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

+ TEST.CAS. 41/2005

ANITA KHOSLA

..... Petitioner

Through: Mr. A.K.Singla, Sr. Adv. with
Mr. Sushil Jaswal, Adv.

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Sushant Singh with
Mr. P.C. Arya, Adv.

+ TEST.CAS. 84/2008

MR. NARAIND KAPUR

..... Petitioner

Through: Mr. A.K.Singla, Sr. Adv. with
Mr. Sushil Jaswal, Adv.

versus

STATE AND OTHERS

..... Respondents

Through: Mr. Sushant Singh with
Mr. P.C. Arya, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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08.04.2015

IA No.6676/2015(u/O.23 R.3 CPC) in TEST.CAS. 41/2005 &
IA No.6710/2015(u/O.23 R.3 CPC) in TEST.CAS. 84/2008

Mr. A.K.Singla, the learned Senior Advocate for the applicant submits that the letters of administration issued by the Court could not be effectuated or acted upon because the order of this Court was issued on the basis of a Will concerning the suit property in which according to the L&DO the testator never acquired any transferable right. Indeed, the L&DO in his

letter dated 20th January, 2015 has referred to para 20 of the probate order dated 21.10.2010 which holds that “... *In a petition for grant of probate, the Court is not concerned with the title of the Testator with respect to the property bequeathed by him/her.*”

The L&DO went on to advise the applicant that:

“Since the property was not in favour of the mother Smt.Lalita Kapoor, accordingly, after the death of father Sh.C.L.Kapoor, the original lessee, the property goes in favour of his legal heirs. You are, therefore, requested to furnish the joint application from all the legal heirs along with necessary supporting documents for substitution of their names in respect of the property mentioned above”.

These joint applications by all the legal heirs of Sh. C.L.Kapoor seek disposal of the cases in terms of the mutual settlement arrived at between them since the property has been agreed to be shared between them in terms of the settlement deed dated 26th March, 2015.

Section 263 of Indian Succession Act, 1925 reads as under:

“263. Revocation or annulment for just cause. – *The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation. – *Just cause shall be deemed to exist where –*

- (a) The proceedings to obtain the grant were defective in substance; or*
- (b) The grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or*

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- (c) *The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or*
- (d) *The grant has become useless and inoperative through circumstances; or*
- (e) *The person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect. ”*

The learned counsel for the parties submit that insofar as the Letters of Administration have been deemed unworkable and inoperative according to the L&DO, it deserves to be revoked or annulled.

This Court finds that in terms of the L&DO's aforesaid letter, the Letters of Administration have become inoperable and need to be annulled. There is just cause for the same as mentioned hereinabove.

In the circumstances, the Letters of Administration are annulled. The applications are allowed in terms of the settlement. The parties shall be bound by the terms of the settlement. The applications are signed by all the parties and supported by their affidavits.

The learned Senior Advocate for the petitioners submits that since the matters have been settled mutually between the parties and also the letters of administration issued by this Court have become useless, redundant and inoperable, therefore, the petitioners are entitled to refund of the entire Court fees paid on the probate certificate. In support of his submission, the learned Senior Advocate relies upon a judgment of this Court in **Rohit Gupta vs.**

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Anil Gupta, CS(OS) No. 2838/2014 which has further relied upon a decision of this Court in **Aya Singh Tirlok Singh vs. Munshi Ram Atma Ram**, AIR 1968 Delhi 249.

This Court is of the view that since the letters of administration issued by this Court have become useless, redundant and inoperable and the disputes have been settled mutually between the parties, the petitioners should be refunded the Court fees paid on the probate certificate. Let it be so done.

The two sureties in the probate case are discharged.

The petitions and applications are disposed off in the above terms.

List before the Joint Registrar on 17th April. 2015 for return of the original title deeds of the sureties and for deletion of the endorsement thereon.


NAJMI WAZIRI, J

APRIL 08, 2015/ak