

\$~OS-17

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

%

Date of Decision: 11.07.2019

+ TEST.CAS. 66/2017

MRS. VANDINI KHANNA

..... Petitioner

Through

Mr.Nitin Gupta and Mr.Harsh Tayal,
Advs.

versus

STATE & ORS

..... Respondent

Through

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 23.10.2012 which was said to be executed by Late Smt. Sukrita Khanna (*hereinafter referred to as "the deceased"*) who has expired on 22.09.2017 in New Delhi.

2. It has been averred in the petition that the deceased was the wife of Late Shri Kirtee Chand Khanna who pre-deceased her. She was also the mother of the petitioner and Late Rohit Khanna who is the father of respondents 2 & 3.

3. The matter first came up for hearing before this court on 07.11.2017, where notice was issued to the respondents. Notice was served on

respondent no. 1 and respondents 2 & 3 were served through publication. Despite sufficient opportunity no one appeared for respondent no. 2& 3 and their right to file objections to the present petition was closed by this court on 27.09.2018.

4. Essentially, the case of the petitioner is that the petitioner and Late Rohit Khanna father of respondent no. 2 & 3 were the only children of the deceased. Late Rohit Khanna was divorced on 08.11.2006 and respondents 2 & 3 were living with their mother. The only legal heirs of the deceased were respondent 2 & 3 and the Petitioner.

5. It is stated in the petition that the deceased was married to Sh. Kirtee Chand Khanna, who pre-deceased her. The deceased used to stay in Dalhousie, Himachal Pradesh with her son late Rohit Khanna. After his death she shifted to Delhi and started living with the petitioner and her family.

6. Evidence was recorded. The petitioner has filed evidence by way of affidavit of herself along with the affidavits of the two attesting witnesses, namely Mr. Deepak Kumar Surie and Mrs. Deepika Kapoor.

7. A perusal of the evidence by way of affidavit of the petitioner affirms the contents of the petition. It is stated that the deceased had passed away on 22.09.2017 and had executed her last registered will and testament on 23.10.2012. It is further stated that the deceased had two offspring's i.e the petitioner and Late Rohit Khanna. It is stated that the deceased before moving to Delhi with the petitioner used to stay at Dalhousie, Himachal Pradesh with her son Late Rohit Khanna. It is stated that the deceased owned a plot of land in Dalhousie, Himachal Pradesh and had created a 99 years lease on the land. It is further stated that the deceased had movable

property in Delhi of which certain had been already transferred in the name of the petitioner by partly administering the will. It is stated that the will was registered and duly executed on 23.10.2012 in the office of the sub-registrar, Mehrauli, New Delhi in the presence of Mr. Deepak Kumar Surie and Mrs. Deepika Kapoor who were the attesting witnesses to the will. It is further stated that when the will was being registered and executed the petitioner with her husband Mr. Pradeep Khanna were also present and the date of “23.10.2012” on the top of the will was written by the deceased and the deceased signed and thumb marked the will in their presence and presence of all others. It is stated that after the deceased signed the will, Mr. Deepak Kumar Surie and then Mrs. Deepika Kapoor signed and thumb marked the will in her presence and the presence of all.

8. A perusal of both the affidavits of Mr. Deepak Kumar Surie and Mrs. Deepika Kapoor shows that they were personally known to the deceased. Both the affidavits further state that the will dated 23.10.2012 was executed by the deceased and the deceased had affixed her signature and thumb impression in their presence and in the presence of each other. The said will was duly executed and registered on 25.10.2012 vide registration no. 2900, Book no. 3, Volume No. 2007 at the office of the Sub-registrar V, East of Kailash, New Delhi/Delhi. Both the witnesses have identified their respective signatures and also identified the signature of the deceased on the will.

9. In view of the above, this court is satisfied that the petitioner has succeeded in proving that the deceased had executed the will dated 23.10.2012 in sound disposing mind. The petitioner has further proved that the said Will was the last testament of Late Smt. Sukrita Khanna.

10. Accordingly, the present probate petition is allowed in favour of the petitioner of the Will dated 23.10.2012. This is subject to the petitioner furnishing the requisite court fees in terms of the valuation report and execution of administration bond.

11. At this stage, the learned counsel for the petitioner states that the concerned office from Tehsil Dalhousie, District Chamba, Himachal Pradesh has valued the said property being the plot bearing Khasra Nos. 767, 768, 778, 779 and 782 at Court Road, Dalhousie, District Chamba, (H.P.) at Rs.1,71,72,000/-. He states that the property in question was given by the deceased in her lifetime by a registered lease deed for 99 years and the deceased had received a consideration of Rs. 1.60 crores. This lease has been duly entered and mutated in the revenue records. Hence, the petitioner is only entitled to in terms of the Will revisionary rights of the lesser after the expiry of the lease in 2110.

12. Considering the facts and circumstances, the value of the said property is taken at 10% of the stated market value of Rs.1,71,72,000/-.

13. No orders as to cost. Petition is disposed off in above terms. All pending applications, if any, also stands disposed of.

JULY 11, 2019
AD

JAYANT NATH, J