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

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Date of Decision: 19.02.2019

+ TEST. CAS. 32/2017

MRS. RITA BISWAS

..... Plaintiff

Through

Mr. Santosh K. Sethi, Advocate.

versus

STATE (GOVT. OF NCT, DELHI) & ANR

..... Defendant

Through

None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The petitioner has filed this present petition under section 276 of the Indian Succession Act seeking grant of probate in favour of the petitioner with respect to the will dated 08.12.2015 which was executed by Late Smt Renuka Guha (*hereinafter referred to as "the deceased"*) who has expired on 19.12.2015 in New Delhi

2. It has been averred in the petition that the deceased was the wife of Late Sh. Subimal Guha who pre-deceased her and mother of the petitioner and respondent no. 2.

3. The matter first came up for hearing before this court on 30.05.2017, where notice was issued to the respondents. Learned counsel for respondent no. 1 accepted notice and was directed to file the valuation report with respect to the subject properties (i.e. 6F Surah 2nd Lane, Plot 9 & Plot 10

of Surah 2nd Lane, Beliaghata, Kolkata). Thereafter, on 23.11.2017 learned for respondent no. 2 appeared and prayed to file objection to the petition within due course. Despite sufficient opportunity no one appeared for respondent no. 2 and their right to file objections to the present petition was closed by this court on 06.04.2018. Valuation Report qua properties at Beliaghata, Kolkata was filed as noted by this court on 11.02.2019.

4. Essentially, the case of the petitioner is that the petitioner and respondent no. 2 are the daughters and the only legal heir of the deceased. The petitioner is the eldest daughter. It is stated in the petition that the deceased was married to Sh. Subimal Guha, who pre-deceased her on 01.01.1987. Thereafter the deceased shifted to Delhi and started living with the petitioner. It is further stated that on 08.12.2015, the deceased executed a registered will in favour of the petitioner, whereby the petitioner was made the sole beneficiary of the properties at Beliaghata, Kolkata.

5. The petitioner has also annexed affidavits of Ms. Geeta Devi and Mr. Proneet Biswas, who are witnesses to the said will dated 08.12.2015. A perusal of the affidavit of Ms. Geeta Devi shows that she was a care taker of the deceased and knew the deceased for long time. Affidavit of Mr. Pronnet Biswas shows that the deceased was the maternal grandmother and knew the deceased since his birth. Both the affidavits states that the will was the last testament of the deceased and the deceased had affixed her signature in the presence of both the witnesses. The said will was duly executed and registered on 10.12.2015 vide registration no. 2143, Book no. 3, Volume No. 2092 at the office of the Sub-registrar V, Mehruali, New Delhi. It is also stated in the affidavits that the deceased was in sound mind when the will was executed in front of them.

6. I have heard the learned counsel for the petitioner and have perused the documents annexed to this petition. As there are no contesting respondents in the present petition, I see no impediment in granting probate of will dated 08.12.2015 in favour of petitioner.

7. In view of the above, this court is satisfied that the petitioner is the eldest daughter of the deceased and has succeeded in proving that the deceased had executed the will dated 08.12.2015 in sound deposing mind. The petitioner has further proved that the said Will was the last testament of Late Smt. Renuka Guha. Ms. Geeta Devi and Mr. Proneet Biswas, attesting witnesses to the will, have identified their signatures and the signature of the deceased in the said will.

8. In this view of the above, I hold that the petitioner has been successful in proving due execution and attestation of the Will dated 08.12.2015 of Late Smt. Renuka Guha. Since the petitioner is the sole executor/beneficiary of the Will, a probate is issued in favour of the petitioner subject to her furnishing the requisite court fees in terms of the valuation report and execution of administration and surety bond.

9. No orders as to cost. Petition is disposed off

JAYANT NATH, J.

FEBRUARY 19, 2019/ss
corrected & released on 13.03.2019