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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 13.09.2023*

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TEST.CAS. 26/2022

POOJA MALHOTRA

..... Petitioner

Through: Mr. Rohit Priya Ranjan, Mr. Sanket Mishra and Ms Srishti Sonkar, Advs.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Ashish Sareen, Standing Counsel for Govt. of GOA for R-3.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The present petition under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as the "Act") seeks grant of probate of Will dated 22.10.2020 executed by late Shri Vinay Kumar Malhotra (hereinafter referred to as the "Testator").
2. It is the petitioner's case that the testator was ordinarily residing at House No. 49, Ram Vihar, Delhi. The testator died on 03.05.2021 leaving behind the petitioner/his widow and two sons, who have been arrayed as respondent nos.2 and 4 in the petition. It is claimed by the petitioner that out the two sons, one son namely Shri Vivek Malhotra i.e. respondent no. 4 was disowned by the petitioner and the testator, for which purpose, a public proclamation was issued in newspaper in the year 2017.



3. The aforesaid Will dated 22.10.2020 is stated to be the last Will and testament in respect of all the movable and immovable properties owned by the testator wherein the petitioner has been named as the Sole beneficiary. The details of the immovable and movable properties have been mentioned in para 5 of the petition. As per the petitioner, the Will was executed by the testator in the presence of two attesting witnesses namely Shri Ravinder Kumar Sharma and Shri Saroj Sharma.

4. While respondent no. 2 has already filed his affidavit of no objection for grant of probate of the Will in favour of the petitioner, the right of respondent no. 4 to file objections stands closed on 14.12.2022.

5. Upon notice being issued in the petition on 16.03.2022, citation was directed to be published in “The Statesman” (English Edition) and in the “Navbharat Times” (Hindi Edition). The said citations were duly published, but till date, no objections from any member of the general public have been received. The valuation reports in respect of the immovable properties have been duly filed by respondent nos. 1 and 3 respectively.

6. In support of her case, the petitioner besides tendering her own evidence by way of an affidavit, has also examined the two attesting witnesses on 28.08.2023. While appearing as PW1, the petitioner produced the original Will executed by the testator, an internet-generated copy of the death certificate of the testator, and the copies of the sale deed in respect of the two immovable properties mentioned in the will.

7. The attesting witness, Shri Ravinder Kumar Sharma was examined as PW-2 and he identified the signatures of the testator on the original Will. The other attesting witness to the Will namely Shri Saroj Sharma, who was examined as PW-3 also testified on the same lines as PW-2.



8. From the aforesaid it is evident that the petitioner has been able to prove that the Will was executed by the testator. In terms of Section 68 of the Indian Evidence Act, the attesting witnesses have also proved that the Will was duly signed by the testator in their presence and that they had signed the Will in the presence of the testator and of each other. Consequently, the petitioner being the sole beneficiary is entitled to be granted probate of the Will dated 22.10.2020 in her favour.

9. The petition is, accordingly, allowed and subject to the petitioner filing the requisite Court fees and an administration bond, probate of the Will dated 22.10.2020 be issued in her favour.

10. The administration bond to the satisfaction of the learned Registrar General be filed within six weeks, for which purpose the matter be listed before the Registrar General of this Court on 31.10.2023.

11. Taking into account that the petitioner is the sole beneficiary under the Will, she is being exempted from furnishing any surety bond. The petitioner is also granted liberty to apply as per law for return of the original documents filed by her.

(REKHA PALLI)
JUDGE

SEPTEMBER 13, 2023

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