rani Bahri on all pages. He also confirmed that he had signed the Will and the second witness had signed the Will in his presence and that there was no force or coercion in the execution of the Will. He also confirmed that all the executants and the other witnesses including himself, went to the office

of Sub-Registrar-V for getting the will registered.

15. The Petitioner is entitled to grant of probate. The probate of Will dated 25th October, 2011 is granted subject to the furnishing of the court fee in terms of the valuation report filed by the SDM, Hauz Khas, New Delhi. Exemption as prayed for from furnishing of sureties and administration bond is granted as per the judgment in Sanjeev Kumar Juneja (Supra).”

To the same effect is the judgment in ***Rita Narang and Anr. v The State & Ors. Test Cas. 11/2011 (Decided on 7th August, 2015)*** cited by the Petitioner.

7. In the present case, the Petitioner is the natural heir of the deceased who is also stated to be in possession of part of the property. The Court is satisfied that the affidavits of the other legal heirs coupled with the No Objection Certificates issued by them entitle the Petitioner to relief. The furnishing of administrative-cum-surety bond requirement is accordingly dispensed with. Let the probate be issued upon verifying the payment of Court fee.

8. With these observations, the petition and all pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 18, 2019

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