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

% ***Reserved on: 1st November, 2023***
Pronounced on: 1st December, 2023

\+ **TEST.CAS. 72/2019**

GAUTAM PATHAK ..... Petitioner
Through: Mr. M.K.Sinha, Advocate.

versus

THE STATE OF NCT OF DELHI & ORS. ..... Respondents
Through: Mr. D. Nandrajog, Panel Counsel, GNCTD with Mr. Jatin Dua, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The petitioner Shri Gautam Pathak has filed the present petition under *Section 276 Indian Succession Act, 1923* for grant of Probate in respect of the Will dated 27.10.2016 executed by Late Smt. Raj Rani Pathak, his mother.

2. The petitioner has stated that the suit property bearing No. B-8, Main Market Road, Hauz Khas, South Delhi was purchased by Smt. Sushila Chopra who gifted the said property vide registered Gift Deed dated 28.06.1990 to Smt. Raj Rani Pathak, late mother of the petitioner. Smt. Raj Rani Pathak died on 11.02.2019. However, during her life time she executed a *registered Will dated 27.10.2016* as her last Will and testament. According to this Will, the suit property was bequeathed in favour of the

petitioner. He was also appointed as an Executor under the said Will. The possession of the suit property is already with the petitioner.

3. The petitioner further submitted that Smt. Raj Rani Pathak is survived by her husband Shri Arun Pathak who is respondent No.2 and her unmarried daughter Ms. Sonia Pathak respondent No.3. The petitioner has one minor son Master Vikramaditya Pathak who through his mother Smt. Parul Pathak, has also been impleaded as respondent No.4, even though he is neither a Class-1 heir nor a beneficiary under the Will. The petitioner has thus, sought Probate of the Will dated 27.10.2016 of late Smt. Raj Rani Pathak to be granted in his favour.

4. **Citation** was published in daily newspaper 'Statesman' (English Edition) and 'Navbharat Times' (Hindi Edition) on 12.10.2019.

5. **The respondent no.2 Shri Arun Pathak and respondent No.4 Master Vikramaditya Pathak** gave their "No Objection" to the issue of Probate in favour of the petitioner.

6. **The respondent No.3 Ms. Sonia Pathak** filed her Written Statement wherein she admitted the contents of the petition as true and correct. Thus, none of the respondent had contested the petition for Probate filed on behalf of the petitioner.

7. The Valuation Report was submitted by SDM, Hauz Khas in respect of the suit property, giving the values of property as under :

> "***4. Property bearing No. B-8, situated at Main Market Road, Hauz Khas, New Delhi.***.
>
> *Category : B*
>
> *Area of Land : 179 Sq. Meter*

Built up Area : Ground Floor 123.18 Sq. Meter
Use Factor : Residential
Structure Type : Pucca
Year of Construction : 1990-2000
Age Factor : 0.9
Minimum Rate of Land : Rs.2,45,520/- per square meter
Cost of Construction : Rs.17,400/- per square meter

Calculation of Property:-

Cost of Land : Rs.2,45,520 x179x1
: Rs.4,39,48,080/- (A)

Cost of Construction : Rs.17,400 x 123.18x0.9 (B)
Total cost of property (A+B) 4,39,48,080+19,28,998): Rs.4,58,77,078/- (Rupees Four Crore Fifty Eight Lakh Seventy Seven Thousand and Seventy Eight Only)"

8. The petitioner examined himself as PW1 and proved the Death Certificate of his mother Mrs. Raj Rani Pathak as Ex.PW1/1. The registered Will dated 27.10.2016 of Smt. Raj Rani Pathak in favour of the petitioner is proved as Ex.PW1/2.

9. *PW2 Shri Dhurjati Verma is one of the attesting witness* to the Will dated 27.10.2016 which is Ex.PW1/2. It is deposed by him that the Will Ex.PW1/2 bears his signature as attesting witness at point A on the last page. He also identified the signatures of the other attesting witness Sonia Pathak at point B on the last page. He further deposed that the Will was signed by the deceased and the other attesting witnesses in his presence and the testrix/

deceased had also signed and put her signatures on the Will in his presence.

10. **Submissions heard.**

11. 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 unpriviledged 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)****
>
> *(c) 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."*

12. 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.

13. **Section 63 of the Indian Succession Act, 1925** provides the mode of execution of a Will. It states that the Will must have the signatures or the mark of a testator and it should also be attested by two or more witnesses each of whom had seen the testator sign or fix his mark on the Will.

14. These facts have been duly proved by **PW1 Shri Gautam Pathak** the petitioner who has deposed that the registered Will dated 27.10.2016 Ex.PW1/2 was executed by his mother Late Smt. Raj Rani and is her last and final Will.

15. **Section 68 of Indian Evidence Act** further provides the mode of proof of the Will and requires that atleast one attesting witness to the Will must be examined. **PW2 Shri Durjati Verma,** the attesting witness has deposed that the Will was signed by the testator Late Smt. Raj Rani Pathak in his presence and in the presence of other attesting witness and that he and the other attesting witness had signed the Will in presence of each other.

16. The testimony of the petitioner as well as PW2 has not been subjected to any cross-examination. Rather the respondents have given their 'No Objection' to grant of the Probate in favour of the petitioner.

17. In the Gift Deed dated 28.06.1990, Mark 'A' it has been mentioned that Smt. Sushila Chopra was the absolute owner of property No.B-8, Hauz Khas, New Delhi comprising of a plot of land measuring 702.8 Sq.Yds. It is further stated in the Gift Deed dated 28.06.1990 that the suit property was divided into three parts namely A, B and C with the common passages. By virtue of the Gift Deed portion A along with portion C comprising of common passage was gifted to Late Raj Rani Pathak the daughter of Late Smt. Sushila Chopra. Smt. Raj Rani Pathak, therefore, became an absolute owner of portion A of the property in question by virtue of the Gift Deed. She during her life time executed the Will dated 27.10.2016 Ex.PW1/2, the execution of which has been proved by the attesting witness PW2 Shri Durjati Verma, who has deposed that the Will was signed by the testator Late Smt. Raj Rani Pathak in his presence and in the presence of other

attesting witness and that he and the other attesting witness had signed the Will in presence of each other.

18. It is specifically mentioned in the Will that the property in question which was gifted to her by her mother Late Smt. Sushila Chopra comprised of three parts marked as A, B and C which were indicated in Blue, Red and Yellow respectively in the Site Plan annexed with the Gift Deed. The three parts were described as under in the Will Ex.PW1/2 :

> *"**Part-A** marked Blue in the plan consists on an area of 192.467 sq yards comprising of one living room, one bedroom, two bathrooms one store, kitchen and a front veranda.*
>
> ***Part-B** marked Red in the plan consists of an area of 469.854 sq yards and comprises of one living room, one Dining room, two bedrooms, two rooms, two toilets and one varanda.*
>
> ***Part-C** marked yellow in the plan consists of 40.44 sq yards comprising of common passage to part A and Part B portions of the above said property premises."*

19. It is further mentioned in the Will dated 27.10.2016 Ex. PW1/2 of Smt. Raj Rani Pathak that she became the owner of Part-A mark Blue in the Site Plan comprising of an area of 192.467 sq. yards by virtue of registered Gift Deed dated 28.06.1990 executed in her favour by her mother. She, therefore, bequeathed portion A along with portion C which comprised of common passage to the petitioner her son as an absolute owner, after her demise. She also appointed the petitioner Shri Gautam Pathak as the sole executor of this Will.

20. The unchallenged and the unrebutted testimony of the petitioner and the attesting witness, therefore, proves the genuineness and the authenticity

of the Will dated 27.10.2016 Ex.PW1/2 of Late Smt. Raj Rani Pathak.

21. The Probate in respect of the Will dated 27.10.2016 is hereby granted to the Petitioner, subject to payment of requisite stamp duty/court fees.

22. The petitioner shall furnish Administrative Bond with one surety to the satisfaction of the Registrar General of this court.

23. The valuation filed by the SDM concerned, is on record.

24. On payment of the requisite court fee and other formalities noted above, the Probate in respect of the Will dated 27.10.2016 be issued by the Registry.

25. The petition stands allowed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 1, 2023
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