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

% ***Date of Decision:* 12.04.2019**

+ TEST.CAS. 82/2018

SUSHILA RANI CHOPRA

..... Petitioner

Through Mr.Ashok Agarwal, Adv.

versus

STATE OF NCT OF DELHI & ORS

..... Respondent

Through Mr.Pramod Kumar and

Mr.Prabhash Kumar, Advs. for R-1, R-2 and
R-3 present in person, None for R-5

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The petitioner has filed this present petition under section 276 (wrongly referred as Section 376 in the petition) of the Indian Succession Act seeking grant of probate in favour of the petitioner with respect to the will dated 20.10.2000 which was executed by Late Sh. Tilak Raj Chopra (*hereinafter referred to as "the deceased"*) who has expired on 13.03.2001 at Delhi.

2. It has been averred in the petition that the petitioner is the wife of the deceased and respondent no. 2 to 6 are the children of the deceased.

3. Notice was issued by this court on 19.12.2018. All the respondents were served. Respondent No. 2 and 3 are present in court in person. Respondents No. 2 to 4 have entered appearance and have already given their no objection to the present petition. Respondent No. 5 and 6 have been served through publication. Despite service, none has appeared on their

behalf, no one appeared on the last date of hearing. Respondent no. 5 and 6 are proceeded *ex-parte*.

4. Essentially, the case of the petitioner is that the deceased during his lifetime acquired some movable and immovable property which are stated below:

- i. Plot No. 6, situated in Jawahar Nagar, Moradabad ,measuring 54 x 44.9 Sq.feet,(approximately 269.4 Sq. Meters)
- ii. Amount lying in bank account No.11355 of Indian Bank at Shanti Niketan ,New Delhi -21 having balance as on 23.09.2016 Rs.75,949.95.
- iii. Amount lying in bank account No HBSB4427of Canara Bank at R.K.Puram, Near Moti Bagh,New Delhi having balance as on 31.10.2017 Rs.4,95,302/-

5. The deceased has executed a will dated 20.10.2000, wherein, the deceased has bequeathed and given the above said movable and immovable property in favour of the petitioner herein. It is also pertinent to mention that the deceased was the absolute and sole owner of the aforementioned properties.

6. Respondent no. 2 to 4 have already filed their respective no objection to the said petition dated 29.09.2018 and Respondent no. 5 and 6 are proceeded *ex-parte*. There are no contesting respondents in this present petition. *Ex-parte* evidence was recorded.

7. The petitioner has filed her evidence by way of affidavit of herself and one of the attesting witnesses to the will, namely, Sh. Rajeev Sehgal.

8. A perusal of the evidence by way of affidavit of the petitioner affirms the facts noted in the petition. It states that she is the wife of the deceased. It further states that the deceased expired on 13.03.2001 in New Delhi. The death certificate is marked and exhibited as Ex. PW 1/1. It is also stated that

the deceased is the sole and absolute owner of an immovable property bearing no. Plot No. 6, situated in Jawahar Nagar, Moradabad, measuring 54 x 44.9 Sq.feet,(approximately 269.4 Sq. Meters). The sale deed dated 28.07.1971 is marked and exhibited as Ex. PW 1/2. It is also stated that the deceased was operating two bank accounts in his name at Canara Bank, R.K. Puram, Near Moti Bagh, New Delhi having account no. HBSB4427 and one at Indian Bank, Shanti Niketan, New Delhi having account no. 11355. The Passbooks of both the banks are marked and exhibited as Ex. PW 1/4 and 1/5. It is pleaded that Respondent no. 2 to 4 have supported the case of the petitioner and have submitted their respective NOC's to this court.

9. Affidavit by way of evidence of Sh. Rajeev Sehgal, supports the case of the petitioner and states that he is one of the attesting witnesses of the will of the deceased. He further states that he was well acquainted with the deceased. He along with other witness, namely, Mr. Devendra Arora were present at the same place and time when the deceased affixed his signature on the said will. He also states that the deceased was in sound disposing mind at the time the said will was executed.

10. In view of the above, this court is satisfied that the petitioner has succeeded in proving that the deceased had executed the will dated 20.10.2000 in sound disposing mind. The petitioner has further proved that the said Will was the last testament of Late Sh. Tilak Raj Chopra. Sh. Rajeev Sehgal one of the attesting witnesses to the will, has identified his signatures and the signatures of the deceased on the said will.

11. In this view of the above, I hold that the petitioner has proved due execution of the Will dated 20.10.2000 of Late Sh. Tilak Raj Chopra. Since the petitioner is the sole beneficiary of the said Will, a probate is issued in

favour of the petitioner subject to her furnishing the requisite court fees and execution of administration and surety bond.

12. Petition is accordingly allowed. All pending application, if any, stand disposed off.

JAYANT NATH, J

APRIL 12, 2019

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