

%27-02-2006

Present: Mr. Vishwanath for the petitioner.

Test Case No.14/2001 & IAs 2259, 2265, 11650/02, 7091/04 & 2971/2005

The petitioner has filed this petition under Section 272 of the Indian Succession Act for probate of Will dated 22nd August, 1984 executed by Sh.Viswanath Praad. Sh.Viswanath Prasad was the husband of the petitioner who died on 1st December, 1990 at Mumbai. It is stated in the petition that he left behind the petitioner (his widow) and one daughter, namely, Dr.Urvashi Prasad Jha. As per the said Will dated 22nd August, 1984, he bequeathed all the assets in favour of the petitioner and to the exclusion of all others. This Will is duly registered with the Sub-Registrar at New Delhi. It is also mentioned that Sh.Viswanath Prasad was the joint owner of the following properties along with his two brothers:

1. House No.B-12/9 and the attached land.
2. House No.12/102 and the attached land.
3. House No.B12/107 and the attached land situated at

Signature Not Verified

Digitally Signed By: ANJULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

Mohalla Gauri Ganj, Varanasi (Banaras City) U.P.

He and one of his brother had instituted a suit for partition bearing No.222/1981 before the Second Upper Civil Judge, Varanasi (U.P.) in which a preliminary decree has been passed. After the death of Mr.Viswanath Prasad, the petitioner wanted to move an application for a final decree and at this stage she was advised to take the probate of the Will. Notice in this petition was served upon the respondent. It was also directed to be published in the newspaper (Statesman). No objection to this Will has been filed by anybody. The respondent, daughter of the petitioner, has filed reply accepting the Will. The petitioner has given her evidence in the form of the affidavit stating the aforesaid facts. The petitioner has also filed the valuation report prepared by Mr.H.R.Suri. Pursuant to the notice being issued to the Chief Controlling Revenue Authority, Varanasi, the Chief Controlling Officer has also prepared the valuation report as regards properties which are subject matter of the petition.

Evidence by way of affidavit of Smt.Vimla Prasad has

been filed. She has stated that her husband Sh.Vishwa Nath Prasad died on 1st December, 1990 at Mumbai. Death certificate is enclosed as document-1. She has further deposed that her husband executed a Will on 22nd August, 1984 which is duly registered at New Delhi. This Will is filed annexed as document -2. Late Sh.Vishwa Nath Prasad was the joint owner of the properties along with his two brothers and these properties are located in Varanasi, Uttar Prasad. She has further stated that her husband Sh.Vishwa Nath Prasad had 1/3rd share in the above-stated properties. The petitioner on the basis of the Will is entitled to get probate of the Will and is entitled to 1/3rd share from the joint family properties being the share of her husband. The deceased Sh.Vishwa Nath Prasad was residing at New Delhi at the time of execution of the Will. The Will was executed at New Delhi and registered with Sub-Registrar, New Delhi. The deceased late Sh.Vishwa Nath Prasad left behind following Lrs.

(1) Vimla Prasad

Wife

(2) Dr. Mrs. Urvashi Prasad Jha

Daughters

It is stated that except the above mentioned persons, the testator i.e. Sh.Vishwa Nath Prasad has left no other legal person and through the aforesaid Will bequeathed all the assets in favour of the petitioner to the exclusion of others. Lat Sh.Vishwa Nath Prasad and one of his brothers Sh.Shiv Nath had instituted a suit for partition being Suit No.222/1981 before the Second Upper Civil Judge, Varanasi (U.P.). The learned trial court has already passed a preliminary decree. The petitioner being a legal representative of the deceased attempted to file an application for final decree proceedings but was advised that she can do so only with the probated Will of her late husband. In these circumstances, the petitioner has filed the present probate petition seeking probate of the Will dated 22nd August, 1984.

Evidence in the form of affidavit of Mr.Sunil Kumar Jain, Advocate is filed who has deposed that he is a practicing Advocate and he is a witness to the Will dated 22nd August, 1994. He has categorically stated that the said Will was signed and executed by the testator in his presence as well as in the presence of other two

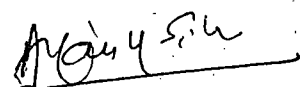
witnesses and the same was drafted by Mr.S.Balakrishnan, Advocate. Affidavit of other attesting witness Dr.S.P.Mondal has also been filed to the aforesaid effect.

From the aforesaid testimony, going through the Will which is duly registered before the Sub-Registrar, Delhi and affidavit of no objection of the respondent, I am convinced that late Sh.Vishwa Nath Prasad executed his last Will and testament dated 22nd August, 1984.

The probate is, thus, grant^{ed} of the last Will and testament dated 22nd August, 1994 of late Sh.Vishwa Nath Prasad. The list of assets is mentioned in the petition and the probate be issued on the petitioner filing appropriate stamp paper on the basis of the affidavit of valuation to be filed by the petitioner.

The petition stands disposed of.

February 27, 2006
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A.K.SIKRI, J

Filed 1A 2227/06 WD/389
for delivery of Will. copy Ret'

for delivery

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 14/2001

VIMLA PRASAD

..... Petitioner

Through Ms. Amita Kalkal Chaudhary, Advocate

versus

DR(MRS) URVASHI PRASAD JHA

..... Respondent

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

31.07.2009

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IA No. 9578/2009

1. This is an application filed by the applicant/Petitioner under Sections 151 & 152 of the Code of Civil Procedure 1908 ('CPC') seeking correction and modification of the probate granted pursuant to the order dated 27th February 2006.

2. It is stated that in the probate dated 27th February 2006 due to clerical mistake the stenographer has inadvertently wrongly mentioned the "House No. B-12/19" instead of "House No. B-12/9." It is further stated that the correct description is House No.B-12/9.

TEST.CAS. 14/2001

page no 1/2

49
3. Accordingly, a direction is issued to the Registry to correct the order dated 27th February 2006 and all other official documents where the description of the House figures. The number of the house be corrected as B-12/9. Correction be carried out within a period of four weeks.

4. The application is disposed of. Order be given dasti.



S.MURALIDHAR, J

JULY 31, 2009
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