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

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Date of Decision: 27.02.2019

+ TEST. CAS. 78/2017

MRS. NANCY PANAGAT & ANR. Plaintiff
Through Mr.A.P. Vinod, Advocate.

versus

STATE & ANR Defendant
Through Ms. Barnali Basak, Adv for R1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The petitioners have filed this present petition under section 276 of the Indian Succession Act seeking grant of probate in favour of the petitioners with respect to the will dated 03.10.2012 which was executed by Late Sh. Raphael Thanjan (*hereinafter referred to as "the deceased"*) who has expired on 10.01.2016 at New Delhi.

2. It has been averred in the petition that the two petitioners and respondent no. 2 are the daughters of the deceased and only surviving legal heirs of the deceased.

3. Notice was issued by this court on 10.01.2018 and was served on respondent no. 1/ State on 19.02.2018 and Respondent no. 2 on 13.06.2018. Valuation Report with respect to the property of the deceased was filed by the state on 20.03.2018. It is pertinent mention that Respondent no. 2 was proceeded *ex-parte* by this court 29.11.2018.

4. Essentially, the case of the petitioners is that the deceased during his lifetime acquired an immovable property bearing No. 134, Hill Garden in Thrissur, Kerala, jointly with his wife who already pre-deceased the deceased on 13.10.1994. After the death of the wife, the deceased started

living with petitioner no. 1 in New Delhi. It is also stated in the petition that the deceased during his lifetime executed a will dated 03.10.2012, wherein petitioners were named as the beneficiaries of the deceased.

5. Hence, this petition is filed for grant of probate of the will dated 03.10.2012 executed by the deceased.

6. I have heard the learned counsel for the petitioners and have examined the necessary documents on record. As noted above respondent no. 2 is proceeded *ex-parte* by this court. Hence, there are no contesting respondents in this present petition. *Ex-Parte* evidence was recorded.

7. The petitioners have led evidence by way of affidavits of themselves, and one Mrs. Sundhu Mohan, Advocate.

8. A perusal of the evidence by way of affidavit of petitioner no. 1, shows that she is one of the daughters of the deceased. It is stated that the deceased had three daughters, namely, Mrs. Nancy Panagat, Mrs. Annie Thomas and respondent no. 2, namely, Mrs. Tessie Francis. It is further stated that the deceased expired on 10.01.2016 at New Delhi. The death certificate of the deceased is marked and exhibited as Ex.PW 1/1. It is also stated that during his lifetime the deceased executed and registered a will dated 03.10.2012 which was his last testament. The original Registered Will dated 03.10.2012 is marked and exhibited as Ex PW 1/2. The will was executed in the presence of two witnesses namely, Mrs. Sundhu Mohan, Advocate and Mrs. Veronica Francis, Advocate. Evidence of Mrs. Sundhu Mohan is marked and exhibited as Ex. PW 1/3. It is also stated that the deceased after the death of his wife started living with petitioner no. 1. Adhaar card of deceased is mark and exhibited as Ex PW 1/4. It is also stated that a similar petition was filed by the petitioners in Saket District Court which is withdrawn by the order dated 16.10.2017. The order is marked and exhibited as Ex. PW 1/5.

9. Affidavit by way of evidence of Mrs. Sindhu Mohan, Advocates, states that she is one of the attesting witnesses of the will of the deceased. She further states that the deceased along with other witness, namely, Mrs. Veronica Francis were present at the same place and time when the deceased affixed his signatures to the said will. She further 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 petitioners have succeeded in proving that the deceased had executed the will dated 10.01.2016 in sound disposing mind. The petitioners have further proved that the said Will was the last testament of Late Sh. Raphael Thanjan. Mrs. Sindhu Mohan one of the attesting witnesses to the will, has identified her signatures and the signature of the deceased on the said will.

11. In this view of the above, I hold that the petitioners has been successful in proving due execution and attestation of the Will dated 10.01.2016 of Late Sh. Raphael Thanjan. Since the petitioners are the named beneficiaries of the Will, a probate is issued in favour of the petitioners subject to her furnishing the requisite court fees in terms of the valuation report and execution of administration and surety bond.

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

JAYANT NATH, J.

FEBRUARY 27, 2019/ss

Corrected and signed on 20.3.2019