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

Judgment pronounced on: 01.12.2023

+ TEST.CAS. 28/2018

MRS. ANITA SACHDEVA & ORS.

..... Petitioners

Through: Mr. Madan Lal Sharma, Mr. Anil Aneja and Mr. Amit Bhardwaj, Advs.

versus

THE STATE (GOVT. OF NCT DELHI) & ANR.

..... Respondents

Through: Ms. Sumitra Choudhary, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioners under Section 276 of the Indian Succession Act, 1925, seeking grant of Letters of Administration with Will annexed, in respect of the moveable and immovable properties left behind by her late maternal aunt - Ms. Vidya Wanti Bagga *alias* Ms. Ved Bagga (the “testatrix”).

2. The Letters of Administration with Will annexed are sought with respect to the following movable/immovable properties, as specified in the Will dated 19.03.2013 of the testatrix:

- i. Undivided half share in the built up double storey residential property admeasuring 334.453 sq. meters, bearing No. M-145, Greater Kailash Part-II, New Delhi 110048 in favour of the petitioner no.1.
- ii. Residential flat No. 1006, admeasuring 89.522 sq. meters situated within the Housing Complex of United Friends Cooperative Group



Housing Society Ltd., Plot No. 9, Sector 6, Dwarka, Phase-I, New Delhi 110075 in favour of petitioner nos. 1-3 jointly.

iii. Amount lying in FDRs/Saving Bank Account of the testatrix in Canara Bank, M Block Market, Greater Kailash-II, New Delhi in favour of petitioner no.4.

3. Further, it is submitted that the testatrix had made a declaration in her Will dated 19.03.2013 that she had deposited some amount with Mr. Sudhir Khurana's Company namely Praveer Construction Pvt. Ltd. and had ordained petitioner no.2 and respondent no.3 to realize and distribute the same amongst petitioner nos. 1 and 4. The petitioners and respondent no. 3 have not been able to trace out either Mr. Sudhir Khurana or his said company and therefore the said amount has not been claimed in the present petition, however, the petitioners have sought leave of this court to add the said amount to the estate of the testatrix, if traced out by the petitioners.

4. It is submitted that the petitioner no.1 (Mrs. Anita Sachdeva) is the niece of the testatrix, and petitioner no.2 (Mr. Sushil Ahlawat) and petitioner no.3 (Mr. Neil Ahlawat) are the husband and the son of petitioner no.1 respectively. It is further submitted that petitioner no.4 (Mrs. Kiran Sachdev) is the real sister of petitioner no.1, and respondent no.3 (Mrs. Shanta Sachdeva) is the mother of petitioner nos.1 and 4, and also the biological sister of the testatrix.

5. The petitioner nos. 1, 2, 3 and 4 are stated to be permanent residents of USA and petitioner nos. 1, 2 and 4 have executed a special power of attorney in favour of Shri Satish Kumar Ahlawat who is the brother of the petitioner no.2 and is stated to have personal knowledge about the present petition filed by petitioners. Shri Satish Kumar Ahlawat has examined



himself as special attorney of petitioner nos.1, 2 and 4 by way of affidavit (Ex.PW-2/A) and has proved the Special Power of Attorney (Ex.PW-2/5).

6. It is stated that the testatrix was an Indian National and was a resident of M-145, Greater Kailash Part-II, New Delhi-110048. It is further stated that the testatrix died unmarried and issueless on 03.11.2017.

7. It is averred in the petition that the testatrix had during her lifetime executed a Will dated 19.03.2013, which is her last Will and testament in respect of her movable and immovable properties, in the presence of the following two Attesting witnesses:

- i. Ms. Bharti, D/o Radhey Shiam, R/o Flat No. 102, Tower 3, Beverly Park, Pocket 2, Sector 22, Dwarka, Delhi-110077.
- ii. Ms. Bhagwant Singh.

8. Notice was issued in the present petition on 09.05.2018, with a direction that citation be published in “the Statesman” (English) Delhi edition and “Jansatta” (Hindi) Delhi edition. It was also directed that a valuation report with respect to the concerned immovable properties be filed by the State and Chief Revenue Controlling Officer.

9. *Vide* Order dated 24.07.2018 passed by the Ld. Joint Registrar (Judicial) in the present petition, it was recorded that the citations in the Newspapers “the Statesman” and “Jansatta”, both dated 04.07.2018, have been filed.

10. *Vide* Order dated 11.07.2018 passed by the Ld. Joint Registrar (Judicial), the valuation report with respect to Property No. M-145, Greater Kailash Part-II, New Delhi 110048 (submitted by Assistant Collector Grade – I/II Sub-Division Kalka Ji) was taken on record. Thereafter *vide* Order dated 14.08.2019, the valuation report with respect to property bearing



Residential flat No. 1006, admeasuring 89.522 sq. meters situated within the Housing Complex of United Friends Cooperative Group Housing Society Ltd., Plot No. 9, Sector 6, Dwarka, Phase-I, New Delhi 110075 (submitted by SDM Dwarka) was taken on record.

11. It has been averred in the present petition that the parents of the testatrix and one of her siblings Mr. Om Parkash Bagga had pre-deceased her. It is also averred that the testatrix had two siblings, namely, Late Mr. Om Prakash Bagga and Mrs. Shanta Sachdeva (respondent no.3). It is further submitted that all persons who are necessary parties to the present petition have been impleaded herein.

12. It is submitted that a separate probate petition with respect to the Will of Mr. Om Prakash Bagga bearing TEST.CAS. No. 36/2018 is pending before this court, wherein Mr. Om Prakash Bagga is stated to have *inter alia* bequeathed his half of the share in M-145, Greater Kailash Part-II, New Delhi-110048 to petitioner no.4 herein. It is further submitted that the aforesaid probate petition is being contested by Dr. Sudhir Kumar Bagga, *i.e.*, the son of Mr. Om Parkash Bagga. A copy of the records pertaining to the said petition have also been placed on record on behalf of the petitioners.

13. *Vide* order dated 12.07.2022, this court had directed the petitioners to file an appropriate affidavit in support of their contention that the legal heir of the pre-deceased brother of the deceased testatrix *i.e.*, Dr. Sudhir Kumar Bagga is not a necessary party in the present proceedings. The Affidavit of the petitioners to the said effect has been filed on 25.07.2022 by Shri Satish Kumar Ahlawat.

14. It is submitted that since the testatrix died unmarried and issueless, there remain no legal heirs as per Section 15 (a) and (b) of the Hindu



Succession Act, 1956. It is further submitted that the father and mother of the testatrix had predeceased her on 27.07.1976 and 01.12.1976 respectively, and therefore no legal heirs as per Section 15 (c) of the Hindu Succession Act, 1956 are available. It is further submitted that as per Section 8 of the Hindu Succession Act, 1956, there is only one surviving legal heir of the testatrix, *i.e.*, Mrs. Shanta Sachdeva (respondent no.3), who has been impleaded as a party to the present petition by way of amended petition filed on behalf of the petitioners. It is further submitted on behalf of the petitioners that in terms of the judgment of the Karnataka High Court in ***S. Krishnamurthy vs. Aswathaiah (deceased) by LRs AIR 2006 Karnataka 44***, the son of the pre-deceased brother will not be the legal heir in case of a female who has died intestate in terms of Section 16 of the Hindu Succession Act, 1956.

15. Mrs. Shanta Sachdeva, who is stated to be the only legal heir of the testatrix has filed a no objection/reply alongwith affidavit, thereby stating that she has no objection if the Letters of Administration with Will annexed is granted to the petitioners with respect to the Will dated 19.03.2013, as prayed for in the present petition.

16. Evidence by way of Affidavit was filed on behalf of the petitioner nos. 1, 2 and 4 on 11.11.2021 by Mr. Satish Kumar Ahlawat.

17. The petitioners have produced the following documents in support of the present petition seeking Letters of Administration with respect to the estate of Late Ms. Vidya Wanti Bagga:

- i. Photocopy of the Will dated 19.03.2013 of Late Ms. Vidya Wanti Bagga alongwith true typed copy.
- ii. Unsealed cover containing the original Will dated 19.03.2013.



- iii. Photocopy of Election Commission of India ID Card of Late Ms. Vidya Wanti Bagga.
- iv. Photocopy of death certificate of Late Mr. Om Parkash Bagga.
- v. Photocopy of Will dated 12.05.2008 of Late Mr. Om Parkash Bagga.
- vi. Attested photocopy of Certificate of Naturalisation of Ms. Anita Sachdeva (petitioner no.1)
- vii. Attested photocopy of Passport of Ms. Anita Sachdeva.
- viii. Attested photocopy of OCI card of Ms. Anita Sachdeva.
- ix. Attested photocopy of Permanent Resident card of Mr. Sushil Kumar Ahlawat (petitioner no.2)
- x. Attested photocopy of Passport of Mr. Sushil Kumar Ahlawat (petitioner no.2)
- xi. Photocopy of Saving Bank Account No. 2741101001816 of Late Ms. Vidya Wanti Bagga with Canara Bank, M-46, Main Market, Greater Kailash Part-II, New Delhi.
- xii. Photocopy of FDRs bearing Sl. Nos. SNSC522770, KC447738, KC447739, KF989340, SNSC522839, KC447455 lying to the credit of late Ms. Vidya Wanti Bagga with Canara Bank, M-46, Main Market, Greater Kailash Part-II, New Delhi.
- xiii. Photocopy of Conveyance Deed dated 18.07.1973 in respect of property no. M-145, Greater Kailash Part-II, New Delhi-110 048 alongwith true typed copy.
- xiv. Photocopy of lease deed dated 18.07.1973 alongwith relevant typed copy.
- xv. Photocopy of Letter dated 09.11.1969 issued by Delhi Bar



Council.

18. Other than the abovementioned documents, Death Certificate of Late Mr. Attar Chand Bagga (father of the testatrix) and the Death Certificate of Late Mrs. Anokh Bai Bagga (mother of the testatrix) has also been filed.

19. Ms. Bharti, D/o Radhey Shiam, who is the attesting witness of the Will dated 19.03.2013 executed by Late. Ms. Vidya Wanti Bagga has filed her evidence by way of affidavit (PW-1/X), and in her statement recorded on 06.04.2022 before the learned Joint Registrar (Judicial) of this court, has identified the signatures of the testatrix on the Will dated 19.03.2013 at points A to D; and her own signatures at point E.

20. PW-2, Mr. Satish Kumar Ahlawat, the special power of attorney holder for petitioner nos.1, 2 and 4 has also filed evidence by way of affidavit (Ex. PW2/A). In his statement recorded on 06.04.2022 before the learned Joint Registrar (Judicial) of this court, he has identified the signatures of petitioner nos. 1, 2 and 4 at points B, C and D respectively on the Special Power of Attorney (Ex PW-2/5) executed by petitioner nos. 1, 2 and 4 in his favour. He has also proved the following documents:

- i. Ex.PW-2/I: Permanent Resident Card and Passport of petitioner No.2
- ii. Ex.PW-2/2(colly): Naturalization Certificate, Passport and OCI Card of Petitioner No.1.
- iii. Ex.PW-2/3: Passport of Petitioner No.3.
- iv. Ex.PW-2/6: Death Certificate of the testatrix.
- v. Ex.PW-2/8 (colly): Aadhar Card and PAN Card of the testatrix.
- vi. Ex .PW-2/9: Death Certificate of late O.P. Bagga.
- vii. Mark-'Y': Photocopy of the Will dated 12.05.2008 of late O.P.



Bagga.

- viii. Mark - 'A' & 'B' :Conveyance Deed of property No.M-145, Greater Kailash, Part-II, New Delhi.
- ix. Mark -'C' (colly): Photocopy of Saving Bank Account Passbook of the testatrix bearing No.2741101001816 & FDRs with Canara Bank.

21. As such, the present petition has remained uncontested. The citation has been carried out in the newspaper and no objection to grant of Letters of Administration with Will annexed with respect to the Will dated 19.03.2013 has been received from any third person.

22. Section 68 of the Evidence Act, 1872 requires a Will to be proved by examination of at least one of the two witnesses. In the present case, Ms. Bharti and Ms. Bhagwant Singh are the two attesting witnesses. Ms. Bharti has deposed that Late Ms. Vidya Wanti Bagga had signed the subject Will in her presence at Points A to D. Ms. Bharti further stated that the subject Will was executed by the testatrix voluntarily when she was in a sound and disposing mind. The unchallenged and unrebutted testimony of the petitioner which is supported by the testimony of Ms. Bharti proves the authenticity of the Will dated 19.03.2013 of Late Ms. Vidya Wanti Bagga *alias* Ms. Ved Bagga.

23. Having considered the facts of the case as well as the documents placed on record, it appears that the averments made in the present petition remain uncontested and have been proved by way of evidence. Accordingly, the present petition is allowed and Letters of Administration with the Will dated 19.03.2013 annexed is collectively granted in favour of the petitioners with respect to the estate left behind by late Ms. Vidya Wanti Bagga, subject



to the petitioners paying the requisite court fee, and furnishing an administration bond with one surety, to the satisfaction of the learned Registrar General of this Court.

24. The present petition is allowed in the above terms.

SACHIN DATTA, J

DECEMBER 01, 2023/dk