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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 27/2018 & I.A. 6245/2018

S. SURJIT SINGH SAHANI

..... Petitioner

Through

Ms. Monica Sharma, Advocate.

versus

STATE & ANR

..... Respondents

Through

None.

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Date of Decision: 21st February, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Today in Court, learned counsel for petitioner has handed over an additional affidavit of Smt. Maninder Kaur, real sister of the testatrix, which is taken on record.
2. It is pertinent to mention that present petition has been filed under Section 276 of Indian Succession Act, 1925 for grant of probate in respect of Will dated 27th April, 1987, of late Mrs. Gian Kaur wife of late Shri S. Rattan Singh Khanpuri.
3. In the petition it has been averred that the petitioner is the sole beneficiary under the Will dated 27th April, 1987 and is the nephew of

the testatrix, late Mrs. Gian Kaur wife, who expired on 02nd April, 2011 in New Delhi. The testatrix is stated to have executed a registered Will dated 27th April, 1987, which was duly attested by Late S. Rattan Singh Khanpuri (husband of the testatrix) and Mr. S. Bhola (Advocate of the testatrix). The Will dated 27th April, 1987 executed by the testatrix is reproduced herein below:-

“WILL

This deed of Will and testament of Shrimati Gian Kaur wife of S. Rattan Singh Khanpuri (Aged about 60 years), R/o 32/2 East Patel Nagar, New Delhi is executed in Delhi on this 27th Day of April, 1987.

Life is short and uncertain, God knows when it may come to end. Hence I with my free will and consent, without any pressure, duress, influence and compulsion from any quarter, I am making this Will in good health and sound mind.

Whereas I am owner and in possession of the following property:

One building bearing No. 32/2, area 200 sq.yds. situated in East Patel Nagar, New Delhi, with lease hold rights vide registered sale deed No. 10951, Additional Book No. I, Volume No. I, Volume No. 1650, paged 109-113, regd. on 15.7.66 by Sub-Register, Delhi and bounded as under:-

<i>North :</i>	<i>Another plot of land</i>	<i>South : House</i>
<i>East :</i>	<i>Gali</i>	<i>West : Road.</i>

And whereas I have no issue, My husband S. Rattan Singh Khanpuri is alive. Moreover my husbands nephew Shri Surjit Singh Sahni is also living with me since childhood and he has been brought up by me as a son and is looking after me.

In order to avoid any dispute or controversy in future, I hereby bequeath that so long as I am alive, I shall remain owner and in possession of my aforesaid property. After my death, the above mentioned property and other moveable assets, shall west in S. Surjit Singh Sahni to the exclusion of all other legal heirs, Shrimati Maninder Kaur his wife is living with me and serving me in all respects.

In case anyone raises any objection to this will, the same shall be treated as null and void in any court of law.

Hence, I testatrix have executed this will at Delhi on the date month and year first above written in the presence of and hearing of the following witnesses. Text of the Will has been explained to me in my mother tongue and I have fully understood it.

TESTATRIX

*Sd/-
Mr. S. Bhola*

WITNESSES.

1. Sd/-

(Rattan Singh Khanpuri)

*S/o. Sh. Ram Singh, R/o. 32/2 East Patel Nagar,
New Delhi”*

4. It is stated in the petition that the deceased died issueless and the petitioner and his wife were taking care of the testatrix. It is further stated that the husband of testatrix, Late S. Rattan Singh Khanpuri also expired on 23rd May, 1995.

5. Notice was issued on the present petition on 07th May, 2018. Citations were also directed to be issued, which came to be published in the English edition of the daily newspaper “The Statesman” Delhi edition and “Navbharat Times” (Hindi) Delhi edition.

6. No objections have been received to the Will after publication of the citations.

7. Notices were duly served on the State and the other respondents. Valuation reports have been filed by the State. Respondent nos. 3 to 13 have filed their 'No Objections' supported by affidavits. The relevant portion of one such no objection affidavit filed by respondent no. 3 is reproduced hereinbelow:-

“(2) I say that the testatrix Late Gian Kaur and her husband Late S. Rattan Singh Khanpuri were my Brother-in-law and Sister-in-law (elder brother of my husband Late S. Bhagat Singh Sahni and his wife). I say that Late Gian Kaur and Late S. Rattan Singh Khanpuri did not have any children hence, since birth my son, S. Surjit Singh Sahni was taken in by them as their child.

(3) I say that Late S. Rattan Singh Khanpuri (husband of the testatrix) died on 23.05.1995 and the Testatrix of the Will Late Gian Kaur died subsequently on 02.04.2011. They were taken care of by the Petitioner and his wife until their death.

(4) I say that I have no objection if the immovable property bearing No.32/2, East Patel Nagar, New Delhi-110008 is transferred in the name of S. Surjit Singh Sahni and the present probate petition is allowed in his favour as prayed for.”

8. Learned counsel for the petitioner states that both the attesting witnesses to the Will have expired. She relies upon Section 69 of the Indian Evidence Act, 1872, which is reproduced hereinbelow:-

“69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

9. Learned counsel for petitioner further relies on the following judgments:-

A. *Babu Singh & Ors. vs. Ram Sahai alias Ram Singh, 2008(14)*

SCC 754 wherein it has been held as under:-

“17. It would apply, inter alia, in a case where the attesting witness is either dead or out of the jurisdiction of the court or kept out of the way by the adverse party or cannot be traced despite diligent search. Only in that event, the will may be proved in the manner indicated in Section 69 i.e. by examining witnesses who were able to prove the handwriting of the testator or executant. The burden of proof then may be shifted to others.”

B. *Jagdish Prasad vs. State, 2015 SCC OnLine Del 14461*

wherein it has been held as under:-

“12. The legislature was conscious of the fact that a situation may arise where both attesting witnesses have taken the train to the heaven before the testator died or before the beneficiary propounds the Will. The consciousness of the legislature can be found in section 69 of the Indian Evidence Act, 1872, which reads as under:

“69. Proof where no attesting witness found.— If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

13. Section 69 of the Indian Evidence Act. 1872, while dealing with a situation where no attesting witness can be found, requires evidence to be led that the signatures on a document which law requires to be attested by one or more witnesses are that of the executant with further proof that

there is attestation in his handwriting by one attesting witness.”

10. Smt. Maninder Kaur, real sister of the testatrix has filed an affidavit by way of evidence and the said affidavit has been marked as Ex. PW1/X. It has been stated in the affidavit that the Testatrix executed the will dated 27th April, 1987 in the presence of Smt. Maninder Kaur. It is further stated that the testatrix and her husband did not have any children and had adopted the biological son of Late Sardar Bhagat Singh Sahani and Late Smt. Manjit Kaur. It is further stated that the Testatrix expired on 02nd April, 2011 at New Delhi leaving behind her last Will and testament dated 27th April, 1987. The petitioner has proved the original Death Certificate of the testatrix as Ex.PW1/2 and her husband, Sardar Rattan Singh Khanpuri as Ex.PW1/1.

11. In the additional affidavit dated 21st February, 2019 filed by Smt. Maninder Kaur, she has identified the signatures of the Testatrix and her husband late S. Rattan Singh – a witness to the Will. She further states that the Testatrix was of sound mind at the time of executing the Will.

12. In view of the above, the Court is satisfied that the petitioner has in accordance with Section 69 of the Indian Evidence Act, 1872, succeeded in proving that the testatrix Mrs. Gian Kaur had executed the Will dated 27th April, 1987 and the said Will was her last valid will and testament.

13. However, since the petitioner is not the executor and no executor has been appointed in the present Will, this Court in

accordance with the judgment in *Preethi Swaminathan Vs. Govt. of NCT of Delhi & Others, (2018) SCC OnLine Delhi 9949*, converts the present petition to a Letters of Administration with Will annexed.

14. Consequently in terms of Section 232(a) of the Indian Succession Act, 1925, the present petition is allowed and the Letters of Administration with a copy of the Will dated 27th April, 1987 annexed thereto is granted in favour of the petitioner enabling him to administer the estate of deceased Mrs. Gian Kaur, subject to the petitioner filing the requisite Court fee in terms of the valuation reports and submitting an administrative bond with one surety in accordance with law.

FEBRUARY 21, 2019

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MANMOHAN, J