



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

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Date of Decision: 18.12.2023

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TEST.CAS. 2/2022

IN THE MATTER OF:

VINAY KAPOOR

..... Petitioner

Through: Mr. Shreyas Mehrotra and Mr.
Manish Kumar Mishra, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Divyam Nandrajog, Panel
Counsel, GNCTD with Mr. Mayank
Kamra, Advocate for respondent
No.1.
Mr. Anshuman Upadhyay and Mr.
Shashi Bhushan, Advocates for
respondent Nos. 2 and 3.
None for respondent No.4.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been instituted under Section 276 of the Indian Succession Act, 1925 whereby the petitioner seeks grant of Probate of the last and final Will dated 01.05.2017 (hereinafter, '*the Will*') executed by *Late Smt. Swaran Kapoor* (hereafter, '*the testatrix*').
2. The testatrix had two sons and one daughter. The present petition has been preferred by the eldest son of the deceased. Respondent No. 2 is the



daughter of the testatrix. The other son of the testatrix, i.e., Mr. Vivek Kapoor had already expired on 20.08.1982, leaving behind his wife, Smt. Anuradha Kapoor, Respondent No.4 herein, and his son Mr. Akshat Kapoor, Respondent No.3 herein. Respondent No.4 remains unserved despite publication and, therefore is proceeded *ex parte*.

3. The petitioner claims that the testatrix was an ordinary resident of Delhi, however she died on 28.05.2019 at the residence of Respondent No. 2 i.e., K-1/1568, Aashiyana Kanpur Road, Lucknow, Uttar Pradesh. The deceased had signed and executed the Will on 01.05.2017 thereby bequeathing the following immovable properties in favour of the beneficiaries:-

A. Immovable Assets/Properties:-

House No. E-73, Greater Kailash- I, New Delhi- 110048

4. It is stated that as per the Will, the sole immovable asset of the deceased has to be divided into three parts, i.e. 55% to the petitioner, 20% to the respondent No.2 and 25% to the respondent No.3.

5. In the Will, testatrix has categorically stated that she was the absolute owner of the aforesaid immovable asset. Citations were directed to be published by the order of this Court dated 11.01.2022 in two national daily newspapers in Hindi and English, having wide circulation including at New Delhi and Lucknow. Citations were also directed to be published in a local newspaper having wide circulation in Greenville, North Carolina, USA- 27834 and one having wide circulation in Missouri City, Texas, USA- 77459. In response to the citations, no member of the public has come forward and filed any objection. It is further stated that Respondent Nos.2



and 3 have already filed their NOC in favour of the petitioner as recorded in the order dated 22.11.2022. It is stated that Respondent No. 4, who is not traceable at the moment, had vide Relinquishment Deed dated 01.10.1982, relinquished all her rights in the estate inherited by her late husband in favour of Respondent No.3. Respondent No.3 further states that he has not been in contact with his mother i.e., Respondent No.4 for a long time and has no knowledge of her whereabouts.

6. The said Will was further verified by the two attesting witnesses i.e., Sh. Alok Verma and Smt. Neelam Dixit. Sh. Alok Verma got himself examined as PW-1 and stated that the said Will, exhibited as Ex.PW1/1, was executed and signed by the testatrix in his presence. He further identified the signatures of the testatrix on the said Will at 'Point C' on all the pages of the Will and his own signature at 'Point A'. He further identified the signatures of the other attesting witness, Smt. Neelam Dixit at 'Point B' on the last page of the Will.

7. Smt. Neelam Dixit i.e., the second attesting witness, got herself examined as PW-2 and likewise stated that the said Will, exhibited as Ex.PW1/1, was executed and signed by the testatrix in her presence. She identified the signatures of the testatrix at 'Point C' on all pages of the Will and her own at 'Point B' at the last page. She also identified the signatures of the other attesting witness Sh. Alok Verma at 'Point A' on the last page.

8. One Mr Gaurav Mishra, Assistant, Department of Stamp and Registration, Government of Uttar Pradesh, having EHRMS Code : 1468 got himself examined as PW-3 and deposed with respect to the said Will. He also brought the original book no.III- 450 from Office of Sub-Registrar-I,



Lucknow in which the original Will was placed after registration. The certified copy of the Will was exhibited as Ex.PW3/1.

9. The petitioner herein appeared and got himself examined as PW-4. He further proved and exhibited the relied upon documents. The Death Certificate of the testatrix was exhibited as Ex.PW4/1 and the Death Certificate of his brother Sh. Vivek Kapoor was exhibited as Ex.PW4/4.

10. From the above, it is established that *Late Smt. Swaran Kapoor* had executed her last and final Will on 01.05.2017, which was duly attested by two attesting witnesses namely i.e., Sh. Alok Verma and Smt. Neelam Dixit, both of whom appeared and proved the Will. It is also the pleaded case of the petitioner that at the time of the execution of the Will, the testatrix was of sound health and disposing mind. The Will has not been opposed by any of the legal heirs or any other member of the public.

11. In the considered opinion of this Court, there is no impediment in allowing the petition, subject to petitioner furnishing the court fees/stamp duty and execution of administration and security bond.

12. The petition is accordingly disposed of alongwith the pending application.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 18, 2023