



2026:DHC:1035



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

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Judgment delivered on: 30.01.2026+ **TEST.CAS. 95/2021**

APARNA MUTATKAR & ANR.

.....Petitioners

Through: Mr. Abhinav Ramkrishna and Mr.
Jayendra Tiwari, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Avni Singh, Panel Counsel for
GNCTD.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)****I.A. 14111/2021 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present petition has been filed by the petitioners under Section 278 of the Indian Succession Act for grant of letter of administration in respect of the Will dated 17.09.2018 [hereinafter, 'the Will'] executed by Late Kumari Usha Pathak [hereinafter, 'the Testatrix'], daughter of Late Krishna Rao Pathak.
4. The petitioners are the daughters of real brother of the Testatrix. No Executor has been named in the Will.
5. The subject matter of Will is only one immovable property i.e. DDA Flat No. 97, Anandvan, A-6, Paschim Vihar, New Delhi-110063 measuring 102 sq. meters.

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 07.02.2026
19:12:27

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6. The Testatrix passed away on 24.10.2018. It is stated that Testatrix was unmarried, and she had no issue of her own, neither by way of adoption.
7. The petitioners herein are the daughters of the real brother of the Testatrix. It is the case of the petitioners that the Testatrix executed the Will dated 17.09.2018 in a sound disposing mind, proper health and without any pressure or undue influence.
8. The notice in the TEST. CAS. was issued on 18.11.2021 and directions were given to publish the citation in the newspapers “Statesman” (English) and “Jansatta” (Hindi). The SDM concerned was also directed to file a valuation report.
9. The aforesaid direction was complied with and necessary citation came to be published in the “Statesman” in English and “Jansatta” in Hindi on 21.12.2021 and the same were taken on record as per the order of the learned Joint Registrar dated 11.01.2022. The said order also mentions that citation was also affixed on the notice board of Delhi High Court and on the notice board of Tis Hazari Court, both dated 13.12.2021.
10. Likewise, the valuation report dated 07.01.2022 was also filed by the Collector of Stamps (Punjabi Bagh), whereby the value of the property has been assessed at Rs.62,17,920/-.
11. Since the Testatrix was not survived by any other legal heir, therefore, apart from the State, there is no other respondent impleaded in the present petition. The State is represented by Ms. Avni Singh, Panel Counsel, GNCTD.
12. Since, there was no contest in the present petition and no objection was received from any person despite publication, no issue was framed in the present matter. Thereafter, the evidence was led by the petitioners to



prove the Will in question. The petitioners examined themselves, as well as, the two attesting witness to the Will. Thus, in the present case following witnesses were examined:

- (i) PW1- Aparna Mutatkar (petitioner no.1)
- (ii) PW2- Surbhi Raste (petitioner no.2)
- (iii) PW3- Sh. Rajendra Moghe, who is the attesting witness to the Will
- (iv) PW4- Sh. Sanjay Kumar Deo, who is the second attesting witness to the Will

13. Mr. Abhinav Ramakrishna, learned counsel appearing on behalf of petitioner submits that the present petition for grant of letter of administration is uncontested.

14. He further submits that there is no other claimant of the property nor any objections were filed by anyone pursuant to the publications made in the present petition. He, therefore, contends that there is no legal impediment for grant of letter of administration.

15. I have heard learned counsel for the petitioner and have perused the record.

16. The original Will dated 17.09.2018 executed by the Testatrix has been received by the Court in a sealed cover from the Registry. For the purpose of final adjudication in the matter, the seal is opened in Court for perusal of the original Will.

17. In terms of mandate of Section 63(c) of Indian Succession Act, 1925, the Will must be attested by two or more witnesses, each of whom should have seen the testator sign or affix his mark to the Will, and the Will must be signed by the witnesses in the presence of the Testator, but it is not



necessary that more than one witness should be present at the same time.

18. Likewise, Section 68 of the Indian Evidence Act, 1872 provide the modes of proof of Will and requires that atleast one attesting witness to the Will must be examined.

19. In the present case, the Will has been attested by Sh. Rajendra Moghe (PW3) and Sanjay Kumar (PW4).

20. Sh. Rajendra Moghe/PW3 filed his affidavit by way of Examination-in-Chief wherein he stated that testatrix namely, Kumari Usha Pathak was of sound mind and health when she executed the Will dated 17.09.2018 and that she executed and signed the said Will in favour of the petitioners. He further stated that he, along with other attesting witness namely, Sanjay Kumar Deo/PW4, also signed the said Will as attesting witness in the presence of Testatrix.

21. The statement of PW3 was recorded on 18.08.2025 and while tendering his affidavit in Examination-in-Chief, he again reiterated that Testatrix had signed the Will in his presence in favour of both the petitioners, and that the same bears his signatures at point X. Certified true copy of the Will is Ex.PW1/1.

22. Likewise, Mr. Sanjay Kumar Deo/PW4 also testified on the same lines.

23. The petitioner no.1 examined herself as PW1 while petitioner no.2 examined herself as PW2. They also stated that the testatrix was of sound mind and health when she had executed the Will.

24. The testimonies of the aforesaid witnesses were not been subjected to any cross-examination. In view of the unchallenged testimonies of PW3 and PW4, the attesting witnesses to the Will, the Will dated 17.09.2018, Ex.



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PW1/1, stands proved in terms of Section 68 of the Evidence Act. It is also proved that the Will was signed by the testatrix and the same was also signed by the two attesting witnesses.

25. Thus, it stands proved that Will dated 17.09.2018 (Ex. PW1/1) was executed by Testatrix namely, Kumari Usha Pathak and same is the last and validly executed Will of the testatrix. A perusal of the Will shows that the petitioners are the only beneficiaries named in the Will, therefore, they are entitled to letter of administration *qua* the Will dated 17.09.2018 of late Kumari Usha Pathak.

26. At this stage, Mr. Ramakrishna submits that since the petitioners are only beneficiaries under the Will, therefore, they may be exempted from filing of administration and surety bond regard being had to the fact that the present petition was uncontested one. In support of his submission he placed reliance on the decision of this Court in *Sanjay Suri vs State and Ors., 2003 SCC OnLine Del 966*.

27. Section 291 of the Act provides that the District Judge may demand from the person to whom probate is granted, a bond with one or more sureties. This Court in *Sanjay Suri* (supra) observed that Section 291 of the Act has to be interpreted so as not being applicable to a case of a sole beneficiary and legal heir, under a duly proved Will insofar as requirement of furnishing an administration bond is concerned. The relevant extract from the said decision reads thus:

“28. Considering the nature of the Testamentary and Intestate succession, the object and purpose sought to be achieved by Section 291 and thus applying the aforesaid principles of interpretation of statutes, it would be seen that Section 291 of the Act is not intended to cover within its



ambit the cases of a sole beneficiary and legal heir under a Will being required to furnish administration/surety bond. One cannot administer the estate or his own estate against himself, for which he be required to give an indemnity or administration bond. Besides, none of the purposes and objectives of Section 291 of the Act are covered or fulfilled by the execution of an administration/surety bond by the sole inheritor or beneficiary under the Will duly proved. Such an exercise would be an exercise in futility. In the instant case if the petitioner's grand son was to mismanage or maladminister, he would be, doing so only against his own and personal interests. A right that clearly vests in him by virtue of the bequest. Hence insistence of furnishing the administration bond in the present case would not only be meaningless and without any purpose, but inconsistent with succession. Section 291 in the light of the foregoing principles of interpretation, as noticed, has to be interpreted so as not being applicable to a case of a sole beneficiary and legal heir, under a duly proved Will insofar as requirement of furnishing an administration bond is concerned.”

28. Likewise, in **Arvind Nanda vs. State** (2020:DHC:1457) the Court had considered the decision of Id. Divisional Bench of this Court in **Rajesh Kumar Sharma and Ors. vs. Estate of late Raj Pal Sharma & Ors., [W.P.(C) 9108/2011, decided on 02.01.2012]** where it was held that the imposition of a condition for furnishing surety is in the discretion of the Court and the same is not mandatory. Para 10 of **Arvind Nanda (supra)** reads as under:

“10. The settled case law, therefore, clearly lays down the following principles:-

(1) The imposition of a condition for furnishing an indemnity/security is at the discretion of the Court.

(2) Whenever the Court is of the opinion that a condition is required to be imposed due to any debts and the fact that



there is a possibility of other claimants raising claims, the condition may be imposed.

(3) In every case involving the grant of a succession certificate, a mechanical approach of imposing a condition for furnishing the surety/security and insisting on the indemnity bond is not required.

(4) When an exemption from filing any surety is sought, the Court has to consider the entire conspectus and exercise its discretion depending on the facts of each case, in accordance with law.

*(5) As held by the ld. Division Bench of this Court in **Rajesh Kumar Sharma (supra)**, the imposition of a condition is not mandatory.”*

29. In view of the exposition of law noted hereinabove, the petitioners being the legal heirs and the only beneficiaries under the Will, which remained uncontested, no useful purpose will be served by insisting upon the furnishing of administration or surety bond. The petitioners are, therefore, exempted from executing or submitting any administration or surety bond.

30. Accordingly, the petition is allowed subject to the filing of requisite court fee as per the valuation.

31. The Registry is directed to grant letter of administration along with copy of the Will (Ex.PW1/1) annexed, in favour of the petitioners.

32. The Registry is also directed to re-seal the original Will dated 17.09.2018.

33. With the aforesaid directions, the petition is disposed of.

VIKAS MAHAJAN, J

JANUARY 30, 2026/N.S. ASWAL