

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

Reserved on: 16.03.2023
Date of decision: 06.04.2023

+ **TEST.CAS. 8/2022**

SHRI MUKUND BHATIA Petitioner
Through: Mr.Mahesh K. Chaudhary,
Adv.

versus

STATE (GOVT OF NCT OF DELHI) & ORS.

..... Respondents
Through: Mr.Divyam Nandrajog, Panel
Counsel for GNCTD with
Ms.Sayantini Sahu, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. The present petition has been filed under Section 276 and 278 of the Indian Succession Act, 1925 (hereinafter referred to as the 'Act') by the petitioner seeking grant of Letters of Administration/ Probate of the Will dated 15.01.2020 in respect of the immoveable properties left behind by his Paternal Aunt, Kumari Lajja Bhatia (hereinafter referred to as 'the Testatrix')

2. It is alleged that the Testatrix was a permanent resident of 17/14, Old Rajinder Nagar, New Delhi-110060 and expired on 19.04.2020 as a spinster, leaving behind Shri Mukund Bhatia (Nephew of the Testatrix), petitioner herein; Shri Prem Girdhari Lal Bhatia (Brother of the Testatrix), respondent no.2 herein; Late Vir Bhatia (Pre-Deceased Brother of the Testatrix) survived by his wife

and two sons, impleaded as respondent no.3 (i) to (iii) herein; and Dr. Indira Sahajwalla (Sister of the Testatrix), respondent no.4 herein.

3. It is the case of the petitioner that the freehold property bearing No. 17/14, Old Rajinder Nagar, New Delhi-110060 (hereinafter referred to as “Property-I”), was a self-acquired property of the father of the Testatrix, Late Girdhari Lal Bhatia, and by virtue of the Will executed by Late Girdhari Lal Bhatia, the abovementioned property was bequeathed to the Testatrix. Thereafter, upon the death of the Testatrix, the above property has devolved upon the petitioner by virtue of the subject Will dated 15.01.2020, executed by her.

4. The other immoveable property bearing No. LU-96, Pitampura, Delhi-110034 (hereinafter referred to as “Property-II”) was purchased by the Testatrix vide a Conveyance Deed dated 29.07.2004, and in terms of the subject Will, is to be divided in the following manner:-

- a. 70% share of the said property shall devolve upon the petitioner;
- b. The remaining 30% share of the said property shall devolve upon the respondent no. 5, which is a religious Trust.

5. It is averred in the petition that during her lifetime, the Testatrix had executed the subject Will dated 15.01.2020, which is her last Will and testament in respect of her moveable and immoveable properties, in the presence of two Attesting Witnesses, as mentioned hereinbelow:

- a. Shri Vijay Vasandani
S/o Late Kishan Chand Vasandani
R/o 17/15, Old Rajinder Nagar,
New Delhi- 110060;
- b. Shri Ashok Pohuja
S/o Sh. Badaldas J. Pohuja

R/o 17/19, Old Rajinder Nagar,
New Delhi-110060

6. The petitioner, in paragraph 6 of the petition, also gives the details of the movable assets in the form of Fixed Deposits, PPF and Shares left behind by the Testatrix.

7. By the order dated 21.01.2022, notice was issued in the present petition. Citation was also directed to be published in two daily national newspapers, one in English edition and one in Hindi edition, having wide circulation in NCT of Delhi, Pune, Mumbai and Jaipur. On the same date, the petitioner was also directed to file the original Will before the learned Joint Registrar (Judicial).

8. It has been recorded in the order dated 21.07.2022, passed by the learned Joint Registrar (Judicial), that the original Will was filed by the petitioner and kept in a sealed cover.

9. The valuation reports in respect of the Property-I and Property-II have been filed by the respondent no.1 and are on record.

10. As per the affidavit of service filed by the petitioner dated 19.07.2022, the respondent nos. 3 to 5 were duly served however, despite service, they failed to appear. Thereafter, vide order dated 07.02.2023 passed by the learned Joint Registrar (Judicial), the right of the respondent nos. 3 to 5 to file objections has been closed.

11. The respondent no.2 has filed an Affidavit giving his 'No Objection' in case the Letters of Administration/ Probate of Will dated 15.01.2020 is granted in favour of the petitioner.

12. The learned counsel for the petitioner submits that this is an uncontested case.

13. Evidence by way of affidavit of the petitioner (PW-1) was tendered on 07.02.2023. Apart from stating the facts and averments

made in the petition, the petitioner has relied upon the following documents:-

- a. Copy of the Death Certificate of Kumari Lajja Bhatia (Ex. PW1/1)
- b. Copy of Conveyance Deed dated 03.02.1994 in respect of property No. 17/14, Old Rajinder Nagar, New Delhi. (Ex. PW1/2)
- c. Copy of registered Will dated 20.08.1990 executed by Sh. Girdhari Lal Bhatia. (Ex. PW1/3)
- d. Copy of registered last Will and Testament dated 05.05.1997 executed by late Sh. Girdhari Lal Bhatia. (Ex. PW1/4)
- e. Copy of Death Certificate of Sh. Girdhari Lal Bhatia. (Ex. PW1/5)
- f. Copy of Death Certificate of Mrs. Bhagwati Bhatia. (Ex. PW1/6)
- g. Copy of Mutation Letter dated 21.05.2003 in respect of property No. 17/14, Old Rajinder Nagar, New Delhi in name of Kumari Lajja Bhatia. (Ex. PW1/7)
- h. Copy of Conveyance Deed dated 29.07.2004 in respect of property bearing No. LU-96, Pitampura, Delhi-110034. (Ex. PW1/8)

14. PW-2, Sh. Vijay Vasandani, is the attesting witness who has approved the Will dated 15.01.2020 and has identified his signatures on the Will at Point 'A'; the signatures of Sh. Ashok Pohuja, the other attesting witness, at Point 'B' on the last page; and the signatures of the Testatrix at Points 'C' on all the pages of the Will.

15. PW-3, Sh. Ashok Pohuja, the second attesting witness, in his statement recorded on 07.02.2023 before the learned Joint Registrar (Judicial) has corroborated the testimony of PW-2.

16. The petition is not contested by the respondent no.2. The respondent nos. 3, 4 & 5 have failed to appear despite service.

17. The citation has been carried out in in the Newspapers and no objection to grant of Letters of Administration/Probate of Will dated 15.01.2020 in favour of the petitioner has been received from any third person.

18. Section 68 of the Indian Evidence Act, 1872 requires the Will to be proved by examination of at least one of the two witnesses. In the present case, Sh. Vijay Vasandani (PW-2) and Sh. Ashok Pohuja (PW-3) are the two attesting witnesses who have deposed that Late Kumari Lajja Bhatia had signed the subject Will in their presence at Point 'C'. They further state that the subject Will was executed by the Testatrix voluntarily and when she was in sound disposing mind. The unchallenged and unrebutted testimony of the petitioner which is supported by the testimony of the two attesting witnesses proves the authenticity of the Will dated 15.01.2020 of Late Kumari Lajja Bhatia.

19. The petitioner being the nephew and beneficiary is entitled to the Probate of Will.

20. In view of the above, the Letter of Administration with the Will dated 15.01.2020 of Late Kumari Lajja Bhatia (Ex.PW2/1) attached, is

hereby granted to the petitioner, subject to payment of requisite Court Fee. The petitioner shall furnish Administration Bond with one Surety to the satisfaction of the learned Registrar General of this Court.

21. The petition is allowed in the above terms.

NAVIN CHAWLA, J.

APRIL 06, 2023/KP

