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

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Date of Decision: 20th February, 2019

+ TEST.CAS. 57/2010

DAYANAND JHA

..... Petitioner

Through: Mr.R.K. Raizada, Senior Advocate
with Mr.Vivek Gupta, Advocate
along with petitioner in person.

versus

STATE OF DELHI & ORS

..... Respondents

Through: Mr.Randhir Jain, Mr.Dhananjai Jain,
Mr.Bhoop Singh, Advocates for
respondents No.2 to 5 along with
respondent No.3 in person.

J U D G E M E N T (O R A L)

1. The petitioner is seeking probate of the Will dated 19th May, 1997 of late Mahanand Jha. Late Mahanand Jha expired on 14th January, 2000. The petitioner is the younger brother of late Mahanand Jha. Late Mahanand Jha was survived by his widow (respondent No.2), two sons (respondents No.3 and 4) and one daughter (respondent No.5).

2. Late Mahanand Jha left behind a Will and an addendum both dated 19th May, 1997 (Ex.PW1/2 and Ex.PW1/3) according to which the deceased bequeathed flat bearing No.3265, Ground Floor, Pocket 3, Sector D, DDA SFS Flats, Vasant Kunj, New Delhi in favour of the petitioner or his wife. According to the Will, the deceased purchased the above flat out of the proceeds of agricultural land of the petitioner and his wife. The deceased had already given the authority letter and title papers to the petitioner's wife to

take the possession of the flat from Delhi Development Authority. The deceased also recorded in the Will that the flat was already in the possession of the petitioner. The deceased bequeathed the flat in favour of the petitioner or his wife. The deceased further recorded that his wife, sons and daughter will have no right over the said flat. The deceased appointed the nephew, Sumit Jha as executor of the Will.

3. The petitioner appeared in the witness box as PW-1. The petitioner examined both the witnesses to the Will as PW2 and PW3. The petitioner examined his wife as PW4.

4. The petitioner deposed that his brother, late Mahanand Jha executed the Will and an addendum as Ex.PW-1/2 and PW-1/3 respectively in respect of flat bearing No.3265, Ground Floor, Pocket 3, Sector D, DDA SFS Flats, Vasant Kunj, New Delhi which was purchased by the deceased out of the money received by selling the share of petitioner and his wife in the agricultural land and the deceased had handed over the title documents to the petitioner's wife during his lifetime. PW-1 further deposed that the respondents were well aware about the execution of the Will dated 19th May, 1997 and therefore, they never disputed the execution of the Will as well as title and ownership of the flat in favour of the petitioner.

5. PW2 and PW3 deposed that they were known to the deceased and other family members as they had family relations and attended each other's family functions. On 19th May, 1997, the marriage of the petitioner's son was solemnized at Mumbai in which the deceased had participated as an elder brother and was fully involved in all the family rituals. The deceased dictated his Will to PW3 who wrote down in his handwriting in the presence of the deceased and other attesting witnesses, PW2. PW3 read over the Will

to the deceased who thereafter signed the same in the presence of PW2 and PW3 who attested the same in the presence of the deceased. PW4 supported the petitioner and reiterated the averments made in the petition.

6. During the course of the hearing dated 20th February, 2019, this Court examined respondent No.3 on oath in exercise of power under Section 165 of the Indian Evidence Act. After recording of the statement, respondent No.3 withdrew his objections as well as the objections of respondents No.2, 4 and 5.

7. This Court is satisfied that the Will and an addendum both dated 19th May, 1997 (Ex.PW1/2 and Ex.PW1/3) are the last and true Will and addendum of late Mahanand Jha. Ex.PW1/2 and Ex.PW1/3 have been validly executed by late Mahanand Jha in the presence of PW2 and PW3 who signed the Will in the presence of the deceased and in the presence of each other. There is no merit in the objections of respondents No.2, 4 and 5 who have withdrawn the same.

8. The petition is allowed and the letters of administration in respect of the Will and addendum both dated 19th May, 1997 of late Mahanand Jha are granted to the petitioner upon depositing the necessary stamp duty.

9. Since the petitioner is in possession of the flat in question, the petitioner is exempted from filing the administration and surety bonds.

10. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

FEBURARY 20, 2019/dk

Test.Cas. 57/2010

**Statement of Satish K. Jha, S/o late Sh. Mahanand Jha, aged 55 years,
R/o Flat No.1602, Challenger Tower 2, Thakur Village, Kandivili (East),
Mumbai – 400101 on S.A.:**

I am a lawyer practising in direct taxes in Mumbai since the year 2000. My family comprises of my wife, one son and one daughter.

I have one brother, Dilip Jha and a sister, Vibha Jha. My mother, Sulochana Jha expired in April 2013.

My father, Mahanand Jha expired on 14th January, 2000 in village Dharhara in Bihar. Both my parents stayed in the village till their death. My father had agriculture lands in the village. The petitioner also had agricultural lands in the village. The petitioner was in transferable job and he never stayed in the village. My father used to take care of the petitioner's land in the village. The petitioner and my father used to settle their accounts of which I have no personal knowledge. Flat bearing No.3265, Ground Floor, Pocket 3, Sector D, Vasant Kunj, DDA SFS Flats is in possession of the petitioner since its possession in the year 1988. I came to know of this flat upon the death of my father. I thereafter collected the documents in respect of the said flat from DDA. I applied for mutation of the said flat in Delhi Development Authority in the year 2008.

I did not issue any notice to the petitioner to claim the aforesaid flat from the petitioner. I have not filed any case against the petitioner till date. However, I filed a report with Vasant Kunj Police Station in the year 2005. My father did not raise any claim respect of the flat from the petitioner because they had cordial relations. I did not file any case against the petitioner to claim the property because the petitioner had filed the probate

petition and I was awaiting the outcome.

RO&AC

J.R. MIDHA, J.
20.02.2019