

(2017) 02 DEL CK 0373

In the Delhi High Court

Case No : 82 of 2012

SHRI SITA RAM KINRA & ORS.

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Indian Succession Act, 1925, Section 276, Section 276, Section 222(1), Section 222(1) - Petition for probate - Probate only to appointed executor

Citation : (2017) 02 DEL CK 0373

Hon'ble Judges : Vibhu Bakhru

Bench : SINGLE BENCH

Advocate : Arun Oberoi, Hem Kumar

Judgement

1. The petitioners have filed the present petition under Section 276 of the Indian Succession Act, 1925 (hereafter "the Act") for grant of probate of the Will dated 01/10/2010 (hereafter "the Will") of Ms Neelam Gupta (hereafter referred to as "the Testator") who expired on 30/11/2010. It is stated that the Will is the last Will and Testament of deceased, Ms Neelam Gupta. Notice in the present petition was issued to the respondent on 05.11.2012 and citation was also ordered to be published in the newspaper "The Times of India, Delhi Edition".

2. Although all the petitioners have filed their respective affidavits affirming the averments made in the petition, only the affidavit filed by petitioner No. 1(PW1) is referred to for the sake of brevity as all the affidavits are almost identical.

3. It is stated in the petition that Mr Abhishek Gupta and Mr Vivek Kinra (petitioner No. 2 & 3 herein) are sons of the Testator and Mr Sita Ram Kinra (petitioner No. 1) is the husband of the Testator. It is further stated that the Testator was in a sound state of mind at the time of execution of the Will and had executed the said Will out of her own free will.

4. In terms of the Will, the Testator has bequeathed the following immovable

properties to the petitioners:- "(a) Immovable property under construction by ABW Infrastructure Ltd., measuring No.1500 sqft on NH-8, Unit no.126, 127 & 128, Gurgaon, Village Kherki Daula, Sector 83, oppst. Givo Factory, Haryana.

(b) Immovable property measuring No.1304.7 sq ft. Unit No.703-04, BPTP Park Centra, 7th Floor, Sector - 30, Village Silokhera, Dist. Gurgaon, Haryana.

(c) Immovable property bearing Unit No. B-1/7, Hehnemann Enclave, plot-40, Sector 6, Dwarka, New Delhi-110077.

(d) Immovable property under construction by Golf Course Sahakari Awas Samiti Ltd. Measuring 1450 sqft. bearing Unit No. 2091, Shivkala, 9th floor, Block T-2, plot no. 7, Greater Noida, Uttar Pradesh."

5. PW1 has stated that the Will was executed by the Testator in the presence of two witnesses namely, Ms Geeta Varshneya and Mr Jagan Lal Kinra (hereafter "the attesting witnesses"). Both the abovementioned witnesses have also filed affidavits dated 10.08.2016 stating that the Testator signed the Will in their presence and had full knowledge and understanding about the contents of the Will.

6. Attesting Witnesses have also been examined on oath, as PW3 and PW4. They deposed that the Testator, in their presence, signed at point A on pages 1, 2, 3 and 4 and at point A and B on page 5 of the Will. PW 3 identified the signatures of the Testator as well as of PW4; similarly PW4 also identified the signatures of the Testator as well as of PW3.

7. It is further stated that PW1 was appointed as an Executor of the Will by the Testator.

8. After the publication of citation in the newspaper "The Times of India" on 24.12.2012, no one has contested the grant of probate to petitioners.

9. PW 1 has produced the death certificate of the Testator as Ex. PW1/1. PW1 has also duly proved the execution of the Will dated 01/10/2010 as Ex. PW1/3. PW1 and other petitioners have acquired the Surviving Member Certificate from the Office of the Deputy Commissioner (South West District), Delhi which has been exhibited as Ex. PW1/4.

10. As per Section 222(1) of the Act, only an Executor named in the Will can be granted the probate. In the present case, petitioner No. 1 has been appointed as an Executor of the Will.

11. The Will remains unchallenged and is also supported by the attesting witnesses, who have deposed that the Testator signed the Will in their presence and out of free will.

12. In view of the above, it is evident that the petitioners have succeeded in proving that the Testator had executed the Will dated 01.10.2010 and the Will is the last Will and Testament of the Testator.

13. For the reasons as stated above, probate of the Will dated 01.10.2010 executed by the deceased, Ms Neelam Gupta is granted to the petitioner No. 1, on furnishing an administrative bond with one surety and requisite court fee, subject to the satisfaction of the Registrar General of this Court.

14. The petition is disposed of accordingly.