

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

% Decided on: 2nd December 2019

+ **TEST. CAS. 80/2018**

GAUTAM MALHOTRA

..... Petitioners

Represented by: Mr. Sanjeev Mahajan, Advocates.

versus

STATE AND ORS.

..... Respondent

Represented by: Ms. Shefali Vohra, Advocate for
Respondent No. 1.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition, the petitioner seeks grant of probate on the basis of the Will dated 12th December 2017 in relation to the estate of Late Shri Harsh Malhotra in favour of the petitioners.
2. Briefly stated, the deceased died on 31st January 2018 leaving behind the petitioner and respondent no. 2 and 3 as his class-I legal heirs. Petitioner and respondent no. 3 are the sons while respondent no. 2 the wife of the deceased.
3. The deceased executed a Will dated 12th December, 2017 and Will the deceased appointed the petitioner as the sole executor of the Will and bequeathed his 25% share in the immovable property bearing no. E-39, Greater Kailash-II, New Delhi-110048 and all his moveable assets equally in favour of his two sons being petitioner and respondent no. 3. The deceased was living separately from his wife for the last twenty-two years.

4. The valuation report was filed in respect of property bearing no. E-39, Greater Kailash-II, New Delhi-110048 by the Assistant Collector Grade-I/II, SDM (Kalkaji) whereby the said property was valued @ ₹10,27,45,209/-.
5. An affidavit by way of evidence has been tendered by the Petitioner Mr. Gautam Malhotra (PW-1) vide Ex. PW-1/A. The copy of death certificate of Late Sh. Harsh Malhotra was proved as Ex. PW-1/1.
6. Affidavit by way of evidence have also been filed by Sahil Minhaj who was the attesting witness to the Will dated 12th December 2017. He stated that the testator was in a sound state of mind while signing his Will. The Will dated 12th December 2017 was proved as Ex. PW-2/1.
7. An affidavit was also filed by Syed Munawer who was also the attesting witness to the said Will whereby he proved that the Will was signed by the deceased.
8. Notice in the present petition were issued on 17th December 2018. The citation was published in Indian Express – English edition and Dainik Bhaskar – Hindi edition on 31st January 2019. Respondent No. 3 entered appearance on 8th July 2019 and stated that we would like to file objection to the present petition. Respondent No. 2 did not enter appearance and despite several opportunities being granted to Respondent No. 3, he failed to file his objections to the present petition. Therefore, right to file objections by Respondent No. 2 and 3 was closed vide Order dated 26th September 2019. Vide Order dated 30th November 2019, Respondent No. 3 submitted that he was not willing to lead any evidence, therefore evidence on behalf of Respondent No. 3 was closed.
9. In view of facts and circumstances, there is no impediment in granting the relief of probate as claimed in the petition. The petitioner and respondent No. 3 being the beneficiaries under the said Will (Ex. PW-2/1) which is proved to have

been executed validly by the testator Late Shri Harsh Malhotra, in absence of proof to the contrary.

10. Accordingly, probate with respect to Will (Ex. PW-2/1) dated 12th December 2017 of Late Shri Harsh Malhotra, is granted in favour of the petitioner in respect of the immovable property left behind by the deceased as mentioned above, subject to the requisite court fees/stamp duty being furnished in accordance with the valuation report and upon submission of administration bond and surety, in accordance with law, to the satisfaction of the Registrar General of this Court.

11. Petition is disposed of.

12. Matter be listed before the Registrar General for payment of requisite court fees in respect of the abovementioned immovable property of the deceased and for acceptance of the administration bond and surety bond on 9th January, 2020.

DECEMBER 02, 2019
‘sk’

(MUKTA GUPTA)
JUDGE

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