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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TEST.CAS. 95/2015**
MRS KIRAN LUTHRAPetitioner
Through: Mr.Dilip Kumar, Adv. along
with petitioner in person.

versus
STATE & OTHERSRespondents
Through: Mr.Amit Bhagat, Ms.Arzoo,
Advs. for R-2-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **14.08.2024**

1. This petition has been filed under Section 276 of the Indian Succession Act, 1925, praying for grant of Probate of the Will dated 31.05.2013 (Ex.PW1/1) (hereinafter referred to as the 'Will') left behind by late Major General (Retd.) S.N. Luthra (hereinafter referred to as the 'Testator'), who unfortunately passed away on 01.03.2015.
2. It is stated that the Testator had left behind the following Class I legal heirs:

“(a) Mrs. Kiran Luthra 66 years, wife of Late Major General (Retd.) S.N. Luthra r/o 151, Golf Links, New Delhi-110003.

(b) Mr. Sushobhan Luthra aged 49 years son of Late Major General (Retd.) S.N. Luthra r/o 27, Kalang Road, Mt. Colah NSW Australia.

(c) Ms. Malvika Vohra aged 52 years, daughter of Late Major General (Retd.) S.N. Luthra R/o D-104, Som Vihar, Sector-X, R.K. Puram, New Delhi presently in Belgium.”

3. The present petition was originally contested by the respondent



no.2, Sh. Sushobah Luthra, and the respondent no.3, Mrs. Malvika Vohra. However, during the pendency of the present petition, and by an Order dated 11.07.2024 passed in CS(OS) 2865/2015, the respondent nos. 2 and 3 stated that they have no objection to the grant of probate of the Will, however, it should be clarified that the 1/3rd share of the Testator in the property bearing No.151, Golf Links, New Delhi-110003, and the entire share in the property bearing No.D-104, Som Vihar, Sector-10, R.K. Puram, New Delhi-110022, did not belong to the Testator at the time of his death as these properties had already been gifted to the respondent nos.2 and 3 *vide* Gift Deeds dated 19.11.2023.

4. The petitioner herein also agreed to the above submission and based thereon, the said Suit was decreed *vide* Order dated 11.07.2024 of this Court.
5. As far as the present petition is concerned, the Will in question was proved by the petitioner by examining Cd. H.S.Bawa as DW-2. In his evidence by way of affidavit (Ex.DW2/1), he stated that the petitioner herein is his sister and was married to the Testator. He further stated that on 31.05.2013, he met the Testator at the Vikas Sadan, INA at Registrar's office, where the Testator signed the Will in his presence, whereafter, he signed the Will, in front of the Registrar, at the place designated and marked as a witness. He further states that he was introduced to a person by the name of Mr.Suresh Kumar, who was known to the Testator and who also signed as a witness on the Will.
6. In view of the above, the Will dated 31.05.2013 (Ex.PW1/1) of



the Testator has been duly proved by the petitioner. Since the respondents have withdrawn their objections against the Will with the above-mentioned explanation, there is no reason why the probate of the Will should not be granted in favour of the petitioner.

7. It is, however, clarified that though the Will mentions the immovable properties, that are, 1/3rd share in property bearing No.151, Golf Links, New Delhi-110003 and the entire share in the property bearing No.D-104, Som Vihar, Sector-10, R.K. Puram, New Delhi-110022 to have also been bequeathed by the said Will, it is admitted that these two properties no longer belonged to the Testator at the time of his death and therefore, will not be bequeathed in terms of the Will.
8. As the petitioner is the sole beneficiary under the Will, the requirement of the petitioner to furnish the Administrative Bond and Surety to the satisfaction of the learned Registrar General of this Court, shall stand waived.
9. Upon her depositing of the requisite Court Fee, let the probate of the Will dated 31.05.2013 (Ex.PW1/1) of late Major General (Retd.) S.N. Luthra be issued in favour of the petitioner in the above terms.
10. The petition is allowed in the above terms.

NAVIN CHAWLA, J

AUGUST 14, 2024
RN/SJ

Click here to check corrigendum, if any