



2024:DHC:6299



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON -28.05.2024****PRONOUNCED ON -20.08.2024**

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+ TEST.CAS. 86/2021

SAURABH NIGAM

..... Petitioner

Through: Mr. Arush Bhandari, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Shashi Pratap Singh, Mr. Sparsh
Agarwal, Advs. for R-1.
Mr. Chetan Wahi, Adv. for R-2 and 3
(VC).**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J :**

1. The present petition has been filed by the petitioner under Section 278 of the Indian Succession Act, 1925 (herein referred to as "*the Succession Act*"), seeking issuance of Probate/Letter of Administration qua the Will dated 1st January 2016, in respect of the estate of the deceased Smt. Manju Nigam w/o Late Shri Sushil Kumar Nigam, as detailed below:
 - a) Property bearing No. Flat No. 231, Nehru CGHS Ltd Sec-7/16, Dwarka, New Delhi 110075.



- b) Co-owner in the Property bearing No. L-208, 2nd Floor in Tower L in Group Housing Residential Complex, "Prateek Laurel" situated at Plot No. GH-01, Sector 120, Sector 120, Noida, Gautam Budh Nagar, U.P.
- c) All the moveable assets of her bank locker (Locker No 240, Indian Overseas Bank, Sector 10, Dwarka, Delhi.
2. Briefly stated, late Smt. Manju Nigam (herein referred to as "*Testatrix*") w/o Late Shri Sushil Kumar Nigam passed away on 18.02.2016. *Testatrix* is the Mother of the Petitioner and Mrs. Varsha Nigam i.e., Respondents no.2 and Mrs. Shweta Saxena i.e., Respondent No.3. *Testatrix*, was a permanent resident of Flat no. 231, Arunachal Apartments, Plot No. 16, sector - 7, Delhi – 110075. At the time of her death *Testatrix* was staying at L-208, 2nd floor in tower 1, Group Housing Residential Complex, Prateek laurel situated at Plot No. GH - 01, Sector 120, Noida, Gautam Budh Nagar, U.P. The testatrix executed her last Will on 01.01.2016.
- 2 Late Smt. Manju Nigam (*Testatrix*) left behind the following legal heirs:
- Mr.Saurabh Nigam (Son- Petitioner)
 - Mrs. Varsha Nigam w/o Sh.Mohit Srivastav (Daughter- R2)
 - Mrs.Shweta Saxena w/oSh. Anshul Saxena (Daughter- R3)
- 3 The *Testatrix* vide Will dated 01.01.2016 bequeathed (a) Property bearing No. Flat No. 231, Nehru CGHS Ltd Sec-7/16, Dwarka, New Delhi 110075. (b) Co-owner in the Property bearing No. L-208, 2nd Floor in Tower L in Group Housing Residential Complex, "Prateek Laurel" situated at Plot No. GH-01, Sector 120, Sector 120, Noida,



- Gautam Budh Nagar, U.P (c) All the moveable assets of her bank locker (Locker No 240, Indian Overseas Bank, Sector 10, Dwarka, Delhi to her son i.e., the present petitioner. Learned counsel submits that the present Petition is uncontested as Respondents no 2 and 3 have executed their no objection certificates in favour of the petitioner.
- 4 The notices to the respondents were issued on 21.10.2021 and matter was directed to be listed before the Joint Registrar for completion of proceedings. Notices were also issued to the concerned SDMs for placing on record the valuation reports in respect of the two properties i.e., Flat No.231, Arunachal Apartments, Plot no. 16, Sector-7, Dwarka, Delhi-110075, and another at L-208, 2nd Floor in Tower-1, Group Housing Residential Complex, Prateek Laurel situated at Plot No. GH - 01, Sector 120, Noida, Gautam Budh Nagar, U.P.
- 5 Further, the directions were given for publishing Citations in two national/daily newspapers in Hindi & English, having wide circulation in NCT of Delhi/Noida, and in an English newspaper having wide circulation in BC, Canada V3W2P6. The citations were published in “*Rashtriya Sahara*” (Hindi) on 22.04.2022 and “*The Statesman*” (English) on 04.05.2022, and also in Canada-The Voice on 29.04.2022. The valuation report was filed on record according to which the properties were assessed as in total to be around Rs.1,79,17,606/-. The evidence on behalf of petitioner was duly recorded.
- 6 Before considering the evidence led by the petitioner, it is pertinent to reproduce the relevant provisions dealing with the validity and execution of a “Will” which are as under:

“Section 63 of the Indian Succession Act, 1925



Execution of unprivileged wills- Every testatrix, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testatrix shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testatrix, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testatrix 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 testatrix, or has received from the testatrix a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testatrix, 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.

- 7 The requisite conditions for the proof of execution of Will has been provided in section 68 of the Indian Evidence Act, 1972 which reads as under:

Section 68 of Indian Evidence Act 1872

Proof of Execution of document required by law to be attested- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving



evidence: xxx”

- 8 Further, it would be apposite to note the principles regarding the nature of proof required to prove a “Will” as elucidated by the Apex Court in its decision in **“Meena Pradhan &Ors. V. Kamla Pradhan &Anr”** 2023 INSC 847, wherein it was inter-alia held as under:

“10. Relying on H. VenkatachalaIyengar v. B.N. Thimmajamma, 1959 Supp (1) SCR 426 (3-Judge Bench), Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 (3-Judge Bench), Janki Narayan Bhoir v. Narayan NamdeoKadam, (2003) 2 SCC 91(2-Judge Bench) Yumnam Ongbi Tamphal Bema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 (3-Judge Bench) and Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (3-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

i. The court has to consider two aspects: firstly, that the Will is executed by the testatrix, and secondly, that it was the last Will executed by him;

ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testatrix shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;



(c) Each of the attesting witnesses must have seen the testatrix 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 testatrix, or has received from the testatrix a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testatrix, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testatrix's signatures but also that each of the witnesses had signed the will in the presence of the testatrix;

vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testatrix's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testatrix as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state



of mind and memory of the testatrix at the time of execution; testatrix executed the Will while acting on his own free Will;

x. One who alleges fraud, fabrication, undue influence etcetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc."

- 9 From a plain reading of the above-cited case, broadly, it needs to be demonstrated that: (a) the testatrix signed the Will voluntarily; (b) he/she was in a healthy mental state at the time of execution; (c) he/she understood the purpose and consequences of the Will; and (d) there were no questionable circumstances surrounding the Will's execution; and (e) it was the last executed Will.
- 10 In order to meet the requirement to prove the Will in accordance with Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, the petitioner has examined the attesting witness Smt. Shweta Saxena (PW-1). To substantiate the uncontested Will, the petitioner also submitted the affidavits from both Respondent No.2 and 3 along with the No Objection Certificates of both respondents. In her statement PW-1 recoded before the Joint Registrar admitted attesting to



the testatrix's execution of Will in the presence of Sh. Sharad Baijal and Smt. Versha Nigam. Smt. Shweta Saxena W/o. Sh. Anshul Saxena, deposed that the testatrix was in good mental health at the time the Will was executed and that the testatrix signed the document in front of her and the other attesting witnesses, i.e., Sh. Sharad Baijal and Smt. Versha Nigam. Further, PW-1 identified her signatures on the Will as well as the signatures of other attesting witnesses. PW-1 also stated that both the attesting witnesses signed the will in front of the testatrix and each other.

- 11 The petitioner, Mr. Saurabh Nigam, s/o Sh. Sushil Kumar Nigam examined himself as PW-2 and deposed that he has two sisters i.e., Mrs. Varsha Nigam (R2) and Mrs. Shweta Saxena (R3), who are the surviving legal heirs of his mother apart from him. They are both witnesses to the Will (Ex.PW1/1) and have issued "No Objection Certificates" and "Affidavits" for the grant of Letters of Administration in his favour.
- 12 In light of the aforementioned, it is clear that the petitioner has been able to demonstrate that the Will dated 01.01.2016, in respect of the estate of *Testatrix*, was executed by her while she was of sound mind, and she signed it in the presence of two attesting witnesses who had also signed the Will in their mutual presence.
- 13 Now the question which remains to be considered is whether there are any questionable circumstances surrounding the execution of Will. In the present cases, the respondents i.e., the sisters of the petitioner have already given there No objection certificates cum affidavit in favour of Petitioner. On the basis of the testimony of the attesting witness,



petitioner, and No objection certificates cum affidavits of respondents, this court is satisfied that there are no suspect-full circumstances that question the execution of the Will.

- 14 The testimonies of the witnesses have remained un-assailed and unchallenged. It has been brought on record by the credence material that the testatrix was in sound mind and the attesting witnesses have duly proved the same. There is no material giving rise to any suspicious circumstance. There is nothing on the record to suggest that the Will of the *testatrix* Smt. Manju Nigam (deceased) is not genuine.
- 15 Taking into consideration the above findings, I believe that the petitioner has successfully proved the Will's execution in accordance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act and has also satisfied the conscience of this court regarding the circumstance in which the execution of Will is sought.
- 16 The present petition is, accordingly, allowed and the probate with respect to the Will dated 01.01.2016 is granted in favour of the petitioner. Since the petitioner is the sole beneficiary under the Will, there will be no requirement for the petitioner to give any administration bond or surety bond. Petitioner will however have to pay the court fees necessary for granting letters of administration with the Will annexed therewith.
- 17 The present petition is allowed and disposed of accordingly.

DINESH KUMAR SHARMA, J

AUGUST 20, 2024

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