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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM (M) No. 301 of 2010

GOVINDI BAI & ANR. (NOW DECEASED)
SHRI SANT SINGH SOUGHT IMPLEADMENT
AS LEGAL REPRESENTATIVE OF THE
PETITIONERS Petitioners/Plaintiffs
Through: Mr. R.M. Sinha, Advocate.

versus

UNION OF INDIA & ORS. Respondent
Through Mr. J.C. Mahindroo with Mr. Ankur
Mahindroo, Advocates for R-2.

AND

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CM (M) No. 43 of 2010

SANT SINGH ARORA Petitioner
Through: Mr. R.M. Sinha, Advocate.
versus

MADAN LAL TUTEJA (DECEASED)
NOW REPRESENTED BY HIS LEGAL
HEIRS & ANR. Respondents
Through Mr. J.C. Mahindroo with Mr. Ankur
Mahindroo, Advocates for R-1.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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27.04.2010

CM (M) No. 301 of 2010 & CM Nos. 4125 & 5352 of 2010
CM (M) No. 43 of 2010 & CM Nos. 703 & 5354 of 2010

Signature Not Verified

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

CM (M) No. 43 of 2010 by Sant Singh Arora is directed against the orders
dated 28th October 2009, 17th November 2009, 24th November 2009 and 12th

December 2009 passed by the learned District Judge-II (N), Delhi in Probate Petition No. 49 of 1994. b

2. CM No. 301 of 2010 has been filed in the name of the deceased Smt. Govindi Bai against an order dated 17th February 2010 passed by the learned Senior Civil Judge ('SCJ')-cum-Rent Controller (II) in Suit No. 1271 of 2006 (Old No. 543 of 1981). At the outset, it must be noticed that the cause titled of CM (M) No. 301 of 2010 reads "***Smt. Govindi Bai & Anr. (now deceased) Shri Sant Singh sought impleadment as legal representative of the Petitioners v. Union of India & Ors.***" This Court fails to understand how the above cause title can be permitted particularly since Shri Sant Singh is not even a party to the proceedings in which the impugned order has been passed. CM (M) No. 301 of 2010 is supported by the affidavit of Shri Sant Singh wherein para 1 he says that "the deponent is Petitioner in the abovesaid petition and is well acquainted with the facts of the case". This is a plain falsehood, stated on affidavit, and it is false to the knowledge of Shri Sant Singh Arora. On this short ground, CM (M) No. 301 of 2010 cannot be entertained in the present form. What is significant is that both Plaintiffs in Suit No. 1271/06/81 have expired and are represented by their respective legal representatives who are already on record as Defendants in the suit.

3. The present petitions have a long history of litigation. Suit No. 543 of 1981 (later renumbered as Suit No. 1271 of 2006) was filed by Smt. Govindi Bai, the widow of late Shri Hotu Ram, and one of her sons Shri Om Prakash for a declaration that a Will dated 5th September 1979 purportedly executed by late Shri Hotu Ram bequeathing his entire property at 4A/29, Old

Rajinder Nagar, New Delhi ('suit property') in favour of the Defendant No.2 u
Madan Lal Tuteja, another of his sons, is null and void. A permanent injunction was sought to restrain the Defendant No.1 Union of India from mutating the suit property in the name of Defendant No.1 alone and for a declaration that the Plaintiffs were entitled to the mutation of the suit property in their names.

4. The Land and Development Officer ('L&DO') had executed a conveyance deed in respect of the suit property in favour of late Shri Hotu Ram. The two daughters of Shri Hotu Ram, Defendants 3 and 4 in the aforementioned suit, had sworn to affidavits on 5th October and 22nd October 1981 confirming the genuineness of the Will dated 15th September 1979 and giving their non objection to the L&DO. In Suit No. 543 of 1981 issues were framed in 1982. However the suit was pending before the learned SCJ, Delhi and was not progressing. Consequently, Shri Madan Lal Tuteja filed a Probate Petition No. 49 of 1994 on 2nd February 1994 which is pending in the court of the learned District Judge-II (N), Delhi. In an application under Order XXXIX Rules 1 & 2 CPC, the learned District Judge on 21st September 1994 passed a status quo order in respect of the aforementioned suit property. At that stage, Smt. Govindi Bai, who was Respondent No.2 in the probate petition did not disclose that any third party was in possession of the suit property. It is stated that Smt. Govindi Bai was living at Property No. 10/54, Old Rajinder Nagar which was owned by Shri Sant Singh, the Petitioner in CM (M) No. 310 of 2010.

5. It appears that despite the aforementioned status quo order, the

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Respondent Shri Om Prakash parted with the possession of the suit property in favour of Shri Sant Singh Arora which came to light on 13th May 1996. An application was filed under Order XXXIX Rule 2A against Shri Om Prakash and Smt. Govindi Bai. In reply to the said application, Shri Om Prakash disclosed that Sant Singh Arora was a tenant in the suit property since January 1994 and that an agreement to sell dated 15th February 1994 was executed in his favour.

6. On 14th March 2001, Smt. Govindi Bai expired. On 5th March 2004 Shri Madan Lal Tuteja expired. His legal representatives filed on 1st October 2005 a suit being Suit No. 118 of 2005 for possession and mesne profits vis-a-vis the suit property against Sri Om Prakash and Shri Sant Singh Arora. In the said suit an application was filed under Order VII Rule 11 CPC by Sant Singh on the strength of the agreement to sell and other documents purported to be executed in his favour by Govindi Bai and Om Prakash and claimed for rejection of the plaint. This was dismissed on 28th November 2005. Interestingly in the above Suit No. 118 of 2005 titled "***Ved Prakash & Ors. v. Om Prakash & Ors.***" pending in the court of the learned Additional District Judge ('ADJ'), the Defendant Sant Singh had not filed any counter claim.

7. It appears that in the Probate Petition No. 49 of 1994 Shri Sant Singh was impleaded as Respondent No.7 by an order dated 10th May 2006 of the learned ADJ. It was noticed in the said order that earlier attempts had been made by Shri Sant Singh Arora to become a party through other legal heirs of the testator. All those applications had been rejected by successive courts.

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Those orders had been affirmed by the High Court. It was noticed that in the suit for possession i.e. Suit No. 118 of 2005 filed by the legal heirs of Madan Lal Tuteja, Shri Sant Singh received summons in November 2005 and therefore knew of the pendency of the probate case. The learned ADJ in its order dated 10th May 2006 noticed that that there was no explanation why Shri Sant Singh waited for six months for filing the application. Nevertheless it was allowed upon costs of Rs.2,000.

8. Subsequently, an application was filed by Sant Singh in the Probate Petition for leading rebuttal evidence as regards his right to the suit property. An order dated 30th April 2008 was passed by the learned ADJ dismissing the said application filed by Shri Sant Singh. Aggrieved by the said order Sant Singh filed CM (M) No. 55 of 2008 which was disposed of on 1st July 2008 by a learned Single Judge of this Court by passing the following order:

“This petition has been filed by the Petitioner to challenge the order dated 30th April, 2008. Vide order dated 30th April, 2008, the Probate Court dismissed an application made by the Petitioner for not allowing the Respondent (Petitioner before the Trial Court) to lead evidence in rebuttal.

The Petitioner claimed himself to be purchaser of the bequeathed property and was allowed to be made a party in the Probate Petition on his application. Thereafter, it seems that the Petitioner lead evidence about his title over the property and the Respondent wanted to lead evidence in rebuttal. I consider that a Probate Court has to decide is whether the ‘Will’ propounded by the Petitioner was validly executed by the deceased and was genuine ‘Will’ or not. The Probate Court cannot go into

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the issue of the title of the property or other issues. A party who claims title is at liberty to file an independent suit.

In the present case, no title suit was before the Probate Court. I, therefore, consider that any evidence lead by the parties beyond the issue of genuineness of the 'Will' cannot be considered by the Probate Court. The Probate Court should, therefore, not allow any evidence which is beyond purview and jurisdiction of the Probate Court.

Determination of genuineness of the 'Will' or grant of probate does not confer title on the person in whose favour probate is granted. A person may execute a 'Will' in respect of property over which he has no title and his successors may obtain probate of the 'Will'. Merely obtaining probate would not confer title over successors. The title has to be decided by independent Court. The order passed by the Probate Court allowing evidence in rebuttal on the genuineness of the documents filed by the Petitioner is hereby set aside. Simultaneously, it is made clear that no evidence lead by either of the parties on the title shall be considered by Probate Court while deciding the genuineness of the 'Will'.

The petition is disposed of.

Trial Court record be sent back forthwith so as to reach the Trial Court before 9th July, 2008.

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9.. In effect, although Shri Sant. Singh was a party in the Probate Petition, it was made clear by this Court in the above order that he could not lead

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evidence in those proceedings regarding his title to the suit property. Shri Om Prakash died on 24th May 2009. Smt. Bimla Kalra, one other objector in the probate petition also died on 26th June 2009.

10. On 28th October 2009 learned counsel appearing for Sant Singh before the learned District Judge in the Probate Petition stated that he had no objection if the LRs of Om Prakash were brought on record. However, soon thereafter an application was filed seeking a review of the said order. The lawyer who made a statement was then directed by the learned District Judge on 17th November 2009 to be present on the next date i.e. 24th November 2009. In his statement made on 24th November 2009, the advocate tendered an unconditional apology and admitted that he had filed a false affidavit on 17th November 2009. In other words, the advocate stood by the statement made by him in court on 28th October 2009. On 12th December 2009, the review application was heard by the learned District Judge. It was observed inter alia that in an application under Order XXII Rule 4, the Court is not required to adjudicate upon the rights of the parties. Om Prakash had died on 24th May 2009 and the application under Order XXII Rule 4 to bring his legal representatives on record was filed on 5th June 2009. It was held that the estate of late Om Prakash was being represented by his legal representatives. Consequently, it was held that there was no ground for review of the order dated 28th October 2009. Shri Sant Singh has filed CM (M) No. 43 of 2010 assailing the above orders.

11. The submissions of Mr. R.M.Sinha, learned counsel appearing for Shri Sant Singh have been heard. It is submitted that since Sri Sant Singh is the

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subsequent transferee of the suit property, he should be considered to be the legal representative of Govindi Bai and Om Prakash. According to him their legal heirs may not in the context be considered as legal representatives. According to him in terms of Order I Rule 10 CPC he had to be brought on record as a legal representative in the 1981 Suit as well as in the Probate Petition. Reference was made to the relevant provisions of Order XXII Rule 44A & Rule 10 CPC. It is contended that since in the event the other parties in the probate petition were not interested in opposing the grant of probate and there had to be someone to represent the estate of Govindi Bai and Om Prakash. According to him, it is only Sant Singh who could represent their estate. Referring to Section 2(f) and (g) of the Hindu Succession Act as well as Section 265 of the Indian Succession Act, it is submitted that Shri Sant Singh is the right person to represent the estate of both Govindi Bai and Om Prakash. Reliance is also placed on the judgment of this Court in *Satyawati Sharma v. Indian Overseas Bank 2006 V AD (DELHI) 312*.

12. This Court has also heard the submissions of Mr. Ankur Mahindroo, learned counsel for the Respondents. He points out that present proceedings are nothing but an abuse of the process of Court. Referring to the long history of litigation, he submitted that every attempt has been made by Shri Sant Singh to frustrate the progress of both the civil suit as well as the probate petition. He pointed out that Sant Singh had not chosen to file any separate proceedings to assert his rights. He has not even filed a counter claim in Suit No. 118 of 2005 filed by the legal heirs of Madan Lal Tuteja.

13. This Court has already noticed that CM (M) No. 301 of 2010 is not

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maintainable in the form it has been filed. That apart, the order under challenge in that petition is dated 17th February 2010 passed by the learned SCJ dismissing an application filed Under Order XXII Rule 4 CPC by Sant Singh seeking impleadment in the suit filed in 1981. It was again urged by the learned SCJ that Sant Singh was at liberty to take steps for filing an independent suit. Since Govindi Bai's rights were yet to be crystallised Shri, Sant Singh could not claim his rights on the basis of the undeclared rights of the Govindi Bai.

14. This Court is of the view that given the limited scope of the 1981 suit, no fault could be found with the above conclusion of the learned SCJ. There was also no ground for seeking review of an order dated 1st May 2009 passed in the said suit. Shri Sant Singh obviously could not be substituted as legal representative of either Govindi Bai or Om Prakash. That attempt was plainly misconceived. Therefore, this Court finds no legal infirmity in the impugned order dated 17th February 2010. For all the above reasons, CM (M) No. 301 of 2010 is accordingly dismissed.

15. As regards CM(M) No. 43 of 2010, this Court fails to understand how Shri Sant Singh can object to the legal representatives of deceased Om Prakash being brought on record. The submission that he is the only legal representative to succeed to estate of both Govindi Bai and Om Prakash and therefore has to be recognized as such in the probate petition, is plainly misconceived. As noticed by this Court in *Satyawati Sharma*, a subsequent transferee of the suit property is not a legal representative of the deceased transferor of the suit property. The remedy with such person is to file an

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application under Order XXII Rule 10 CPC. There is yet another difficulty in the way of Shri Sant Singh which is that the transfer to him was in the teeth of the status quo order passed by the Court. In terms of the judgment of the Supreme Court in *Surjit Singh v. Harbans Singh AIR 1996 SC 135*, it is doubtful whether the Petitioner is entitled to be impleaded in the Suit. No infirmity can be found in any of the impugned orders passed by the learned District Judge.

16. The petitions and the applications are accordingly dismissed.



S.MURALIDHAR, J

APRIL 27, 2010

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- Fresh Review petition no- 318/10 filed (P-222)
- " CM 13474/10 for delay (P-231)
- " CM 13475/10 for exemption (P-284)