



\$~23

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

% *Date of decision: 13th May, 2024*

+ **TEST.CAS. 12/2018**

SH. NIKHIL SEHGAL

..... Petitioner

Through: Mr. Sumit Chander and Mr. Gurdeep Chauhan, Advocates (through video-conferencing) with Mr. Nikhil Sehgal, nephew of petitioner.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Abha Chawla, Mr. Manu Chawla and Ms. Kanika Chawla, are present through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 2187/2023 (under Order 6 Rule 17 CPC filed by the petitioner for amendment of: (i) Petition for grant of Probate of the Will and Schedule of properties (containing the valuation of the properties of the deceased):

1. The application under Order 6 Rule 17 CPC has been filed on behalf of the petitioner wherein it is submitted that the Tehsildar, Badkhal, Haryana vide diary No. 1475858/2022 dated 01.09.2022, has given a status report that the Plot No. B-81, Kant Enclave, Village Anangpur, District Faridabad, Haryana, is not reflected in the name of Late Sh. Tejinder Chawla, in the revenue records.
2. In view of the Tehsildar report, the petitioner, seeks deletion of this



property from the list of properties as mentioned in the Petition seeking Probate of the Will of Late Sh. Tejinder Chawla.

3. It is submitted on behalf of the petitioner that the Probate has been filed by the petitioner, Mr. Nikhil Sehgal, who is a nephew and only the named executer. He does not get any benefit in his name. The wife, Ms. Abha Chawla, son Mr. Manu Chawla and daughter, Ms. Kanika Chawla, have no objection to the grant of Probate. Even before filing of this Petition, they had submitted their “*No Objection*” for which reason they have not been impleaded as respondents. However, learned counsel for the petitioner submits that he shall file an amended memo mentioning the names of the wife, son and daughter of the deceased Mr. Tejinder Chawla.

4. The defendants i.e. Ms. Abha Chawla, Mr. Manu Chawla and Ms. Kanika Chawla have joined through video-conferencing and have reaffirmed their “*No Objection*” to the grant of Probate.

5. In view of the submissions made, the property bearing Plot No. B-81, Kant Enclave, Village Anangpur, District Faridabad, Haryana, is hereby deleted from the list of properties as mentioned in the Petition.

6. The amended memo of parties be filed.

7. The Amended Petition filed, is taken on record.

TEST.CAS. 12/2018

1. The petitioner, Sh. Nikhil Sehgal has filed the present Petition under *Section 276 of the Indian Succession Act, 1925* for grant of *Letter of Probate* in respect of the last Will of Late Shri Tejinder Chawla, dated 18.07.2016 as he is named as the executer under the Will.

2. Late Shri Tejinder Chawla was survived by his wife Mrs. Abha



Chawla and two children i.e. Manu Chawla (son) and, Kanika Chawla (daughter).

3. It is asserted in the petition that the Testator, i.e. Shri Tejinder Chawla was a permanent resident at *House no. 3/5998, Gali no. 2, Dev Nagar, Karol Bagh, New Delhi -110005*. He expired on 31.07.2016 and since just before his death, he was being treated at the Medanta Hospital, Gurugram, he was temporarily staying at 9H Mousari Avenue, DLF City Phase III, Gurugram.

4. During his lifetime, Late Shri Tejinder Chawla executed his last Will dated 18.07.2016, whereby he bequeathed all his movable and immovable properties owned by him in favour of his wife, Mrs. Abha Chawla. The properties owned by him are as under:

- i. Shareholding of 62,153 equity shares in DEN Networks Limited and shareholding of 5 equity shares in Nestle India Limited. The aforesaid equity shares are held in the deceased's demat account maintained with K.K Securities Ltd at New Delhi .*
- ii. Plot number 90, Akashneem Marg, DLF City, situated around Village Sikandapur Goshi, Gurgaon, Haryana.*
- iii. Residential apartment No. D0301, Tower D at Ireo Grand Arch, Sector 58, Gurgaon, Haryana*
- iv. Residential apartment No. D-101, DLF Westend Heights, DLF City Phase V, Gurgaon, Haryana*
- v. Two commercial units UG 60 & 71 at ground floor in shopping complex MGF Metropolis at MG Road, Gurgaon, Haryana.*

5. The Will of the testator was attested by Sh. Mahesh Chander Bhalla, and Rajiv Kumar Sethi. The affidavit of Sh. Mahesh Chander Bhalla is filed as Ex. PW1/X wherein it is stated that he was one of the witnesses to the Will dated 18.07.2016 of deceased Late Tejinder Chawla.

6. A prayer is, therefore, made that a Probate in respect of the last Will



dated 18.07.2016 of Late Shri Tejinder Chawla may be granted and all the immovable and moveable assets may be transferred in terms of the last Will.

7. **The legal heirs of the deceased** who are his two children i.e. Manu Chawla (son)/respondent No.2 and, Kanika Chawla (daughter)/ respondent No.3, have given their “*No Objection*” Certificate **giving their consent to the grant of Probate.**

8. The Valuation Report of property namely, *Plot number 90, Akashneem Marg, DLF City, situated around Village Sikandepur Goshi, Gurgaon, Haryana*, was submitted by SDM Gurgaon and the property was valued at Rs. 25,00,00,000/-.

9. The Valuation Report of property namely, *Residential apartment No. D0301, Tower D at Ireo Grand Arch, Sector 58, Gurgaon, Haryana* was submitted by the Naib Tehsildar, Wazirabad. The property was valued at Rs. 2,00,00,000/-.

10. The Valuation Report of property namely, *Residential apartment No. D-101, DLF Westend Heights, DLF City Phase V, Gurgaon, Haryana* was submitted by the SDM Gurgaon valuing the property at Rs. 2,25,00,000/-.

11. The Valuation Report of property namely, *Two commercial units UG 60 & 71 at ground floor in shopping complex MGF Metropolis at MG Road, Gurgaon, Haryana* was submitted by Tehsildar, wherein the property was valued at Rs.12000 per square feet.

12. The Valuation Report of property namely *House no. 3/5998, Gali no. 2, Dev Nagar, Karol Bagh, New Delhi -110005* was submitted by SDM, Karol Bagh and the property was valued at Rs. 1,75,76,640/-.

13. Citations were published in the newspapers "The Statesman" (English) Delhi edition and "Nav Bharat Times" (Hindi) Delhi edition on



16.May 2018.

14. The other legal heirs of the deceased have filed their 'No Objection' through an Affidavit before this court. Also, no third person has filed objections to the petition pursuant to the citation.

15. PW-1 is the Attesting Witness, Mr. Mahesh Bhalla who deposed in his affidavit of evidence Ex. PW-1/X that Will Ex. PW1/A dated 18.07.2016 of deceased Late Tejinder Chawla, was his last and final Will.

16. Submissions heard.

17. The first aspect in the Probate Petition is to establish due execution of the Will. *Section 63 of Indian Succession Act, 1925* provides for the substantive law on Execution of Unprivileged Wills. *Section 63 (a) & (b) of the Indian Succession Act, 1925* provides the requisites of a valid Will. It states that the testator must affix his signature on the Will and it shall appear that it was intended thereby to give effect to the writing as a will. Further, *Section 63(c) of the Indian Succession Act, 1925* provides that a Will must be attested by two or more witnesses, each of whom should have seen the testator sign or put his mark on the Will. 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. Thus, to prove the valid execution of unprivileged wills, it is apposite to establish that - *firstly*, the Will was duly signed by the testator or bears the affixation of his Mark; *secondly*, the Mark so affixed or the signatures of the testator was so placed that it appears that it was intended to be executed by the Testator in the manner as specified and with a dispensing mind free from all extraneous influences; *thirdly*, it must be attested by two or more witnesses, each of whom should have seen the testator sign or put his mark



on the Will. 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

19. **Section 68 of Indian Evidence Act, 1872** further provides the mode of proof of the Will and requires that at least one attesting witness to the Will, must be examined.

20. To prove their case, petitioner has examined **PW-1, Mr. Mahesh Chander Bhalla, the Attesting Witness** who has deposed in his affidavit of evidence Ex. PW-1/X that Will Ex. PW1/A dated 18.07.2016 of deceased Late Tejinder Chawla was his last and final Will. The Will was read over and explained to the testator who signed the same in a sound and deposing mind, in front of him and the other attesting witness, Mr. Rajiv Sethi. Thereafter, he and Mr. Rajiv Sethi signed the Will as well. He stated that the same bears his signature at Point X-1, and he further identified the signature of the testator at point X-2 and the signature of the other Attesting Witness, Rajiv Sethi at point X-3.

21. The Petition is not contested by the Respondents, who are the other legal heirs of the deceased. Respondent No. 2 and 3 are not beneficiaries under the Will and have given their No-objection/consent by way of Affidavits. Also, no third person has filed any objection pursuant to the citation in the newspapers.

22. The unchallenged and unrebutted testimony of PW-1, Mr. Mahesh Chander Bhalla, the attesting witness, proves the genuineness and the authenticity of the Will Ex. PW1/A dated 18.07.2016 which was duly executed by Late Tejinder Chawla.

23. Section 276 (2)(a) of the Indian Succession Act, 1925, provides that



the Petition can be filed where the Testator had a fixed abode. The petitioner has stated that the Testator, i.e. Shri Tejinder Chawla was a permanent resident at *House no. 3/5998, Gali no. 2, Dev Nagar, Karol Bagh, New Delhi -110005*. However, the Death Certificate of late Shri Diva Kant ThakurEx. PW-1/1 records his address as 9H Mousari Avenue, DLF City Phase III, Gurugram. It is explained by petitioner that the Testator was temporarily staying at 9H Mousari Avenue, DLF City Phase III, Gurugram before his death as he was being treated at Medanta Hospital, Gurugram. Be that as it may, the petitioners have proved that the testator had his permanent residence within the jurisdictional limits of this Court.

24. Since no objections have been raised against the grant of Probate in favour of the petitioner, the present petition stands allowed.

25. The petitioner shall furnish Administrative Bond and one surety to the satisfaction of the learned Joint Registrar General of this court

26. On payment of the requisite court fee and other formalities and noted above, the Probate shall be issued in respect of the Will dated 18.07.2016.

27. The petition is hereby, allowed in the aforesaid terms.

28. List before the Joint Registrar on 04.07.2024 for depositing of the Bonds. The Original Will be submitted within 7 days.

NEENA BANSAL KRISHNA, J

MAY 13, 2024/RS