

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TEST.CAS. 31/2019
DR. SATYAVIR TYAGI Petitioner

Through: Mr. Mohd. Anas, Adv.

Versus

STATE (GOVT. OF NCT OF DELHI) & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.01.2020**

1. This petition under Section 276 of the Indian Succession Act, 1925 seeks probate of the document dated 25th May, 2017, stated to be the validly executed last Will of Smt. Kamla Tyagi, wife of late Sh. S.V.S. Tyagi, who is stated to have died at Delhi on 2nd October, 2017 leaving the respondents no.2 to 4 viz. Dr. Sanjay Tyagi, Sh. Rajiv Tyagi and Sh. Sandeep Tyagi as her sons and only natural heirs, her husband Sh. S.V.S. Tyagi having pre-deceased her on 21st January, 2006. The petition has been preferred by the brother of the deceased Kamla Tyagi, as the named executor in the document stated to be the validly executed last Will.

2. The petition came up first before this Court on 7th May, 2019, when finding the claim in the petition of the deceased being ordinary resident of Delhi, but in paragraphs no.1 to 7 of the petition different addresses at Delhi having been pleaded, enquiry was made from the counsel for the petitioner. The counsel for the petitioner stated that the two addresses were of the two sons of the deceased Smt. Kamla Tyagi and the deceased Smt. Kamla Tyagi, from time to time was residing with either of her two sons in Delhi or with the third son at Ghaziabad.

3. Notice and citation of the petition were ordered to be issued and report of valuation of properties bearing Nos. C-19/B, Category-III, Gangotri Enclave, Alaknanda, New Delhi and B-36, Kaushambi, Ghaziabad, UP, stated to have been bequeathed under the document claimed to be the Will, requisitioned.

3. Service of notice/citation were effected and the respondents no.2 to 4, through the same advocate, filed separate affidavits affirming the document dated 25th May, 2017 to be the last Will and testament of their mother Smt. Kamla Tyagi and Smt. Kamla Tyagi having left them as her only natural heirs and of ownership of deceased Smt. Kamla Tyagi of the two immovable properties aforesaid and of no objection of each of the respondents no.2 to 4 to grant of probate to the petitioner Dr. Satyavir Tyagi. None else, in response to the citation issued, filed any objection.

4. In view of the aforesaid, vide order dated 3rd September, 2019 the petitioner was directed to file affidavits by way of examination-in-chief and the matter posted before the Joint Registrar for recording the evidence of the witnesses of the petitioner.

5. The petitioner, in his affidavit by way of examination-in-chief has proved the death of the deceased Kamla Tyagi vide Death Certificate Ex.PW1/1 and else deposed in terms of the petition.

6. The said affidavit by way of examination-in-chief was tendered in evidence before this Court on 30th October, 2019.

7. Mr. Anis Ahmed, Advocate appearing as PW-2, in his affidavit by way of examination-in-chief has deposed that (i) he was called by Dr. Sanjay Tyagi, son of the deceased Kamla Tyagi to be present along with

Sh. Rizwan Ahmed, Advocate, as attesting witness to the execution of the Will dated 25th May, 2017 of the deceased Smt. Kamla Tyagi; (ii) the deceased Smt. Kamla Tyagi, at the time of putting her thumb impression on the said Will dated 25th May, 2017, had three sons viz. respondents no.2 to 4 and all of whom were present; (iii) the Will dated 25th May, 2017 bears the thumb impression of the deceased Smt. Kamla Tyagi on each of the nine sheets thereof and which thumb impression was put by her in his presence and he had seen her putting her thumb impression on the Will dated 25th May, 2017; (iv) the other attesting witness Mr. Rizwan Ahmed, Advocate was also present at that time; (v) he as well as Mr. Rizwan Ahmed Advocate also put their signatures as attesting witnesses to the Will in the presence of each other and after having seen Smt. Kamla Tyagi put her thumb impression on the Will dated 25th May, 2017; and, (vi) at the time of putting her thumb impression on the Will dated 25th May, 2017, Smt. Kamla Tyagi was in a sound and disposing mind and she had put her thumb impression voluntarily, without any force, fraud or threat and after being explained the contents of the Will dated 25th May, 2017 which was based on her instructions to him and she had agreed thereto and thereafter put her thumb impression thereon.

8. The said affidavit by way of examination-in-chief along with the document claimed to be the Will dated 25th May, 2017 on which Ex.PW1/2 was put, were tendered in evidence and the point on each sheet, on which the deceased Smt. Kamla Tyagi had put her thumb impression and the point at which PW-2 had put his signatures on the Will, were identified.

9. Mr. Rizwan Ahmed, Advocate appearing as PW-3, in his affidavit by way of examination-in-chief stated that, (a) he was one of the attesting witnesses to the Will of deceased Smt. Kamla Tyagi; (b) at the time when the deceased Smt. Kamla Tyagi put her thumb impression on the Will, her three sons i.e. respondents no.2 to 4 were also present; (c) the Will bears the thumb impression of deceased Smt. Kamla Tyagi on each of the nine pages thereof and the said thumb impression was put in his presence and in the presence of PW-2 Anis Ahmed, Advocate; (d) he along with PW-2 Anis Ahmed, Advocate had also put their signatures as attesting witnesses on the said Will dated 25th May, 2017 Ex.PW1/2 in the presence of each other and after seeing the deceased Smt. Kamla Tyagi put her thumb impression thereon; (e) at the time of putting the thumb impression, the deceased Smt. Kamla Tyagi was in a sound and disposing mind and she had put the thumb impression voluntarily without any force, fraud or threat from anyone; and, (f) PW-2 Anis Ahmed, Advocate has explained to the deceased Smt. Kamla Tyagi the contents of the Will, which was based on her instructions and she had agreed thereto before putting her thumb impression thereon.

10. The said affidavit by way of examination-of-chief was tendered in evidence on 30th October, 2017 and the points where the deceased Smt. Kamla Tyagi had put her thumb impression, where PW-2 Anis Ahmed, Advocate signed as an attesting witness and where PW-3 himself signed as attesting witness, were identified.

11. The petitioner, on the basis of the evidence led, has proved the document Ex.PW1/2 to be the validly executed last Will of the deceased Kamla Tyagi.

12. Under the Will, besides the immovable properties aforesaid, the deceased Smt. Kamla Tyagi is also found to have bequeathed other financial assets / jewellery. No report of valuation thereof has been submitted or requisitioned.

13. The petition is allowed.

14. Probate is ordered to be issued to the petitioner, of the document dated 25th May, 2017 proved as Ex.PW1/2 as the validly executed last Will of deceased Smt. Kamla Tyagi, wife of Late Sh. S.V.S. Tyagi who died at Delhi on 2nd October, 2017 with copy of the Ex.PW1/2 annexed thereto, subject to the petitioner (i) submitting requisite stamp duty as per valuation received of the two immovable properties and valuation to be submitted of the financial assets, jewellery etc. mentioned in the Will dated 25th May, 2017; and, (ii) furnishing an Administration Bond of the value of the estate bequeathed under the Will dated 25th May, 2017 with two sureties of the like amount.

15. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

JANUARY 27, 2020

‘gsr’..