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

+ **TEST.CAS. 68/2023**

JANKI DEVI SHARMA

.....Petitioner

Through: Mr. Utkarsh Mathur, Advocate for
Petitioner No. 1
Mr. Vineet Kalra, Advocates for
Petitioner Nos. 2 and 3

versus

STATE & ORS.

.....Respondents

Through: Ms. Pavitra Kaur and Mr. Shiven
Asthana, Advocates for R-1

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Date of Decision: 4th November, 2024

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition under Section 276 of the Indian Succession Act, 1925 ('Act of 1925'), had been instituted for grant of probate in respect of the last registered Will of the Testator i.e., late Sh. Om Prakash Sharma dated 02.11.2007 ('the said Will'). The said Will stands registered with Sub Registrar II, Janakpuri, bearing registration No. 3384, in Book No. 3, Volume No. 7525, on pages 41 to 42.

2. As per the said Will, the Testator has made a bequest of immovable property bearing No. A-1/9 Janak Puri, New Delhi-110058 ('subject property') in the favour of the Petitioner No.1 herein. The certified copy of



said Will was filed with the petition in compliance to the Section 276 of the Act of 1925.

3. For the purpose of disposal of the present petition, the following essential facts alone need to be noticed. The Testator died on 15.10.2011 at the property bearing No. A-1/9 Janak Puri, New Delhi-110058 and therefore this Court has necessary territorial jurisdiction to entertain this matter and pass appropriate orders.

3.1 The Petitioner No.1 herein, is the wife of the Testator, Petitioner No.2¹ is the son of the Testator and Petitioner No.3² is the grandson of the Testator, being son of the predeceased son of late Sh. Om Prakash Sharma i.e., late Sh. Harish Kumar Sharma. The Petitioners are the only Class-I legal heirs of the Testator.

3.2 Insofar as the subject property which stands bequeathed in terms of the registered Will dated 02.11.2007 is concerned, it is stated that it was a self-acquired property of the Testator, which was purchased on perpetual lease from Delhi Development Authority (DDA) and was converted to free hold with effect from 03.04.1997.

3.3 The SDM Vikaspuri, through Tehsildar Dwarka has filed a valuation report dated 19.02.2024 on 20.02.2024 in terms of which the value of the property has been assessed at Rs. 3,86,15,220/-.

3.4 This Court had directed for publication of citation which was done on 19.03.2024 and received by the registry of this Court on 30.04.2024. An affidavit dated 28.03.2024 to the said effect has been filed on behalf of the counsel for the Petitioner No.1.

¹ (earlier arrayed as Respondent No.2, later transposed as Petitioner No.2 vide order dated 03.05.2024)

² (earlier arrayed as Respondent No.3, later transposed as Petitioner No.3 vide order dated 03.05.2024)



3.5 The Petitioner No.2 and Petitioner No.3 were earlier arrayed as Respondent Nos. 2 and 3 respectively. The Petitioner No.1 thereafter moved an application I.A. 9915/2024 under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking transposition of the Respondent Nos. 2 and 3 as Petitioner Nos. 2 and 3. The said application was allowed vide order dated 03.05.2024. The No-Objection of the Respondent Nos. 2 and 3, to the grant of reliefs in the present petition was recorded in the said order dated 03.05.2024.

3.6 It is averred on behalf of the Petitioner No.1 that one of the attesting witnesses to the registered Will dated 02.11.2007 i.e., Sh. D.N. Sharma has since passed away and the other attesting witness i.e., Sh. Praveen Kumar is not traceable.

3.7 The Petitioner No.2 i.e., Sh. Rakesh Kumar Sharma entered into the witness box and his statement was recorded on 17.09.2024. The said Petitioner No.2 has further placed on record a document i.e., photocopy of the registered Will dated 02.11.2007 which has been exhibited as 'Exh. PW 1/1'. Petitioner no. 2 has stated that the Original of the Will dated 02.11.2007 is in his custody. The relevant part of the deposition of Petitioner No.2 as 'PW-1' reads as under:

"I am son of late Shri Om Prakash Sharma i.e. the testator of the Will dated 02.11.2007. I have brought the original Will dated 02.11.2007 photocopy of which is Exh.PW1/1 (OSR).

I have also brought death certificate of my father ie. Exh. PW1/2, death certificate of my brother H.K. Sharma i.e. Exh. PW1/3, photocopy of the certified copy of the divorce decree dated 06.04.1991 of my brother late Shri Harish Kumar Sharma & Mrs. Sarita Sharma i.e. Exh. PW1/4 (Original Certified Copy Seen & returned).

My brother late Shri H.K. Sharma died on 03.08.2007 & my father late Shri Om Prakash Sharma died on 15.10.2011.



I do not know as to when my father had got prepared this Will However, I have found the same after his death from his personal papers lying in his room.”

3.8 The petitioners have summoned an official from the office of Sub-Registrar concerned to produce to the registered Will dated 02.11.2007. The said official was examined as PW-2 and discharged on 15.10.2024. The said witness produced the original Will dated 02.11.2007, which was marked as ‘Exh. PW2/1’. The relevant part of the deposition of ‘PW-2’ reads as under:

“I have brought the original Will dated 02.11.2007 executed by Late Sh. Om Prakash Sharma in the favour of petitioner no. 1, Smt. Janki Devi Sharma w/o Late Sh. Om Prakash Sharma: Registration No. 3384 in Book No. 3 Vol. No. 7525 on Page No. 41 to 42 dated 02.11.2007 at Sub- Registrar-II, Janakpuri, New Delhi exhibited as Ex.PW2/1 (OSR).”

4. PW 1/1 corresponds to PW 2/1 and therefore the factum of registration of the Will stands proved. From the aforementioned facts, it is apparent that the present probate proceedings have remained uncontested and that the existence of the aforesaid Will registered on 02.11.2007 has been duly proved by Petitioner No. 2 and the official witness PW-2.

5. The Petitioners herein are the only Class-I legal heirs of the Testator and can be the only person claiming to have any caveatable interest in the estate of the Testator.

6. This Court thus finds no impediment in the grant of probate on the present petition in terms of Section 276 of the Act of 1925 and Rule 6 of Chapter XXIX of Original Side Rules.

6.1 In view of the fact the Petitioner No.1 is the sole beneficiary under the registered Will dated 02.11.2007; all legal heirs have consented to the grant of the probate in favour of Petitioner No. 1; the probate petition has remained uncontested and Petitioner No. 1 is even otherwise the natural



legal heir of the Testator, in these facts this Court is of the considered opinion that Petitioner No.1 can be exempted from filing the administrative and surety bond. 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**³, 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 heir or a sole beneficiary. 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.....**”

(Emphasis supplied)

Bearing in mind principles enunciated therein this Court is of the view that granting exemption from filing an administration and surety bond would be justified in the facts of this case.

7. Accordingly, the instant petition is allowed. Subject to the Petitioner No.1 filing the requisite court fee, probate along with a copy of the Will annexed shall stand granted in favour of the Petitioner No.1. The Petitioner No.1 shall also stand exempted from executing or submitting any administration or surety bond.

³ 2015 SCC OnLine Del 9265.



8. The Petitioner No. 1 shall produce the original Will before the registry, if so directed by the registry.
9. Pending applications, if any stands disposed of.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 4, 2024/mt/sk

[Click here to check corrigendum, if any](#)