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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 27.03.2019

+ TEST.CAS. 71/2017

MS. SHALINI SRIVASTAVA

..... Petitioner

Through Mr.T.K.Tiwar, Adv. with Mr.Chandra
Dutt, Attesting Witness.

versus

STATE AND OTHERS

..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The petitioner has filed this present petition under section 278 of the Indian Succession Act seeking grant of Letter of Administration in favour of the petitioner with respect to the will dated 15.07.2015 which was executed by Late Smt. Madhu Bala Srivastava (*hereinafter referred to as "the deceased"*) who has expired on 04.08.2015 at New Delhi.
2. It has been averred in the petition that the petitioner and respondent no. 2 to 5 are the children of the deceased and the only surviving legal heirs.
3. Notice was issued by this court on 05.12.2017 and was served to respondents. Respondent no. 2, 4 and 5 have entered appearance and supported the case of the petitioner by recording their respective NOCs' dated 22.03.2018 and 21.05.2018 to this court. It is pertinent mention that

Respondent no. 3 was proceeded *ex-parte* by order of this court dated 21.01.2019.

4. Essentially, the case of the petitioner is that the deceased during her lifetime acquired an immovable property bearing No. C-4, Baleshwar Vihar, Boring Canal Road, Patna-800001 by virtue of the registered sale deed dated 08.12.2008. The deceased was the sole and absolute owner of the said property. Thereafter, the deceased executed a will dated 15.07.2015 with respect to the said property in favour of the petitioner. The said will appointed Mr. Garish Chandra Upadhyay to be the Executor.

5. As pleaded in the petition that the petitioner being the sole beneficiary of the said property by virtue of the said will approached the executor, however the executor showed his inability to accept the executorships and administer the estate of the deceased due to some personal inability. A perusal of the letter dated 20.12.2016 by Mr. Garish Chandra Upadhyay to the petitioner shows his inability to perform his duties.

6. Hence, this petition is filed for grant of Letter of Administration in favour of the petitioner with respect to the will dated 15.07.2015 executed by the deceased.

7. I have heard the learned counsel for the petitioner and have examined the necessary documents on record. As noted above respondent no. 3 is proceeded *ex-parte* by this court and respondent no. 2, 4 and 5 have submitted their respective NOC's. Hence, there are no contesting respondents in this present petition. *Ex-Parte* evidence was recorded.

8. The petitioner has led evidence by way of affidavit of herself, and one of the attesting witness to the will, namely, Sh. Chandra Dutt.

9. A perusal of the evidence by way of affidavit of petitioner, affirms the facts noted in the petition and states that she is one of the daughters of the deceased. It is further stated that the deceased was the sole and lawful owner of the property bearing no. C-4, Baleshwar Vihar, Boring Canal Road, Patna-800001 by virtue of the registered sale deed dated 08.12.2008 duly registered vide registration no. 19819 on Folio No. 234 to 248 at page of book No. CD-51. It is also stated that the deceased executed a will dated 15.07.2015, which is the last testament of the deceased, wherein the petitioner has become the sole beneficiary of the said property. The said will is marked and exhibited as Ex. PW 1/1. It is pleaded that the said will appointed Mr. Garish Chandra Upadhyay to be the Executor, who has declined to do the needful due to some personal difficulty. It is also pleaded that the deceased was of sound disposing mind during the execution of the will dated 15.07.2015 and has put her thumb impression on the said will in front of the two attesting witnesses namely, Sh. Rajnish Kumar and Sh. Chandra Dutt. It is further pleaded that Respondent no. 2, 4 and 5 have supported the case of the petitioner and have recorded their respective NOC's to this court.

10. Affidavit by way of evidence for one of the witness, namely, Sh. Chandra Dutt, states that he is one of the attesting witness of the will of the deceased. He further states that he was well acquainted with the deceased being the mother of his friend, namely, Mr. Rajnish Kumar (Respondent no. 4). He along with other witness, namely, Mr. Rajnish Kumar were present at the same place and time when the deceased affixed her thumb impression on the said will. He also states that the deceased was in sound disposing mind at the time the said will was executed.

11. In view of the above, this court is satisfied that the petitioner has

succeeded in proving that the deceased had executed the will dated 15.07.2015 in sound deposing mind. Sh. Chandra Dutt one of the attesting witnesses to the will, has identified his signatures and has stated that he was present when the deceased affixed her thumb impression on the said will.

12. In view of the aforementioned facts and documents, the present petition is allowed and the Letters of Administration is issued in favour of the petitioner with respect to the said will of the deceased, Late Smt. Madhu Bala Srivastava, subject to the petitioner filing the requisite Court fee and execution of administration and surety bond in accordance with law.

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

MARCH 27, 2019/ss

JAYANT NATH, J

नित्यमेव जयते