

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.320/2009

% Judgment delivered on: 9th November, 2009

1. Mr. Suresh Kumar Sahgal
S/o. Late Justice Achhru Ram Sahgal
28/1 Friends Colony,
New Delhi

2. Mrs. Pushpa Badhwar
W/o. Late Mr. Amrik Lal Badhwar
37/2-1, Vijay Colony,
New Cantonment Road,
Dehradun,
Uttarakhand

3. Mrs. Raj Sethi
W/o. Mr. Bal Krishna Sethi
236 RPS Flats, Sheikh Sarai,
New Delhi

....Appellants

Through: Mr. Sanjeev Sachdeva with Ms.
Priya Puri, Advs.

Versus

State

....Respondent.

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

V.B.Gupta, J. (Oral)

+CM No.14831/09 in FAO No.320/2009

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There is a delay of 10 days in filing of this appeal.

For the reasons mentioned in the application, application is allowed and delay is condoned.

Application stands disposed of.

+CM No.14832/09 in FAO No.320/2009

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There is a delay of 70 days in filing of this appeal.

For the reasons mentioned in the application, application is allowed and delay is condoned.

Application stands disposed of.

+FAO No.320/2009

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Trial court record has been received.

Heard.

It is contended by learned counsel for appellants that trial court wrongly dismissed the petition filed by appellants since the original Powers of Attorney executed by the appellants in favour of Dr. Anand Kumar Sethi were filed before the court of Administrative Civil Judge in another matter, namely ***Suresh Sehgal and Kamla Sehgal v. State***. Now, appellants have placed on record certified copy of Powers of Attorney and appellants may be given opportunity to prove the Powers of Attorney in accordance with law and matter may be remanded to the trial court.

Trial court vide impugned judgment, dismissed the petition of the appellants observing that;

“Petition is not signed by any of the petitioners. It is signed by the power of attorney holder Dr. Anand Kumar Sethi. Its verification part is defective because no verification is done by the attorney. Simply he has signed the verification part without putting any date of verification of the petition. The power of attorney holder has not placed on record the power of attorney executed by the petitioners in his favour. So, he failed to prove his authority to file this petition on behalf of the petitioners. None of the petitioner has entered the witness box to prove their case and even at the time of leading the evidence the power of attorney holder has not proved his authority to file this petition. In the absence of his authority to file this petition, this petition is not maintainable even though the petitioners might be the only class II legal heirs of the deceased Smt. Kamla Sahgal. Hence, I hold that the petition is defective. Dr. Anand Kumar Sethi has failed to prove his authority to file this petition.”

As per contentions of learned counsel for appellants, the appellants had filed the original Powers of Attorney in another matter pending before the Administrative Civil Judge and that is why they could not file the original Powers of Attorney before the Additional District Judge.

Under these circumstances, as original Powers of Attorney have already been filed in another case, the present appeal filed by appellants is allowed.

Matter is remanded back to the trial court with directions that the appellants should prove the original Powers of Attorney before the trial court or should file certified copies of the same and prove the certified copies, in accordance with the provisions of law. Thereafter, the trial court shall decide the matter afresh.

Appellants are directed to deposit a sum of Rs.10,000/- as costs, with 'Delhi High Court Legal Services Committee' within four weeks from today and receipt of the same be produced before the trial court, on the next date of hearing.

List on 15th January, 2010 before trial court.

Appellants are directed to appear before trial court on the said date.

Trial court record and copy of this order be sent back forthwith.

November 09, 2009
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V.B. GUPTA, J.