

## Udaya Kumar Kamath vs Government Of Nct Of Delhi on 2 April, 2025

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 12th March, 2025

Pronounced on : 02nd April, 2025

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TEST.CAS. 3/2023

UDAYA KUMAR KAMATH

.....Petit

Through: Mr. Harsha Gollamudi &  
Mr. Vishal Kapoor, Advocate

versus

GOVERNMENT OF NCT OF DELHI & ORS. ....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGEMENT

ANISH DAYAL, J.

1. The present petition has been filed under Section 276 of the Indian Succession Act, 1925 ('the Act'), seeking grant of probate of Will dated 23rd April 2021, executed and signed by Late Ms. S.R. Sarasvati ('Testatrix/Deceased').

2. The Will was executed in the presence of two attesting witnesses, namely Mr. Ravinder Kumar Rai and Mr. Anil Bhatia. Petitioner was appointed as the executor of the said Will by the deceased.

3. The Testatrix passed away on 27th April 2021. A copy of the death certificate of the Testatrix issued by North Delhi Municipal Corporation has been placed on record as Exhibit PW 1/2.

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4. The deceased remained unmarried during her lifetime and, therefore, had no children at the time of her demise. The deceased had two sisters and two brothers.

5. Late Sh. S.S. Ramakrishnan, father of the Testatrix, purchased property no. A-55 total measuring 207.5 sq.yds. situated in Inderpuri, New Delhi from Sh. Som Dev Chandna vide Sale deed registered as document No.1916 in Addl.Book No. 1 Volume No.1082 on pages 160 to 165 registered on 16th May 1969, in the office of Sub Registrar-II, New Delhi. He died on 25th August 1994, and his wife Late Mrs. Savitri passed away intestate on 20th August 1987, leaving behind three daughters and two sons.

6. Further, the above-mentioned property fell into the share of Testatrix in the following manner:

i. Respondent no. 4 [Mrs. Parvati S. Rao, sister of the Testatrix], executed a relinquishment deed on 15th September 2014, in favour of Testatrix, Respondent no. 2 [Mrs. Vijayalakshmi Tumkar, sister of Testatrix], and Husband of Respondent no. 5 [Late Mr. S.R. Satyanarayanan, brother of Testatrix ] (Exhibit PW1/3).

ii. Respondent no. 2, executed a relinquishment deed on 04th October 2015, in favour of Testatrix and Late Mr. S.R. Satyanarayanan (Exhibit PW1/4).

iii. Partition Deed was executed between the deceased and her brothers on 5th October 2015, concerning the property situated at A-55, Inderpuri, New Delhi - 110012 (Exhibit By:MANISH KUMAR TEST.CAS. 3/2023 2 of 10 PW1/5). As per the partition deed the entire first floor of the said property was allocated to the deceased. West/Left side of Ground floor and East/Right side half portion of Second floor were allocated to respondent no. 3; East/Right side of Ground floor and West/Left side half portion of Second floor to Husband of Respondent no. 5 (Late Mr. S.R. Satyanarayanan).

7. The Testatrix's last place of residence was A-55, Inderpuri, New Delhi - 110012, therefore, the Court has jurisdiction in this case.

8. As per the Will dated 23rd April 2021, the Testatrix has bequeathed her estate to her siblings and friends as mentioned below :

i. Mr. Subramaniam R. Sular (Respondent no. 3/ brother of the deceased) ii. Ms. Priyamvada Satyanarayanan (Respondent no. 5/ sister-in-

law of the deceased) iii. Smt. Kusum Kalia (friend of the deceased) iv. Smt. Geeta Arora (friend of the deceased) v. Mrs. Urmila (friend of the deceased)

9. The estate of the Testatrix was bequeathed to the aforementioned parties in the following manner:

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Signing Date:04.04.2025  
18:50:03

10. Petitioner as PW1 has filed his evidence by way of affidavit of evidence Exhibit PW1/A which bears his signatures at point A and B, and has placed the following documents on record:

i. A certified copy of the Testatrix's death certificate dated 16th September 2021 issued by NDMC as Exhibit PW-1/2. ii. A photocopy of Relinquishment deed dated

15th September 2014 executed by Mrs. Parvati S. Rao as Exhibit PW1/3. iii. A photocopy of Relinquishment deed dated 04th October 2015 executed by Mrs. Vijayalakshmi Tumkur as Exhibit PW1/4.

iv. Original partition deed dated 5th October 2015 as Exhibit PW1/5.

v. List of immovable assets has been filed as Exhibit PW1/6. vi. List of movable assets has been filed as Exhibit PW1/7. vii. List of beneficiaries named in the Will dated 23rd April 2022 of Late Ms. S.R. Saraswati is contained in Exhibit PW1/8.

11. The original Will, dated 23rd April 2021, executed by the Testatrix, was produced before the Court during the evidence of PW1 in a sealed cover and marked as Exhibit PW1/1, as noted in the order dated 8th January 2025.

12. In compliance with the directions of this Hon'ble Court, citations were published in two newspapers i.e., 'The Statesman' (English edition) and 'Dainik Jagran' (Hindi edition), as per this Court's order dated 24th March 2023. The Court on 11th July 2023 noted that citations have been By:MANISH KUMAR TEST.CAS. 3/2023 5 of 10 published in the said newspapers. Compliance of the same has been placed on record.

13. Two of the attesting witnesses, Mr. Ravinder Kumar Rai and Mr. Anil Bhatia, have filed affidavits of evidence Ex.PW2 and Ex.PW3 respectively, confirming that the Testatrix signed the Will in their presence, without any pressure or coercion.

14. The evidence of PW-2 and PW-3 are produced as below:

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15. Counsel for petitioner relied on the judgment of Janaki Narayan Bhoir v. Narayan Namdeo Kadam (2003) 2 SCC 91, wherein it was held that a document can be considered a Will only if it is proven in compliance with Section 63 of the Act, in conjunction with Section 68 of the Indian Evidence Act, 1872. The relevant paragraph of the judgment is reproduced as under:

"10.....On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the By:MANISH KUMAR TEST.CAS. 3/2023 7 of 10 Testatrix but must also prove that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the will as envisaged in Section 63. Although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be

attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the court...."

(emphasis added)

16. Notice was issued to respondents on 24th March 2023. Fresh notices were served to respondent nos. 2 and 4 on 11 th July 2023. Petitioner filed an Affidavit of Service qua service of respondent no.2 and 4, and the same was noted in order dated 14th October 2024.

17. Respondent No.1, Sub-Divisional Magistrate, was directed to file a valuation report assessing the estate of the Testatrix. The concerned authority has filed the valuation report assessing the Testatrix's estate value at Rs.45,91,632/- (Forty-five lakh ninety-one thousand six hundred thirty-two Rupees only).

18. The right of respondent nos.2 and 4 to file reply/objection was closed by order dated 25th November 2024.

19. The 'No Objection' of respondent no. 3 was filed vide diary no. 1138116/2023 as noted in order dated 11th July 2023. Further, respondent By:MANISH KUMAR TEST.CAS. 3/2023 8 of 10 no. 5 filed her 'No Objection' which was noted in the order date 25 th November 2024.

20. Petitioner relied on the judgment of this Court in Om Prakash Aggarwal v. State (NCT of Delhi) 2023 SCC OnLine Del 5564 to support his argument of grant of probate in cases where plea of the petitioner remained unchallenged, unrebutted and uncontested. The court in this case granted probate on the testimony of petitioner and which was supported by the testimony of one of the two attesting witnesses.

21. Accordingly, considering that no objection has been raised by any other legal heirs regarding the grant of probate and all relevant evidence has been placed on record, the Court is satisfied that the Will is genuine, valid, and duly executed in accordance with the law, and there is no legal impediment to grant probate.

22. Accordingly, the present petition is allowed. Subject to the Petitioners filing the requisite court fees, probate shall be granted in favour of the petitioners.

23. Petitioners are exempted from furnishing any administration or surety bond, considering there is no contest from other legal heirs to grant of probate in favour of petitioners. In this regard, a decision in Maninder Singh v State & Anr. 2015 SCC OnLine Del 9265 is apposite, the relevant paragraph of which, is extracted as under:

"8...There are a stream of cases, where having regard to the fact that the petitioners in testamentary cases where probate/letters of administration were sought in respect of the estate of the deceased, had been exempted from By:MANISH KUMAR

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24. Petition is accordingly disposed of. Pending applications (if any) are also rendered infructuous.

25. Judgment be uploaded on the website of this Court.

ANISH DAYAL,

APRIL 02, 2025/sm/bp

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