

\$~09

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

%

Delivered on: 11th November, 2021

+ **TEST.CAS. 47/2021**

ASHISH GUPTA

..... Petitioner

Through : Mr.Hrishikesh Baruah, Advocate
versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through : Mr.Nishant Das, Advocate for
respondent Nos.2 to 4.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. (Though Video Conferencing)

1. This is a petition under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of the last valid and legal Will dated 10.02.2021 of late Shyam Sunder.

2. It is alleged the last Will/testament has been validly executed by the testator and has been duly registered with the Sub Registrar-V(I), Delhi. The family tree of deceased Shyam Sunder is given in para No.2 of the petition. He was survived by his wife Urmila Devi/respondent No.2; his son Ashish Gupta/ petitioner; his daughter Nidhi Bansal/respondent No.3; and another daughter Neeti Khandelwal/respondent No.4. It is alleged there is no impediment in grant of probate in respect of the Will dated 10.02.2021 of deceased Shyam Sunder as the class I legal heirs of deceased have no objection to the Will and accepted it and request for grant of probate. The wife of

deceased as also his children who are parties to this petition have no objection for grant of probate and the bequest granted therein. The respondents No.2 to 4 have executed and filed their affidavits of no objection before this Court and have also filed consolidated written statement wherein they have not raised any objection for grant of probate in respect of the Will dated 10.02.2021.

3. The Will dated 10.02.2021 is annexed as Annexure A along with the documents. A bare perusal of the said Will dated 10.02.2021 would show deceased Shyam Sunder was the sole, absolute and exclusive owner of the moveable and immovable properties, including 1/3rd of the property bearing No.21, Sunder Nagar, New Delhi-110003 (hereinafter referred as *subject property*) which is bequeathed in favour of the petitioner herein to an extent of 1/3rd undivided share. The petitioner has also been appointed executant under the Will dated 10.02.2021. The schedule I to this petition describes the property as No.21, Sunder Nagar, New Delhi 110003 to the extent of 1/3rd undivided share with beneficiary Ashish Gupta/petitioner herein. The deceased Shyam Sunder was an ordinary resident of this property, hence this Court has the jurisdiction to entertain this probate petition.

4. I have perused the pleadings, including the affidavits of respondents No.2 to 4; the evidence so adduced on record, and heard the submissions made by the learned counsels for parties. The respondents No.2 to 4 have submitted they have no objection to the grant of probate in favour of petitioner herein, an executor of the Will dated 10.02.2021 of deceased Shyam Sunder.

5. The petitioner has led the evidence and the evidentiary affidavits of both attesting witnesses have been filed on record alongwith his own affidavit of evidence.

6. *PW1* Sunil Gupta, one of the attesting witness deposed he has witnesseth the Will dated 10.02.2021 – Ex.*PW1/A* and identified signatures of the testator Shyam Sunder at points A1 to A4; the photographs of Shyam Sunder at point A5; his own photograph at point A6; the photograph of another attesting witness namely *Dinesh Gupta* at point A7. He deposed the Will dated 10.02.2021 has been executed by Shyam Sunder in the presence of both attesting witnesses and they all have signed the Will in the presence of each other.

7. Similar is an affidavit of the other attesting witness Dinesh Gupta qua the manner of execution of Will dated 10.02.2021.

8. The affidavit of petitioner – Ashish Gupta has also been placed on record wherein he states about the contents of the probate petition and that there exist no impediment for grant of probate since all his relatives, who are Class I heirs of the testator, have filed their no objections in the form of affidavits as also by a consolidated written statement. The petitioner has proved the Will dated 10.02.2021 as Ex.*PW1/A*; copy of death certificate of testator as Ex.*PW3/A*; no objection affidavits of respondents No.2 to 4 as Ex.*PW3/B* to Ex.*PW3/D* respectively.

9. He also deposed that beside respondents No. 2 to 4, there are no other class I heirs of deceased Shyam Sunder and respondents No.2 to 4 have executed the affidavits/consolidated written statement thereby

accepting the Will dated 10.02.2021.

10. The Citation has been issued in the newspaper *Statesman* dated 13.07.2021 and none has filed any objection qua the probate petition till date.

11. Another issue raised before me is qua valuation of the 1/3rd share of the subject property. In schedule A to the petition, the valuation of 1/3rd share has been shown to be Rs.18,33,19,000/- but the valuation report qua the entire subject property has been filed by the SDM, Defence Colony, New Delhi wherein the valuation is assessed, on the basis of the market circle rate for valuation of land and property under Section 27 and 47A of the Indian Stamps Act, 1899 per notification No.F.1(2854)/Regn.Br./Div.Com/HQ/ 2020/5453 dated 26.02.2021 valid upto 30.09.2021, as Rs.45,24,03,762/-; hence, 1/3rd of same comes to Rs.15,08,01,254/-, apparently lesser than the valuation done by the petitioner herein.

12. In view of above, there is no impediment to the grant of probate of the Will dated 10.02.2021 in favour of petitioner in respect of 1/3rd undivided share of property bearing No.21, Sunder Nagar, New Delhi - 110003. Thus the petitioner is appointed as an executor of the Will dated 10.02.2021.

13. Registry to issue the probate in respect of the Will dated 10.02.2021 **Ex.PW1/A** annexed to petition, on paying the requisite stamp duty etc. on the share that goes in favour of the petitioner herein and upon furnishing administration bond and surety bond.

14. The application for return of original documents may be moved by petitioner upon completion of formalities.

15. In view of above, the petition stands disposed of. Pending application, if any, also stands disposed of.

NOVEMBER 11, 2021

M

YOGESH KHANNA, J

