

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

% **Date of decision: 28th January, 2020**

+ **TEST.CAS. 23/2019**

VIPIN KUMAR

..... Petitioner

Through: Mr. R.C.Khatri, Adv.

Versus

STATE & ORS.

..... Respondents

Through: Mr. Harsh Vardhan Sharma,
Adv. for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Section 276 of the Indian Succession Act, 1925, is filed seeking probate/letters of administration of the document dated 22nd August, 2013 registered on 13th September, 2013, as the validly executed last Will of S. Pritam Singh son of Late S. Diwan Singh ordinary resident of 45/77, West Punjabi Bagh, New Delhi, who died on 20th November, 2017.

2. It is pleaded in the petition that S. Pritam Singh was married to Gurdeep Kaur and three children namely Avtar Singh, Gurlad Singh and Rupinder Kaur i.e. respondents no. 2 to 4 herein were born out of the said wedlock. It is further pleaded that Gurdeep Kaur, wife of S. Pritam Singh pre deceased S. Pritam Singh on 6th February, 2015.

3. The petition came up first before this Court on 18th March, 2019, when notice/citation of the same was ordered to be issued and the respondent no.1 State directed to submit a report of valuation of the property.

4. The order dated 28th August, 2019 records the statement of the counsel for the respondents no. 2 to 4 that affidavits of no-objection had been filed and citation had been effected and none had preferred objections to the probate/letters of administration sought. Accordingly, the petitioner was relegated to evidence.

5. The order dated 25th September, 2019 of the Joint Registrar records that the petitioner had examined himself as PW1 and Hitesh Khurana, as PW2 and closed his evidence.

6. I have perused the records. The petitioner, appearing as PW1 has in his affidavit by way of examination-in-chief proved the Death Certificate of S. Pritam Singh as Ex.A1 and further deposed, (i) that he is the beneficiary of the document claimed to be the validly executed last Will of the deceased; (ii) that S. Pritam Singh was married to Gurdeep Kaur who pre deceased S. Pritam Singh; her death certificate has been proved as Ex.A2; (iii) that out of the said wedlock, three children i.e. respondents no. 2 to 4 were born; and, (iv) that S. Pritam Singh was of sound mind at the time of execution and registration of the document claimed to be the validly executed last Will.

7. PW2 Hitesh Khurana, in his affidavit by way of examination-in-chief has deposed, (i) that he was the witness to the Will dated 22nd August, 2013 registered on 13th September, 2013 made by S. Pritam Singh; (ii) that S. Pritam Singh had put his signatures in English on the Will in his presence and at that time S. Pritam Singh was having full knowledge and understanding of the contents of the Will and had read and understood the Will and admitted before him the correctness

of the contents thereof; and, (iii) that he was present and saw S. Pritam Singh affixing his signatures on the Will and testament dated 22nd August, 2013 registered on 13th September 2013 of his own free will. The said witness, when tendering his affidavit by way of examination-in-chief in evidence before the Joint Registrar on 25th September, 2019, only identified his own signatures on the affidavit by way of examination-in-chief Ex.PW2/A and on the verification accompanying the petition and did not identify the signatures of S. Pritam Singh on the original Will on which Ex.A3 was put or his own signatures thereon.

8. Else I have perused the registered document stated to be the validly executed last Will and find that thereunder, the deceased has not appointed the petitioner as the Executor. Probate of validly executed last Will proved to be of S. Pritam Singh can be granted only to the named executor and the petitioner as a beneficiary under the Will is entitled only to grant of letters of administration with copy of the Will proved annexed thereto. However, unfortunately petitions continue to be filed, without realising the difference between probate and letters of administration and claiming the reliefs in the alternative.

9. However, even if the aforesaid defect were to be ignored, the fact remains that the document claimed to be the Will has not been proved in accordance with law. A Will can be proved only by an attesting witness and not by any other person. The document claimed to be the Will in the present case has been purported to be proved by the petitioner himself who is not an attesting witness and PW2

examined as the attesting witness, though has deposed being an attesting witness to the Will of S. Pritam Singh, has not identified the signatures of S. Pritam Singh thereon and/or his own signatures thereon. He has also not deposed that the document was witnessed by any other person and not identified signature of any other person which the document purports to bear.

10. However finding the aforesaid lacunas / defects / faults to be owing to ignorance of the counsel, it has not been felt appropriate to penalize the petitioner therefor. Else, in view of no-objection of the heirs and in view of the matter otherwise having a ring of truth, it is deemed appropriate to allow the petition.

11. The petition is allowed.

12. Letters of administration with copy of the document dated 22nd August, 2013 registered on 13th September, 2013 on which Ex.A3 has been put, as the validly executed last Will of S. Pritam Singh son of Late S. Diwan Singh ordinary resident of 45/77, West Punjabi Bagh, New Delhi is ordered to be granted to the petitioner, subject to the petitioner depositing the requisite stamp duty and furnishing administration bond of the value of the property. However since the petitioner is found to be the sole beneficiary of the property bequeathed under the Will, the petitioner is exempted from furnishing surety with administration bond.

13. It appears that the petitioner is the purchaser of the property bearing No.1, Road No.34, Class B built on land admeasuring 1050 sq. yds., East Punjabi Bagh, New Delhi bequeathed under the Will in

his name by S. Pritam Singh. It is thus made clear that this order of grant of letters of administration shall not be deemed to sanction non compliance of any other law, rule or regulations.

14. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

JANUARY 28, 2020

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