

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.02.2015

+ FAO(OS) 71/2015

B VENKATARAMAN

... Appellant

versus

THE STATE NCT OF DELHI

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Ashok Gurnani

For the Respondent : Nemo

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No. 2397/2015

The exemption is allowed subject to all just exceptions.

FAO(OS) 71/2015

1. The learned counsel for the appellant has drawn our attention to the impugned order dated 19.12.2014 whereby the learned Single Judge has granted Letters of Administration in favour of the appellant instead of granting probate. The appellant has moved a petition under Section 276 of the Indian Succession Act, 1925 for grant of probate of the Will dated 10.05.2011 executed by Late

Lakshi Balasubramanian (appellant's mother). The only reason for non-grant of probate and for grant of the Letters of Administration in favour of the appellant was indicated in paragraph 5 of the impugned order. The same reads as under:-

“As stated above, none from the general public has come forward to oppose the petition. Rather both the other legal heirs of the deceased Lakshi Balasubramanian have supported the petition. However, as per the provision of Section 222 of the Indian Succession Act, 1925, probate of the Will can be granted only to the named executor of the Will. In the instant case, the petitioner is only a beneficiary under the Will and nobody has been appointed as the executor of the Will. Thus, though probate of the Will cannot be granted to the petitioner, on the other hand, I do not find any impediment in grant of Letters of Administration in respect of Property No. B-84, Gulmohar Park, Journalists Colony, New Delhi Ex. PW1/1 annexed to the Will to the petitioner.”

2. On going through the above extract, it is evident that according to the learned Single Judge the appellant was only a beneficiary under the Will and “nobody had been appointed as the executor of the Will”. This observation of the learned Single Judge is contrary to the record. We have seen the copy of the Will (Ex.PW1/1). In the said Will, it is specifically stated as under:-

“I hereby appoint my eldest son Shri B. Venkatraman as the Executor under this Will.”

3. It is obvious that the learned Single Judge has committed an error in recording that there is no named executor in the Will.

4. The only reason for not granting the probate to the appellant was that he was not named as an executor. In all other aspects, the learned Single Judge was satisfied that it was a fit case for grant of probate. Since the learned Single Judge has committed a factual error, which we have pointed out above, we set aside the impugned judgment and allow the Testamentary Case No. 72/2013. Probate is granted subject to the appellant's completing all the requisite formalities including payment of stamp duty.

5. The appeal is allowed accordingly.

BADAR DURREZ AHMED, J

FEBRUARY 11, 2015
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SANJEEV SACHDEVA, J