

(2023) 08 DEL CK 0018
In the Delhi High Court
Case No : TEST.CAS. No. 109 Of 2021

Chander Kanta Pathak

APPELLANT

Vs

State Of Nct Of Delhi & Ors.

RESPONDENT

Date of Decision : 04-08-2023

Acts Referred:

Indian Succession Act, 1925 — Section 276
Evidence Act, 1872 — Section 68

Citation : (2023) 08 DEL CK 0018

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Sagar S. Jaiswal, Divyam Nandrajog, Mayank Kamra

Final Decision : Allowed

Judgement

Rekha Palli, J

1. The present petition under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as the "Act") seeks a grant of probate of 'will' dated 09.05.2017 of late Sh. Hans Raj Pathak (hereinafter referred to as "the testator").

2. It is claimed by the petitioner, who is the widow of the late Sh. Hans Raj Pathak, that the testator was ordinarily residing at C-1/20, Janakpuri, New Delhi-110058. The testator died on 26.06.2023 leaving behind the petitioner, his widow and three children i.e., two daughters and a son, who have been arrayed as respondent nos. 2 to 4. The aforesaid 'will', is stated to be the last 'will' and testament in respect of all the properties of the testator wherein the petitioner has been appointed the Executor. It is the petitioner's case that the 'will' was executed by the testator in the presence of two attesting witnesses namely Shri Kulbushan Malhotra and Shri Satish Kumar Ailawadi.

3. The three children of the testator i.e., respondent nos. 2 to 4 have filed their respective no objection affidavits for grant of probate of the 'will' in favour of the petitioner. The details of the only immovable property which is the subject matter

of the 'will' has been set out in para 4 of the petition and is described as property bearing C-1/20, Janakpuri, New Delhi-110058 . Upon notice being issued in the present petition on 20.12.2021, citation was directed to be published in "The Statesman", (Delhi Edition). The said citation was duly published in

"The Statesman" on 28.03.2022, but till date no objection has been received from any person whatsoever. The valuation report in respect of the property has also been filed by the respondent no.1 on 21.08.2022. As per the said valuation report, the value of the property has been assessed as Rs.3,65,82,840/-.

4. In support of her case, the petitioner has examined the two attesting witnesses besides tendering her own evidence on 15.03.2023 the petitioner while appearing as PW1 produced the original 'will', a photocopy of her Aadhar Card, and an internet-generated copy of the death certificate of the testator issued by South Delhi Municipal Corporation.

5. The attesting witness, Shri Kulbhushan Malhotra was examined as PW-2 and he not only identified the signatures of the testator on the 'will' but also categorically stated that he had put his signatures on the 'will' in the presence of the testator and witnessed the testator put his signatures on the 'will'. He further stated that the other attesting witness namely Shri Satish Kumar Ailawadi had also put his signatures on the 'will' in the presence of the testator. The attesting witness to the 'will' namely Shri Satish Kumar Ailawadi, who was examined as PW-3 also testified on the same lines as PW-2.

6. As per Section 68 of the Indian Evidence Act, a 'will' is required to be proved by at least one of the two attesting witnesses. In the present case, both the attesting witnesses namely Shri Kulbhushan Malhotra and Shri Satish Kumar Ailawadi have deposed that the testator had signed the subject 'will' in their presence. They have also stated that the subject 'will' was executed voluntarily by the testator who was in a sound disposing mind at the time of execution of the 'will'. As noted hereinabove, no objections whatsoever to the petition have been received either from the respondents or from any other member of the general public. In the light of this unchallenged and unrebutted testimony of the petitioner which is supported by the testimony of the two attesting witnesses, I am of the considered opinion that the petitioner has been able to prove the 'will' dated 09.05.2017 executed by the testator and being the Executor, she is entitled to be granted probate of the same in her favour.

7. The petition is, accordingly, allowed by directing that subject to the petitioner filing the requisite Court fees, probate of the 'will' dated 09.05.2017 be issued in her favour. The petitioner shall furnish administration bond and surety bond, to the satisfaction of the Registrar General of this Court, for which purpose the matter be placed before the learned Registrar General on 11.09.2023.

8. The petitioner is also granted liberty to apply as per law for return of the original documents filed with the petition.