



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

*Reserved on: 29th November, 2023
Pronounced on: 15th December, 2023*

TEST.CAS. 30/2019

1. MS. MAMATA KATHURIA

W/o Shri Rajjat Kathuria
D/o Late Shri Purnachandra Dayaldas Chaudhari
and Late Smt. Indira Chaudhari
R/o 14, Next Golden Hut,
Rewari, Haryana-123401.

..... Petitioner No. 1.

2. MS. PRATHIBHA CHAUDHARI

D/o Late Shri Purnachandra Dayaldas Chaudhari,
And Late Smt. Indira Chaudhari,
R/o Flat No. C-43, Carlton Estate-4,
DLF Phase 5, Off Golf Course Road,
Gurugram 122002, Haryana

..... Petitioner No. 2.

3. MS. MAYA CHAUDHARI

D/o Late Shri Purnachandra Dayaldas Chaudhari
and Late Smt. Indira Chudhari,
R/o Flat No. 7267, First Floor,
Pocket-7, Sector-D, Category-III,
Vasant Kunj, New Delhi-110070.

..... Petitioner No. 3.

4. MS. MEETA SHUKLA,

W/o Shri Naveen Shukla
D/o Late Shri Purnachandra Dayaldas Chaudhari
And Late Smt. Indira Chaudhari,
R/o C-4 – C-43, Carlton Estate-4,
Phase-V, Sikander Pant Ghosi (68)
Gurgaon, Haryana-122002.

Presently at:
8144, Prestige Shantiniketan,



ITPL Main Road,
Whitefield,
Bengaluru-560048

..... Petitioner No. 4.

Through: Mr. Om Prakash and Mr. Anshul
Parashar, Advocates.

versus

1. STATE

To be served through the Collector,
Distt. South-West, Delhi
Govt. of NCT, Delhi-110070.

..... Respondent No.1

2. MS. SONIA SARDA

W/o Shri Sampatlaji Sarda
D/o Late Shri Purnachandra Dayaldas Chaudhari
And Late Smt. Indira Chaudhari,
R/o 48, Archana Apartments,
HB Town, Near Gomti Hotel,
Bhandara Road,
Nagpur-440035.

..... Respondent No.2

Through: Mr. Tushar Sannnu and Mr. Yash
Singh, Advocates for GNCTD/R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The petitioners, Ms. Mamata Kathuria, Ms. Pratibha Chaudhari, Ms. Maya Chaudhari and Ms. Meeta Shukla, have filed the present petition under *Section 276 of the Indian Succession Act, 1923 for grant of Probate in respect of Will dated 6th April, 2005 executed by their father Late Shri Purnachandra Dayaldas Chaudhari, Will dated 6th April, 2005 and Codicil*



dated 26th January 1014 executed by their mother Late Smt. Indira Chaudhari, in which they are the beneficiaries.

2. It is submitted in the petition that Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari, parents of the petitioners, at the time of their death, were living at Flat No.7267, Sector-D, Pocket-7, Vasant Kunj, New Delhi-110070 which was their fixed place of residence in Delhi.

3. Shri Pumachandra Dayaldas Chaudhari was the *sole and absolute owner of immovable property namely, a flat bearing No. 7267 on the first floor in Sector - D, Pocket-7, Vasant Kunj, New Delhi 110070.*

4. Aside from this, ***he had following movable assets:***

- (i) Hyundai Santro, model LS 2001, bearing registration number DL9 CC 6679;
- (ii) Equity Shares held in Demat Account Number 31353789 jointly with Ms. Indira Chaudhari;
- (iii) Cash balance in Savings Banks Account Number 8529 at Gol Post Office (Head Post Office), Connaught Place, New Delhi, in which Ms. Indira Chaurhari is the nominee;
- (iv) Personal belongings such as apparels and other personal goods at residence in 7267, D-7, Vasant Kunj. New Delhi.
- (v) Lockers with UCO Bank, Supreme Court of India, New Delhi.

5. ***He owned the following assets jointly with his wife, Ms. Indira Chaurhari:***

- (i) Cash balance in their joint Savings Bank Account Number 000701003479 at ICICI Bank, Vasant Kunj, New Delhi;



6. Shri Pumachandra Dayaldas Chaudhari died on 1st April, 2017 and was survived by his wife, Ms. Indira Chaudhari along with the petitioners and respondent No. 2 as his class-I heirs, being his daughters. During his lifetime, Shri Pumachandra Dayaldas Chaudhari executed his last Will dated 06.04.2005, whereby he bequeathed the immovable property and his other assets in the following manner:-

*“3. **Flat:** That I own a residential flat bearing No. 7267 on the first floor in Sector - D, Pocket- 7, Vasant Kunj, New Delhi 110070, with a scooter garage on the ground floor, along with, undivided, indivisible ownership rights in the underneath land of the said property with freehold ownership rights. The flat is free of any debt, loan, dues, mortgage, liability whatsoever.*

- I bequeath **this flat to my wife, Smt. Indira Chaudhari.***
- In case she is pre-deceased, I bequeath this flat to my daughter Maya Chaudhari. Maya has contributed financially to me and her mother on a regular basis to meet our monthly living expenses, as well as to purchase assets such as a car, air conditioner, refrigerator, etc. thus ensuring a comfortable life. In addition, she sent full funds for the marriages of Meeta and Mamata, which otherwise were beyond our limits and resources at that time. I am against using any of my daughter's money without repaying the same, and I want to leave this world without any loan of any kind in my name, to the extent possible.*

*4. **Car:** That I own a car of make Hyundai Santro, model LS 2001, bearing registration number DL9 CC 6679.1 bequeath this car to **my daughter Maya Chaudhari** given that she provided full funds for its purchase.*

*5. **Shares and Cash Balance in Savings Bank Accounts:** That I have the following financial assets:*

- **Equity Shares:** That I have equity shares of limited companies held in Demat Account number 31353789*



jointly with Indira Chaudhari with ICICIDirect.com or in physical form.

- *ICICI Savings Bank Account: That I have a cash balance in Savings Bank Account Number 000701003479 at ICICI Bank, Vasant Kunj, New Delhi, which I hold jointly with my wife (Payable to Either or Survivor).*

- *NSS Savings Account: That I have a cash balance in Savings Banks Account Number 8529 at Gol Post Office (Head Post Office), Connaught Place, New Delhi. I have named my wife Smt. Indira Chaudhari as the nominee for this account.*

The proceeds from the shares and cash balance in savings accounts shall be dealt with as follows;

- ***In case Maya is unmarried at the time of my death, the total proceeds or Rs. 7 (Seven) Lakhs, which ever is less, shall be set aside for the marriage of Maya, and the balance proceeds I bequeath to my wife, Smt. Indira Chaudhari. In case Maya remains unmarried at the age of 50 years, the amount set aside for her marriage will belong to her.***

- *In case Maya is married at the time of my death, I bequeath the total proceeds to my wife, Smt. Indira Chaudhari.*

- *In case my wife is pre-deceased, the amount bequeathed to her shall instead be distributed equally between Mamata, Pratibha, Maya and Meeta.*

6. Personal belongings: That I own apparels and other personal goods at my residence in 7267, D-7, Vasant Kunj, New Delhi. I bequeath these personal belongings to my wife Smt. Indira Chaudhari and in case she is pre-deceased, it should be equally distributed between Mamata, Pratibha, Maya and Meeta."

7. It is submitted that by virtue of the Will dated 06.04.05 of her husband, Ms. Indira Chaudhari became the sole and absolute owner of immovable property namely, flat No. 7267 on the first floor in Sector - D,



Pocket- 7, Vasant Kunj, New Delhi 110070, with a scooter garage on the ground floor, along with, undivided, indivisible ownership rights in the underneath land of the said property with freehold ownership rights

8. Further, she owned an immovable property namely, a residential flat bearing No. 1668 on the third floor in Sector - C, Pocket- 1, Vasant Kunj, New Delhi 110070 with a scooter garage on the ground floor and a terrace above the flat, along with undivided, indivisible ownership rights in the underneath land of the said property with freehold ownership rights.

9. ***She also owned the following moveable assets:***

- (i) Gold ornaments and other Jewellery;
- (ii) Fixed deposits at ICICI Bank, Vasant Kunj, New Delhi, held jointly with her husband (Payable to Either or Survivor) under Customer ID 0710515;
- (iii) Cash Balance in Savings Bank Account Number 000701003480 at ICICI Bank, Vasant Kunj, New Delhi, held jointly with husband (Payable to Either or Survivor);
- (iv) Cash Balance in Savings Bank Account Number 0191000056697 at HDFC Bank, Vasant Kunj, New Delhi, held jointly with husband (Payable to Either or Survivor);
- (v) Cash Balance in Savings Banks Account Number 01190005669 at State Bank of India, Vasant Kunj, New Delhi, held jointly with her husband (Payable to Either or Survivor);
- (vi) Personal belongings such as apparels and other personal goods at residence in 7267, D-7, Vasant Kunj, New Delhi.

10. Ms. Indira Chaudhari died on 12th October, 2017 and is survived by the petitioners and respondent No.2 as her legal heirs being her daughters.



During her lifetime, Ms. Indira Chaudhari duly executed a Will dated 06.04.2005 whereby she divided the assets owned by her in the following manner:-

“3. Flat: *That I own a residential flat bearing No. 1668 on the third floor in Sector - C, Pocket- 1, Vasant Kunj, New Delhi 110070, with a scooter garage on the ground floor and a terrace above the flat, along with undivided, indivisible ownership rights in the underneath land of the said property with freehold ownership rights. The flat is free of any debt, loan, dues, mortgage, liability what so ever.*

- I bequeath this flat to my husband, Shri P.D.Chaudhari.*

- In case my husband is pre-deceased, I bequeath the flat to Pratibha only if she is still unmarried. In case Pratibha is married subsequently, the flat shall be sold after six months of her marriage. In case however, Pratibha is married earlier the flat shall be sold and its proceeds distributed equally between Mamata, Pratibha, and Mona.*

Such a sale of the flat will be done at a time deemed appropriate by the trustee.

4. Jewellery: *That I own gold ornaments and other jewellery which I had received as Streedhan at the time of my marriage, as well as those that were acquired by me after my marriage. The jewellery will be divided amongst my daughters as per my wishes stated in my handwritten note, kept by me inside Safe Locker Numbers 10 & 55 with ICICI Bank, Vasant Kunj, New Delhi. These lockers can be operated by myself my husband and my daughter*

5. Fixed Deposits and Cash Balance in Savings Bank Accounts: *That I have the following financial assets:*

- Fixed Deposits: That I have fixed deposits in my name at ICICI Bank, Vasant Kunj, New Delhi, which I hold jointly with my husband (Payable to Either or Survivor) under Customer ID 0710515.*

- ICICI Saving Bank Account: That I have a cash balance in Savings Bank Account Number*



000701003480 ICICI Bank, Vasant Kunj, New Delhi, which I hold jointly with my husband (Payable to Either or Survivor).

- *HDFC Savings Bank Account: That I have cash balance in Savings Banks Account Number 0191000056697 at HDFC Bank, Vasant Kunj, New Delhi which I hold jointly with my husband (Payable to Either or Survivor).*

- *SBI Savings Bank Account: That I have cash balance In Savings Banks Account Number 01190005669 at State Bank of India, Vasant Kunj, New Delhi, which I hold jointly with my husband (Payable to Either or Survivor').*

The proceeds from the fixed deposits and cash balance in savings bank accounts shall be dealt with as follows:

- ***In case Pratibha is unmarried at the time of my death, the total proceeds or Rs. 7 (Seven) Lakhs, which ever is less, shall be set aside for the marriage of Pratibha, and the balance proceeds I bequeath to my husband, Shri P.D. Chaudhari. In case Pratibha remains unmarried at the age of 50 years, the amount set aside for her marriage will belong to her.***

- ***In case Pratibha is married at the time of my death, I bequeath the total proceeds to my husband Shri P.D.Chaudhari.***

- ***In case my husband is pre-deceased the amount bequeathed to him shall instead be distributed equally between Mamata, Pratibha, Maya and Meeta.***

6. Personal belongings: That I own apparels and household goods, at my residence in 7267, D-7, Vasant Kunj, New Delhi. I bequeath these personal belongings to my husband Shri P.D. Chaudhari and in case he is pre-deceased, it should be equally distributed between Mamata, Pratibha, Maya and Meeta.

7. Any other moveable assets: Any other moveable assets (all assets except properties) acquired by me after the date of this Wilf or which I may inherit I bequeath to my husband, Shri P.D.Chaudhari. In ease he is pre-deceased,



these assets must be equally divided between Mamata, Pratibha, Maya and Meeta.

8. Any other immoveable assets: Any other immoveable assets (properties) which I inherit, I bequeath as follows: If I inherit property from my husband, Mr. P.D. Chaudhari, then the said property must be dealt with as per his wishes indicated in his Will. **In the absence of any explicit wishes, the property must be sold and its proceeds distributed equally between Mamata, Pratibha, Maya and Meeta.** Such a sale of the property will be done at a time deemed appropriate by the trustee. Property I inherit from any other source other than my husband must be sold and its proceeds distributed equally between Mamata, Pratibha, Maya and Meeta.”

11. It is submitted that Shri Pumachandra Dayaldas Chaudhari pre-deceased Smt. Indira Chaudhari and hence, the residential flat bearing No. 1668 on the third floor in Sector - C, Pocket- 1, Vasant Kunj, New Delhi 110070 is bequeathed to Petitioner No. 2, Ms Pratibha Chaudhari, who is an unmarried and single lady. Further, the said flat no. 1688 has already been mutated in the name of Petitioner No. 2, Ms Pratibha Chaudhari vide mutation order dated 22.02.2019.

12. It is further submitted that reading the two Wills of Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari, residential flat bearing No. 7267 on the first floor in Sector - D, Pocket- 7, Vasant Kunj, New Delhi 110070, is bequeathed exclusively to Petitioner No.3, Maya Chaudhari. Furthermore, the Petitioners No.1, 2, and 4, to obviate any difficulty in peaceful enjoyment, holding and possession of the immoveable property, have executed a Relinquishment Deed dated 11.10.2018 in favour of Ms. Maya Chaudhari in respect of said Flat bearing No. 7267 which has been registered on 11.08.2018. Thus, Petitioner Nos. 1, 2 and 4 have no right,



interest, share or claim in said property. The said flat no. 7267 has already been mutated in the name of Petitioner No. 3, Ms. Maya Chaudhari vide Mutation Order dated 24.01.2019.

13. Further, Ms. Indira Chaudhari, along with petitioner No. 3, Maya Chaudhari, was the owner of immovable property namely, an apartment bearing No. 102, Pearl Court-III, Essel Towers, Gurgaon. She executed a Codicil dated 26th January 2014 whereby she bequeathed her share in the property bearing No. 102, Pearl Court-III, Essel Towers, Gurgaon, in favour of petitioner No. 3, Maya Chaudhari.

14. The petitioners are the beneficiary under the Wills being the daughters of the two deceased namely: Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari. A prayer is, therefore, made that a Probate in respect of i) the last Will dated 06.04.05 of Late Shri Pumachandra Dayaldas, ii) Will dated 06.04.05 of Smt. Indira Chaudhari and, iii) Codicil dated 26.01.2014 of Smt. Indira Chaudhari, may be granted and all the movable and immovable assets may be transferred in terms of the Wills.

15. It is contended that respondent No.2 is not a beneficiary under the Wills dated 06.04.2005 and Codicil dated 26.01.2014, probate of which has been sought, in the present petition. Despite service, there was no appearance on behalf of **respondent No.2, who was proceeded ex parte** vide order dated 27.11.2019.

16. A **citation** was published in Statesman (English edition) on 29.06.2019. No objections have been filed by any third party.

17. **The Valuation Report** in respect of immovable properties was filed by Sub-Divisional Magistrate, Vasant Vihar, that the property namely, Flat No. 7267, Sector D, Pocket 7, Vasant Kunj, New Delhi is valued at



Rs.87,63,000/- (approx). Further, the property bearing number, Flat No. 1668, 3rd Floor, Sector C, Pocket I, Category II, Vasant Kunj, New Delhi-110070 is valued at Rs 76,96,200/- (approx).

18. **The Valuation Report** in respect of immovable property i.e. Apt No. 102, Pearl Court-Ill, Essel Tower, MG Road, Gurugram was submitted by Tehsildar, Wazirabad valuing the said property at Rs.7000/- per Sq Ft.

19. The petitioners, to prove the Wills dated 06.04.2005 executed by Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari, examined **PW1 Shri Juginder Nath Uppal**, one of the attesting witnesses.. He deposed that he was one of the attesting witness to the both the Wills executed by Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari which are Exhibited as PW1/1 and PW1/2, respectively. He deposed that the Will was signed by the deceased, him and the other attesting witness, Mr. Hemant Maheshwari, in the presence of each other and that the testator was of sound and deposing mind at the time of signing.

20. **PW2 Ms. Pratibha Chaudhari**, one of the attesting witness to the Codicil dated 26.01.2014 executed by Smt. Indira Chaudhari deposed that she was one of the witness to the Codicil executed by Smt. Indira Chaudhari and identified her signatures as Witness No.2. She deposed that the Will was signed by the deceased, her and the other attesting witness, Ms. Maya Chaudhari, in the presence of each other and that the testator was of sound and deposing mind at the time of signing. She further deposed that she had read over the contents of the Codicil to the testatrix and that the same was prepared as per the desire of the testatrix.

21. **The petitioner No.3**, Ms. Maya Chaurdhari, in order to prove the Wills Exhibited as PW1/1 and PW1/2 and the Codicil dated 26.01.2014



examined herself as **PW3**. She proved the certified copy of the Death Certificate of Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari as Ex.PW3/1 (colly.), the copy of Aadhaar Card of Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari as Ex. PW3/2 (colly.), Sale Deed dated 20.01.2014 for the Amrapalli property as Ex.PW1/4, Agreement dated 22.07.2013 for Apartment No. 102 at Gurugram as Ex. PW3/3, Statement of account of savings account No.000701075265 in my name with the ICICI Bank for the period 30.10.2013 to 17.01.2014 duly certified under the Banker's Book Evidence Act as Ex. PW 3/4, copy of the mutation orders dated 22.02.2019 and 24.01.2019 issued by the SDMC as Ex. PW3/5 and copy of the Aadhaar Cards of Petitioners No. 1-4 as Ex. PW3/6.

22. Submissions heard.

23. The mode for execution of Will is provided under Section 63(c) of the Indian Succession Act, 1925 which reads as under:

“63. Execution of unprivileged wills – Every testator, not being a soldier employed in an expedition or engaged in actual warfare, I[or an airman so employed or engaged] or a mariner at sea, shall execute his will according to the following rules:-

*(a)– (b)****

(b) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the



testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

24. The conditions for execution of a Will, as per the mandate of **Clause (c) of Section 63**, is that it must be attested by two or more witnesses, each of whom should have seen the testator sign or put his mark on the Will. The Will must be signed by the witnesses in the presence of the testator, but it is not necessary that more than one witness should be present at the same time.

25. **Section 68 of Indian Evidence Act** further provides the mode of proof of the Will and requires that at least one attesting witness to the Will must be examined. Accordingly, PW1 and PW2 Shri Juginder Nath Uppal and Ms. Pratibha Chaudhari, the attesting witnesses have been examined, who have both deposed that the respective Wills and the Codicil were signed by the testators in front of them.

26. The uncontested testimony of **Shri Juginder Nath Uppal** has proved the Will dated 06.04.2005 exhibited as Ex.PW1/1 as the last and final Will of deceased Shri Pumachandra Dayaldas Chaudhari.

27. Further, the uncontested testimony of **Shri Juginder Nath Uppal** and **Ms. Pratibha Chaudhari** have proved the Will dated 06.04.2005, Ex. PW1/2 and Codicil dated 26.01.2014. Wills of deceased Smt. Indira Chaudhari

28. The testimony the petitioner No.3 and that of PW1 and PW2 Shri Juginder Nath Uppal and Ms. Pratibha Chaudhari, the attesting witnesses has not been subjected to any cross-examination. Respondent No.2 who has not put appearance despite service of notice, was proceeded ex-parte by the Order of this court dated 27.11.2019. Also, no objection has been received



from any third person, pursuant to the citation.

29. The unchallenged and unrebutted testimony of the petitioner No.3 along with PW1 Shri Juginder Nath Uppal proves the genuineness and the authenticity of the Wills dated 06.04.2005 i.e. Ex. PW1/1 and PW1/2 executed by Shri Pumachandra Dayaldas Chaudhari and Smt. Indira Chaudhari, respectively.

30. Further, the unchallenged and unrebutted testimony of the petitioner No.3 along with PW2 Ms. Pratibha Chaudhari, proves the genuineness and the authenticity of the Codicil dated 26.01.2014 executed by Smt. Indira Chaudhari. The above-mentioned Wills and Codicil are hereby held to be proved.

31. Probate in respect of the Will dated 06.04.2005 i.e. Ex. PW1/1 and PW1/2 and Codicil dated 26.01.2014, is hereby granted to the Petitioner no.3, Maya Chaudhari, who is executor of the Wills dated 06.04.2005 i.e. Ex. PW1/1 and PW1/2, subject to payment of requisite court fees.

32. Petitioner No. 3 shall furnish Administrative Bond with one Surety to the satisfaction of the learned Joint Registrar General of this court.

33. The valuation of all properties filed by the Sub-Divisional Magistrate and the Tehsildar concerned, is on record.

34. On payment of the requisite court fee and other formalities noted above, the Probate in respect of both the Wills dated 06.04.2005 and Codicil dated 26.01.2014 shall be issued by the Registry.

35. The petition stands allowed and Probate in respect of the Will dated 06.04.2005 i.e. Ex. PW1/1 and PW1/2 and Codicil dated 26.01.2014, is hereby granted to the Petitioner no.3, Maya Chaudhari, who is executor of the Wills dated 06.04.2005 i.e. Ex. PW1/1 and PW1/2, subject to payment



of requisite court fees.

36. List before the Joint Registrar on 05.01.2024 for depositing of the bond.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 15, 2023/n/va

Signature Not Verified

Digitally Signed By: VIKAS
ARORA

Signing Date: 18.12.2023
19:09:28

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