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

+ **TEST.CAS. 59/2024**

SANJEEV MITLA

.....Petitioner

Through: Ms. Vinita Sasidharan for Mr.
Abhishek Agarwal, Advocates

versus

THE STATE & ORS.

.....Respondents

Through: Ms. Avni Singh, Advocate for State

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **19.07.2024**

TEST.CAS. 59/2024

1. This petition has been filed by the named Executor with respect to the registered Will dated 30.05.2023 executed by late Smt. Lakshmi Gupta ('testatrix'), for seeking probate of the said Will. It is stated in the petition that the testatrix expired on 09.03.2024.
2. Issue notice. Learned counsel for Respondent No. 1 accepts notice.
3. Upon steps being taken by the Petitioner, issue notice to Respondent Nos. 2 and 3 through all permissible modes.
4. Let the notice state that the said Respondents must file their objections, if any, within a period of four (4) weeks from receipt of the notice along with affidavit of admission/denial of documents annexed with this petition.
5. Response, if any, by the Petitioner to the said objections be filed within a period of four (4) weeks from receipt of the objections along with affidavit of admission/denial of documents filed with the objections.



6. Notice also be issued to the concerned SDM, who shall, before the next date of hearing, file the valuation report in respect of the immovable property mentioned in the 'Schedule of Properties - Schedule A' filed alongwith the petition.
7. In the meantime, let the citations be published in the "Times of India" (English Newspaper) and in "Nav Bharat Times" (Hindi Newspaper), both having circulations in the National Capital Region.
8. Learned counsel for the Petitioner states that she wishes to replace the affidavits of attesting witnesses to the Will dated 30.05.2023 annexed with the present petition as well as the affidavits of the attesting witnesses filed as Documents nos. 4 and 5. She states that the fresh affidavits will be filed within a period of two (2) weeks. It is ordered accordingly.
9. The Registry is directed to take the said fresh affidavits on record. These fresh affidavits of the attesting witnesses will be served on the Respondents along with the petition.
10. List the matter before the Joint Registrar (J) for completion of service and pleadings on 16.08.2024.
11. List the matter before the Court on 22.10.2024.
- I.A. 33580/2024 (Application under Section 149 read with Section 151, CPC seeking exemption from paying/ affixing ad valorem court fees**
12. Issue notice. Learned counsel for Respondent no. 1 accepts notice.
13. Upon steps being taken by the Petitioner, issue notice to Respondent Nos. 2 and 3 through all permissible modes.
14. Reply to the application be filed within four (4) weeks. Rejoinder thereto, if any, be filed within four (4) weeks thereafter.



I.A. 33579/2024 (Application under Order XXXIX Rules 1 and 2, CPC seeking interim reliefs)

15. This is an application filed by the Petitioner seeking restraint against Respondent Nos. 2 and 3 from creating any third-party interest in the immovable property bearing no. 29/B, Friends Colony, West, Mathura Road, New Delhi-110065 ('subject property') and movable properties of late Smt. Lakshmi Gupta.

16. In view of the fact that Respondent No. 3 is admittedly in possession of the subject property and even under the Will dated 30.05.2023, he is entitled to devolution of 75% ownership rights in the subject property, at this stage, no cause for grant of injunction is made out.

17. Similarly, as per the Will dated 30.05.2023, since all movable assets have to devolve upon Respondent No. 3 to the exclusion of Respondent No. 2, no ground for stay has been made out at this stage, especially, since the petition does not disclose any list of movable assets.

18. The relief sought in this application will be considered after Respondents enter appearance and file their response to the probate petition.

19. Reply to the application be filed by Respondent Nos. 2 and 3 within four (4) weeks from receipt of notice. Rejoinder thereto, if any, be filed within four (4) weeks thereafter.

20. List before the Joint Registrar (J) for completion of service and pleadings on 16.08.2024.

21. List before the Court on 22.10.2024.

MANMEET PRITAM SINGH ARORA, J

JULY 19, 2024/rhc/MG