

(12)

IN THE HIGH COURT OF DELHI AT NEW DELHI.

Probate No.19/2001

Date of decision: March 25/4, 2003.

Mrs.Nishi Hari

.... through Mr.Mahesh K.Chaudhry,Adv.

Versus

State and others

.... through Mr.Varun Kapur,Adv.

.....for respondents 2 to 10

CORAM:

Hon'ble Mr.Justice Manmohan Sarin.

- (1) Whether reporters of local papers may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest?

MANMOHAN SARIN, J.

1 Petitioner is the daughter-in-law of deceased Sh.Bansi Lal Hari son of Shri Diwan Chand Hari. She has filed this petition for the grant of a probate in respect of registered Will dated 10.8.1995, of the deceased Sh.Bansi Lal Hari.

2. Petitioner had duly impleaded the State and respondents No.2 to 10, the near relations of the deceased as respondents. Respondents 2,4,5,6 and 7 are the five surviving sons of the deceased, while respondent Nos.8,9 and 10 are the three daughters of the deceased. Respondent Nos.3A to D

are the widow and two sons and daughter of the pre-deceased son late Shri Ashok Hari.

3. A citation was directed to be published in newspaper "Statesmen" vide order dated 1.6.2001. The citation was duly published in the issue of the "Statesmen" dated 15.9.2001, in terms of Section 283 of the Indian Succession Act, 1925. Respondents 2 to 10 were represented through counsel and have filed the Vakalatnamas and written statements on record accepting the execution of the Will dated 10.8.1995, by the deceased Shri Bansi Lal. They have given their No Objection to the grant of a probate in respect of the said Will.

4. Petitioner examined herself on 5.12.2002. She has deposed on oath as to the institution of the petition. She is the beneficiary under the Will Ext.PW1/1. She has prayed for the grant of a Probate. Affidavit filed by the petitioner is Ext.PW2/1 wherein the value of the immovable property, namely, the rear portion of the first floor of premises No.95-A, Street No.4, Krishna Nagar, New Delhi, bequeathed by the deceased to her is given as Rs.6 lacs.

5. The deceased expired on 10.1.1999. Petitioner also examined the attesting witness to the Will, one Shri M.N.Sharma, Advocate. Shri Sharma has deposed on oath that the Will dated

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10.8.1995 Ext.PW1/1 had been signed by the deceased in his presence and in the presence of Shri Mahesh K.Chowdhry, Advocate and Shri Ajay Mehrotra, Advocate, who all had signed in the presence of each other and the deceased. The said M.N.Sharma also verified the petition affirming the attestation of the Will.

6 The report from the Valuation Officer has also been received. As per the report of the Tehsildar, Tehsil Hauz Khas, District Mehrauli the property which is the subject matter of the Will is assessed at Rs.5,50,000/-. Petitioner has also produced on record the Death certificate.

7 In view of the foregoing, the Will dated 10th Day of August, 1995, i.e. Ext.PW1/1 has been duly proved in accordance with law. The Will is a registered Will and it bequeaths property No.95-A, St. No.4, Krishna Nagar, New Delhi to the petitioner as a owner to deal with the same in whatever manner she likes.

8 A perusal of the Will shows that no Executor has been appointed under the Will. In these circumstances, in view of the bar contained in Section 222 of Indian Succession Act, 1925, providing that a probate can only be granted to an Executor appointed by the Will, petitioner not being the executor cannot be granted a Probate.

However, it is within the power and jurisdiction of the Court to mould the relief. Accordingly, in terms of Section 232 of the Indian Succession Act, I direct that petitioner be granted instead a Letter of Administration with a copy of the Will annexed upon payment of the requisite court-fees.

9 Petition stands allowed in the above terms.

March 25th 2003.

Manmohan Sarin
Manmohan Sarin, J.

vkm

for 07-03-11
from SA 3590/11 C.A.S. 1517
C.P.R. by Petitioner
for Cause Admin.
Petitioner
Adm. in the Will/Surety Bond filed