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

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Date of Judgment: 21.10.2011

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CM(M) No.1128/2009

DHARAM BIR SINGH

.....Petitioner

Through: Ms.Anju Lal, Advocate
for the petitioner.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Sanjay Kumar
Pathak, Advocate for the
R-1.
Mr.Ajay Verma, Advocate
for the DDA/respondent
no.10.
Mr.S.S.Tomar, Advocate
for the respondent no.2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

For order see CM(M) No.1156/2009.

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INDERMEET KAUR, J

OCTOBER 21, 2011

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A-8 & 22

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 21.10.2011

+CM(M) No.1156/2009, CM No.14762/2009 &
CM(M) No.1128/2009

DHARAM BIR SINGH

.....Petitioner
Through: Ms.Anju Lal, Advocate
for the petitioner.

Versus

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CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
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INDERMEET KAUR, I. (Oral)

1. Order impugned before this court is the order dated 11.5.2009 vide which the application filed by the petitioner Narain

Singh under Order 22 Rule 3 of the Code of Civil Procedure (hereinafter referred to as "the Code") seeking substitution as legal representative of Ancha Devi had been allowed.

2. Record shows that a Reference Petition under Section 18 of the Land Acquisition Act seeking enhancement of compensation was pending before the concerned court. Deceased Ancha Devi was the wife of Shanker Singh. Shanker Singh had two brothers namely Mahavir Singh and Dhrambir Singh. Dhrambir Singh claims himself to be the legal representative of the deceased Ancha Devi. On the other hand the petitioner Narain Singh being the grandson of Ancha Devi is also claiming the estate of Ancha Devi; he had set up his claim on the basis of a will dated 18.01.1990 purportedly executed by Ancha Devi bequeathing her property in his favour. After the death of Ancha Devi application for substitution had been filed by Narain Singh claiming to be her legal representative. Issues qua the will were framed. They read as follows:

1. Who is entitled to be substituted in place of deceased Ancha Devi thus in place of Mahavir Singh?

2. Relief.

3. To prove the will Narain Singh had come into witness box. He has reiterated that the will Ex.PW-2/1 dated 18.10.1990 had

been left by Ancha Devi in his favour. There were two attesting witnesses one Ranjit Singh and another Shree Pal. Ranjit Singh was examined before the trial court as PW-2. He has on oath deposed that Ancha Devi had executed a will in favour Subash (@ Narain Singh); this was registered at Kashmere Gate about 12-13 years back. The will had been thumb impressed by him. The petitioner Subhash (Narain Singh) was living with Ancha Devi. In his cross-examination he has identified his signature at point 'C' in Ex.PW-2/1. He had categorically deposed that the will was read over in his presence and thereafter he had signed the will; counsel for the petitioner has highlighted that part of the cross-examination of PW-2 wherein he has stated that "thereafter Ancha Devi thumb marked"; contention being that Ancha Devi had thumb marked the will after the attesting witnesses which is not as per the requirement of 63(c) of the Indian Succession Act, 1925. Moreover the attesting witnesses has also not deposed about the presence of the second attesting namely Shri Pal; these are the grounds of challenge to the will.

4. It is not in dispute that the parties are illiterate and uneducated. The deceased Ancha Devi is a pardanshin lady. This has also come in the version of PW-2. The will is a typed written document; contention of the petitioner is that this document had

802
19
L.A. Act

been got typed and drafted by some other person without the contents being known to the testator as it is in a third person form.

5. Evidence led by the petitioner negatives these submissions. Petitioner as also the attesting witnesses have clearly and categorically deposed that Ancha Devi thumb marked this will while she was in a sound disposing state of mind. The attesting witnesses had also signed in the presence of the testator. Merely because a line had appeared in the cross-examination that after the will had been thumb marked by the attesting witness, thereafter Ancha Devi thumb marked it can be given no relevance. Parties are admittedly illiterate; PW-1 and PW-2 have deposed that the parties had gone to Kashmere Gate where the will had been registered; Ancha Devi had thumb marked it and thereafter the attesting witness had also put his thumb mark in the presence of the attesting witness. Testimony of a witness has to be read as a whole; no one sentence can be subtracted from its whole to give it a contrary meaning; intention has to be gathered from a wholesome reading of the version. In no manner can it be said that requirement of Section 63 (c) of the Indian Succession Act had not be adhered to.

6. There is no dispute to the factum that under Section 68 of CM(M) Nos.1156/2009 & 1128/2009

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L.A. Act
15

the Indian Evidence Act only one attesting witness is required to prove a will.

7. Section 63 (c) of the Indian Succession Act reads as follows:

'The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal knowledge of his signature or mark, or the signature of such other person; and each of the witness shall sign the Will in the presence of the testator, but it shall not be necessary that more than witness be present at the same time, and no particular form of attestation shall be necessary.'

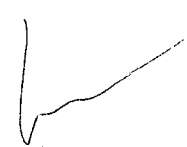
8. There were admittedly two attesting witnesses; out of which Ranjit Singh was examined as PW-2. Version of Ranjit Singh satisfies the requirement of Section 63(c); requirement being that each of the attesting witnesses must have seen the testator sign or affix his mark to the Will and has received from the testator a personal acknowledgment of his signature and mark on the Will; further that the attesting witnesses shall sign the Will in the presence of the testator. PW-2 had signed the will in the presence of the testator. PW-3 was the summoned witness from the office

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16

of the Sub-Registrar who had also corroborated the version that this will was registered vide Ex.AW-1/1.

9. The impugned judgment in no manner suffers from no infirmity. Petition is without any merit. Dismissed.



INDERMEET KAUR, J

OCTOBER 21, 2011

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