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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 28.08.2024***+ **TEST.CAS. 68/2019 & I.A. 12290/2019, I.A. 7815/2022, I.A. 2321/2024, I.A. 2322/2024****SHRI RAJAN WALIA & ANR.**PetitionersThrough: Mr.Praveen Suri and Mr.Nikhil
Kumar Singh, Advs.

versus

STATE & ORS.Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 278 of the Indian Succession Act, 1925 seeking grant of Letter of Administration in respect of the Will dated 19.12.2011 duly registered as Document No. 63 in Book No.3, Volume No. 7984 at pages 19 to 20 on 09.01.2012 with the office of the Sub-Registrar-II, Janak Puri, New Delhi (hereinafter referred to as the 'Will') of late Smt.Kamlesh Kumari, W/o late Shri Tirlok Chand Walia, R/o D-544, Raghubir Nagar (JJ Colony), New Delhi-110027 (hereinafter referred to as the 'Testator').

2. It is pleaded that the Testator unfortunately passed away on 18.10.2018, leaving behind the petitioners and the respondent nos.2 to 7 as her legal heirs. The husband of the Testator had predeceased her in the year 1976.

3. It is further pleaded that the Testator left behind the Will in



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question (Ex.P-1), whereby she bequeathed the immovable property bearing no. D-544, Raghubir Nagar (JJ Colony), now known as Tagore Garden Extension, New Delhi-110027, and other movable assets, which she was in possession of at the time of her death, solely to the petitioners in equal shares, and to the exclusion of her other legal heirs, that is, the respondent nos.2 to 7.

4. Notice of the present petition was issued to the respondents *vide* Order dated 05.09.2019. This Court also directed the SDM of the concerned area to file a valuation report in respect of the property mentioned in Schedule-A to the petition. The petitioner was also directed to publish the citations in the New Delhi editions of 'The Statesman' and 'Navbharat Times'.

5. In the Order dated 08.01.2020 passed by the learned Joint Registrar (Judicial), it is recorded that the respondent nos.3 to 7 have filed their Reply-cum-No Objection Certificate with their ID proofs. The objections to the present petition were filed only by the respondent no.2.

6. During the pendency of the present petition, however, the petitioners and the respondent no.2 also settled their *inter se* disputes and the petitioners and the respondent no.2 filed a joint application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (in short, 'CPC'), being I.A. 2321/2024, whereunder they stated that they have settled their disputes and the respondent no.2 has no objection to the petitioners being granted the Letter of Administration with respect to the Will. The respondent no.2 also admitted that the Testator was the owner of the above-mentioned property.



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7. Though none is appearing for the respondent no.2, the learned counsel for the petitioners identifies the signatures of the respondent no.2 on the said application and also on the affidavit annexed in support of the said application.

8. The petitioners examined Mr.Satish Kumar (PW-1), a witness to the Will. In his evidence by way of affidavit (Ex.PW1/A), PW-1 has stated that he is the husband of the respondent no.5, who is one of the daughters of the Testator. He has further stated that the Testator had requested him to become an attesting witness to her last Will, along with Mr.Anil Kumar Ahluwalia, who is the husband of the respondent no.3, another daughter of the Testator. He has stated that the Testator, after understanding the contents of the Will, which were explained to her in the presence of the two witnesses, had put her right hand thumb impression and signatures at point A and point B on the first page and on point C and point D on the second page of her Will. Thereafter, the Will was signed by the two attesting witnesses at Point E and Point F, and the Will was then registered with the office of the Sub-Registrar at Janakpuri with all three, being the Testator and the two witnesses, appearing in the said office for the purposes of registration of the said Will.

9. In spite of opportunity granted, there was no cross-examination of PW-1 by any of the respondents, as has been recorded in the Order dated 09.08.2024 of the learned Joint Registrar (Judicial).

10. The petitioners also examined Mr.Anil Kumar Ahluwalia (PW-2), the other witness to the Will, who, in his evidence by way of affidavit (Ex.PW2/A), deposed on identical lines as PW-1. He was



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also not cross-examined by any of the respondents, as has been recorded in the Order dated 09.08.2024 of the learned Joint Registrar (Judicial).

11. The petitioner no.1 also examined himself as PW-3 and filed his evidence by way of affidavit (Ex.PW3/A). He proved on record the death certificate of the Testator (Ex.P1/R2). He stated that the husband of the Testator had died on 30.08.1976. He further stated that it was with the financial assistance provided by his maternal uncles, that the above-mentioned property was purchased by the Testator for a sum of Rs.24,500/- and a bank draft of the same was given from the Punjab National Bank, Kishan Ganj, New Delhi, where one of the petitioners' uncles namely, Shri Om Prakash Ahluwalia, was working as a cashier. He also stated that the documents of purchase, being the Agreement to Sell, the GPA, and the Will of Shri Bhagwan Dass, the original owner of the property, were all executed on 21.06.1978. He further stated that after the marriage of the respondent no.2, the respondent no.2 shifted to Subhash Nagar and was not having good relationship with the Testator and that the respondent no.2 had also filed certain litigations against the Testator, details whereof have been given in the affidavit of PW-3. He stated that the Testator had executed the subject Will in a sound disposing mind and in presence of the witnesses mentioned therein. PW-3 was also not cross-examined by the respondents, as has been recorded in the Order dated 09.08.2024 of the learned Joint Registrar (Judicial).

12. The learned counsel for the petitioners submits that the due execution of the Will has been duly proved by the two attesting



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witnesses thereto, that is, PW-1 and PW-2. He submits that there are no suspicious circumstances surrounding the execution of the Will. He submits that the respondent nos.3 to 7 had, at the inception of the present proceedings itself, given their no objections to the grant of present petition. He submits that as far as the respondent no.2 is concerned, though he had initially filed his objections to the petition, later the parties settled their *inter se* disputes and have filed a joint application whereby the respondent no.2 has also admitted the Will and given his no objection to the grant of the present petition. He further submits that, even in the affidavit of admission/denial of documents, the respondent no.2 had denied the Will only for want of knowledge and stated that the Testator has no right to execute the said Will.

13. I have considered the submissions made by the learned counsel for the petitioners.

14. The Will is to be proved in accordance with Section 68 of the Indian Evidence Act, 1872 read with Section 63 of the Indian Succession Act, 1925. They read as under:

***“68. 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:
Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908***



(16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

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63. Execution of unprivileged wills.—Every testator, 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 testator 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 testator, 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 testator 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 testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, 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.”

15. In the present case, the petitioners have duly proved the Will by examining the two attesting witnesses to the Will, who have deposed that the Testator was in sound disposing mind and understood the contents of the Will at the time of its execution. They have also deposed that the Testator had signed the Will in their presence, and that they had also counter-signed the Will as witnesses in the presence of the Testator and each other. The witnesses, who are otherwise close



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relatives of the Testator, are natural witnesses to the Will. They have also given reasons for the Testator to exclude the other legal heirs of the Testator from the bequeath. Therefore, there are no suspicious circumstances surrounding the execution of the Will.

16. Keeping in view the above, I find that the petitioners have been able to prove the Will, that is, Ex.P-1.

17. Accordingly, let the Letter of Administration be issued in favour of the petitioners for the Will dated 19.12.2011 (Ex.P-1) of late Smt.Kamlesh Kumari, W/o late Shri Tirlok Chand Walia, R/o D-544, Raghubir Nagar (JJ Colony), New Delhi-110027, duly registered as Document No. 63 in Book No.3, Volume No. 7984 at pages 19 to 20 on 09.01.2012 with the office of the Sub-Registrar-II, Janak Puri, New Delhi, on the petitioners submitting the requisite Court Fee.

18. As the petitioners are the only beneficiaries under the subject Will, the requirement of furnishing the Administrative Bond with one Surety to the satisfaction of the learned Registrar General of this Court for the due execution of the Letter of Administration shall stand dispensed with.

19. The petition is allowed in the above terms.

20. There shall be no orders as to costs.

21. As far as pending applications are concerned, I.A. 2321/2024 is allowed, while I.A. 12290/2019, I.A. 7815/2022 and I.A. 2322/2024 are disposed of as having been rendered infructuous.

NAVIN CHAWLA, J

AUGUST 28, 2024/ns/SJ

Click here to check corrigendum, if any