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Court : Delhi

Decided On : Sep-04-1997

Reported in : 1997VIAD(Delhi)189; 68(1997)DLT772; 1997(43)DRJ559

Judge : Lokeshwar Prasad, J.

Acts : Succession Act, 1925 - Sections 222

Appeal No. : Probate Case No. 39 of 1993

Appellant : Vinod Bahl

Respondent : State

Advocate for Pet/Ap. : Manoj Wad, Adv

Judgement :

Lokeshwar Prasad, J.

(1) The petitioner seeks grant of probate in respect of the Will dated the 13th June, 1990, executed by his mother late Smt. Tej Kumari. In terms of the provisions of Section 222 of the Indian Succession Act, 1925 (hereinafter referred to as The Act'). The petition for probate would not lie inasmuch as the deceased did not name any person as `executor' in the Will. I would, thereforee, treat this petition as one for grant of Letters of Administration with the Will annexed.

(2) Notice of the filing of the petition was given to the Chief Revenue Controlling Authority, to the near relatives (Smt. Usha Marwah daughter of the Smt. Tej Kumari the deceased) and a citation was also published in the daily `The Statesman' (New Delhi Edition). No objection has been filed by any one. Smt. Usha Marwah the daughter of the deceased has filed an affidavit dated the 5th January, 1994, stating therein that she has no objection if the prayer of the petitioner is allowed.

(3) The petitioner, in support of his case, had adduced the evidence of three witnesses including his ownself. Public Witness 1 is Dr.H.S.Yadav. This witness is one of the attesting witness to the Will (Ex. P-1). In his statement on oath, this witness has proved the execution of the Will Ex. P-1, executed by late Smt. Tej Kumari Public Witness 2 Shri K.C. Dhawan is another attesting witness to the Will (Ex P-1). This witness in his statement has also proved the execution of the Will Ex. P-1 by late Smt. Tej Kumari. The petitioner in his statement on oath, has stated in clear cut terms that Smt. Tej Kumari, who was ordinarily residing at the time of her death at 140, Malcha Marg, Chanakya Puri, New Delhi, expired at Delhi on 26th January, 1993. He has proved and exhibited the death certificate of said Smt. Tej Kumari Ex. P-2. It also stands proved on the basis of the testimony of the petitioner that said Smt. Tej Kumari has left behind the properties as detailed in Annexure-C, annexed to the petition and has bequeathed all the properties mentioned in Annexure-C to the petitioner who is her son. Said Smt. Tej Kumari did not leave behind any other asset either movable or immovable other than those mentioned in Annexure-C annexed to the petition. The evidence of Dr. H.S. Yadav (P.W.1) Shri K.C. Dhawan (P.W.2) and that of the petitioner has gone on record unrebutted and unchallenged which I see no reason to disbelieve. I would, thereforee, accept the petition and direct that the petitioner be granted Letters of Administration to the estate of deceased said Smt. Tej Kumari with a copy of the Will (Ex-P.1) dated the 13th June, 1990 annexed which shall be in the form set forth in Schedule Vii to the Act subject to, production of the Estate Duty Clearance Certificate and completion of other formalities. It is clarified that as the petitioner is the sole beneficiary under the Will, he need not furnish any bond with or without surety as required under Section 291 of the Act.