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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:-15.09.2023***

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TEST.CAS. 93/2021 & I.A. 14035/2021 (directions)

TIA MAJUMDAR

..... Petitioner

Through: Mr. Shivain Vaidialingam, Adv.

versus

STATE & ORS.

..... Respondents

Through: Mr. Divyam Nandrajog with Mr. Jatin
Dua, Advs for R-1.

Mr. Shikhar Garg, Adv. for R-2-11.

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 the Will dated 19.07.2020 of late Shri Kalyan Patra (hereinafter referred to as 'the testator').
2. It is the case of the petitioner that the testator was ordinarily residing at property bearing no. A-94, Ground Floor, Neeti Bagh, New Delhi. The testator was unmarried and passed away on 05.12.2020. It is claimed that the aforesaid Will dated 19.07.2020 was executed by the testator at New Delhi in the presence of two attesting witnesses namely Mr. Zahoor Ali and Mr. Anup Roy and was the last Will and testament in respect of all his estate. The details of the immovable and movable assets of the testator have been set out by way of document no. P-3 filed alongwith the petition.



3. Learned counsel for the petitioner submits that since the testator was unmarried and his mother had pre-deceased him, he has left behind no Class-I heirs. Consequently, all his Class-II heirs being his siblings have been arrayed as respondent nos. 2 to 5. The petitioner has also arrayed the nieces and nephews of the testator as respondent nos. 6 to 11 and all the said respondents have filed their respective no-objection affidavits to the grant of probate in favour of the petitioner, who is the sole executrix of the Will.
4. Vide order dated 28.10.2021, notice was issued in the present petition on which date citation was directed to be published in 'The Statesman' (English), Delhi Edition. The said citation was duly published on 19.11.2021 but till date, no objections to the petition have been received from any person whatsoever. The valuation report in respect of the immovable property at Neeti Bagh, New Delhi has been placed on record by respondent no. 1. Similarly, the valuation report in respect of the property in village Umagarh, Patti Ramgarh, Nainital, Uttarkhand, has been filed by the concerned Tehsildar and, is, also on record. The petitioner has also valued the movable properties left behind by the testator at Rs.1,66,51,000/-, which are in the nature of amount lying in his various bank accounts.
5. In support of her case, the petitioner has examined Mr. Zahoor Ali, one of the attesting witnesses to the Will, as PW-1. The said witness has duly proved the Will dated 19.07.2020, the death certificate dated 12.12.2020 and has also categorically stated that the testator had signed the Will in the presence of the attesting witnesses, who had also signed the Will in the presence of the testator and in the presence



of each other. He has further stated that the testator was of sound disposing mind at the time of execution of the Will.

6. The aforesaid unchallenged and unrebutted testimony of Mr.Zahoor Ali, the attesting witness, therefore, proves the authenticity of the aforesaid Will dated 19.07.2020 of late Sh.Kalyan Patra. The petitioner has, therefore, in my view, been able to prove the Will dated 19.07.2020 in accordance with Section 68 of the Indian Evidence Act. However, it transpires that the Will also makes a bequeath in favour of the attesting witnesses which has to be treated as void in terms of Section 67 of the Act. It may, therefore, be apposite to note Section 67 of the Act, which reads as under:

"Section 67 of The Indian Succession Act, 1925

Effect of gift to attesting witness.—A Will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband; but the bequest or appointment shall be void so far as concerns the person so attesting or the wife or husband of such person or any person claiming under either of them."

7. Additional affidavits of the two attesting witnesses in terms of Section 67 of the Act have been filed. Both the witnesses have categorically stated that they are aware that bequeaths in their favour are void, but they still have no objection to the grant of probate of the Will in favour of the petitioner. Consequently, it is made clear that though the Will dated 19.07.2020 stands proved as per Section 68 of the Indian Evidence Act, the said part of the Will whereby the testator had bequeath a part of his estate in favour of the two attesting witnesses



will be treated as void and will therefore, devolve on all his Class-II legal heirs i.e. respondent nos.2 to 5, as per law.

8. The petition is, accordingly, allowed and subject to the petitioner filing the requisite Court fees, administration bond and surety bond, probate of the Will dated 19.07.2020 be issued in her favour.
9. The administration bond and security bond to the satisfaction of the learned Registrar General be filed within six weeks, for which purpose the matter be listed before the learned Registrar General of this Court on 17.10.2023.

(REKHA PALLI)
JUDGE

SEPTEMBER 15, 2023

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