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

+ **TEST.CAS. 35/2023**

MADHU SARIN

.....Petitioner

Through: Ms. Aditi Sinha and Mr. Rajnandini
Singh, Advocates with petitioner in
person (through VC)

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr Abhinav Raghuvanshi and Mr
Avinash Tripathi, Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

03.10.2024

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1. The present petition under Section 276 of the Indian Succession Act, 1925 has been instituted for grant of probate in respect of the last registered Will of Late Mrs. Nirmal Sarin ('Testator') dated 16.11.2016. The Will stands duly registered on 22.11.2016 with the Sub-Registrar-VII, New Delhi, bearing Registration No. 279 of 2016 in Book No. 3.

2. In terms thereof, the Testator has made a bequest of all her movable and immovable properties in the favour of the Petitioner and Respondent No. 2 in equal share the i.e. $\frac{1}{2}$ each. The Certified Copy of Will dated 16.11.2016 was filed with the petition in compliance to the Section 276 of the Act of 1925 and the Original of the aforesaid Will is stated to be in the custody of the Petitioner.



3. For the purposes of disposal of the present petition, the following essential facts alone need be noticed. Petitioner is the daughter of the Testator who passed away on 29.06.2020 at Max Super Speciality Hospital, E-Block Rd, Saket Institutional Area, Saket, New Delhi, Delhi 110017, leaving behind her daughter, Ms. Madhu Sarin (Petitioner) and her son, Mr. Garish Sarin (Respondent No. 2) as the only Class-I legal heirs.

4. Insofar as the property i.e. land admeasuring approximately 1400 sq. yards (1170.5 Sq. Mtrs.) situated at 29, Golf Links, New Delhi — 110003 ('Subject Property') which stands bequeathed in terms of the Will is concerned, it is stated that it was the self-acquired property of late Sh. Prem Nath Khanna, the father of the Testator which devolved upon the Testator by the Will of late Sh. Prem Nath Khanna. It is stated that Sh. Prem Nath Khanna made a bequest of the subject property to Mrs. Nirmal Sarin (the Testator herein) subject to a life interest for his wife late Smt. Kaushalya Rani who has since passed away on 09.08.2000 making Mrs. Nirmal Sarin the absolute owner of the subject property.

5. In terms of an order dated 12.07.2023, citations were directed to be published in the daily newspaper The Statesman (English edition) and Nav Bharat Times (Hindi edition). The aforesaid direction was complied with and the necessary citation came to be published on 03.08.2023 and no objections to the petition have been received thereupon.

6. The Respondent No. 2 had orally conveyed his no objection to the grant of probate and which fact stands duly recorded in the order dated 12.07.2023 and moreover, an affidavit of no objection dated 22.06.2023 was



also filed by the Respondent No. 2 and the same was recorded in the order dated 06.12.2023.

7. The affidavit of Smt. Suman Khanna and Sh. Manjeet Kumar Singh, attesting witness to the aforesaid Will dated 16.11.2016 has also been filed with the Petition in compliance to Section 281 of the Act of 1925 and Rule 2 of Chapter XXIX of Delhi High Court (Original Side) Rules, 2018 ('Original Side Rules').

8. In terms of the order dated 30.01.2024 passed in these proceedings, Collector of Stamps/SDM, Chanakyapuri has filed a valuation report dated 07.06.2024 in terms of which the value of the subject property has been assessed at Rs. 91,39,98,359/-.

9. The matter was listed before this court on 05.07.2024 whereby this Court directed the Petitioner, Respondent No. 2 and the attesting witness of the Will dated 16.11.2016 to remain present before the Joint Registrar (J) for recording their statement(s). Keeping in view advanced stage of the parties, liberty was granted to the parties to join the proceedings through video conferencing on the date fixed. Accordingly, this Court directed listing of this matter before learned Joint Registrar (Judicial) for recording of the statements of the Ms. Madhu Sarin, Petitioner; Mr. Garish Sarin, Respondent No. 2 and Smt. Suman Khanna and Sh. Manjeet Kumar Singh, attesting witnesses to the Will dated 16.11.2016.

10. In compliance of order dated 05.07.2024, statements of both attesting witnesses proving the valid execution of the Will. The statements of Respondent No. 2 and Petitioner were recorded virtually on 25.07.2024 and their no objection was recorded with respect to grant of probate qua the Will



dated 16.11.2016. The PDF of the statements were sent to the attesting witnesses, Respondent No. 2 and Petitioner by way of email. The scanned copy of the said statements duly signed by the witnesses and the parties were received back on the official Email ID of the Court. Thereafter, the signed statements received on email were printed and the same are signed by the respective learned counsel for the parties and by the learned Joint Registrar (J). The statements were thus, authenticated. The relevant parts of the depositions of Petitioner, Respondent No. 2 and attesting witnesses are reproduced hereinbelow : -

“Petitioner - Ms. Madhu Sarin

On SA

I am petitioner in this petition. My mother. Late Mrs. Nirmal Sarin had executed the Will dated 16.11.2016. The said Will was executed at her residence and was registered at Sub-Registrar Office. INA in the presence of attesting witnesses.

At the time of execution of the Will, my mother was having good health and having sound mind. She was having sound mind till she passed away. She made the Will voluntarily and as per her free will. The probate may be granted accordingly.”

“Respondent No. 2 - Mr. Garish Sarin

On SA

I am Mr. Garish Sarin S/o Late Mrs. Nirmal Sarin who expired on 29.06.2020. She had two children. I being the son and the other one is my sister, Ms. Madhu Sarin. My mother, Late Mrs. Nirmal Sarin had executed the Will dated 16.11.2016 and I have no objection if probate is granted qua the said Will in favour of the petitioner Ms. Madhu Sarin.



I am making this statement voluntarily, freely and with my own free will without any pressure coercion etc.”

“Attesting Witness – Mr. Manjeet Kumar Singh

On SA

My name is Manjeet Kumar Singh. I was present at the time of the execution of the Will of Late Mrs. Nirmal Sarin at her residence and was registered at Sub-Registrar Office, INA on 16.11.2016. She was of sound mind and body and she was in good health and she had voluntarily signed and executed the Will. I had signed the Will after reading it, I am having no objection if the probate is granted in favour of the petitioner. I am making my statement voluntarily and without any pressure.”

“Attesting Witness – Ms. Suman Khanna

On SA

I am attesting witness on the Will dated 16.11.2016 executed by Late Mrs. Nirmal Sarin. The said Will was executed in my presence. At the time of execution, Late Mrs. Nirmal Sarin was having good health and sound mind. She executed the Will with her own free will, voluntarily and without any pressure. After reading the Will, I had put my signatures on the last page of the Will. I am having no objection if the probate is granted in favour of the petitioner.”

11. From the aforesaid recordal of facts, it is apparent that the present probate proceedings have remained uncontested and that the execution of the aforesaid Will dated 16.11.2016 has been duly proved by the attesting witnesses thereto. The Court thus finds no impediment in the grant of probate for the Will dated 16.11.2016 in terms of Section 272 of the Act of 1925 and Rule 6 of Chapter XXIX of Original Side Rules.



12. The facts of this case further justify grant of exemption from filing any administrative and surety bonds to the petitioner since the probate petition is uncontested and the executors (Petitioner and Respondent No. 2) of the Will dated 16.11.2016 are the only legal heirs of the testator. In this regard it would be apposite to refer to a judgement of the coordinate bench of this court passed in **Maninder Singh v. State**¹, wherein it was observed that the exemption from filing an administration and surety bond under section 291 of the Act of 1925 can be granted in the case where the property had been bequeathed in the favour of legal heirs or a sole beneficiary. Bearing in mind principles enunciated this Court is of the view that the exemption as prayed for would be justified in law. The relevant para of the said judgment reads as under:

“8. There are a stream of cases, where having regard to the fact that the petitioners in testamentary cases where probate/letters of administration were sought in respect of the estate of the deceased, had been exempted from furnishing Surety Bond/Administration Bond on the ground that the will was in favour of the natural heirs and there was no contest to the request for grant of letters of administration/Probate. It was observed that where the petitioners/applicants were natural heirs/sole beneficiary of the deceased, any order directing the said petitioner(s) to stand as an administrator/surety of the estate of the deceased would amount to their/his standing surety for themselves/himself.....”

13. Accordingly, the instant petition is allowed. Subject to the Petitioner filing the requisite court fee, probate along with a copy of the Will annexed shall stand granted in favour of the Petitioner. The Petitioner shall also stand exempted from executing or submitting any administration or surety bond.

¹ 2015 SCC OnLine Del 9265



14. Pending applications, if any stands disposed of.

OCTOBER 3, 2024/hp/AKT

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any