

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

% *Judgment reserved on :15.01.2015*
Judgment delivered on :20.01.2015.

+ TEST.CAS. 66/2011 & I.A.No.13456/2011

RAMESH CHAND SHARMA

..... Petitioner

Through Mr.J.M.Kalia, Advocate.

versus

STATE & ORS.

..... Respondents

Through Mr.V.C.Jha and Ms.Sonia
Sharma, Advocate for respondent
no.1.
Ms.Madhavi Khare, Advocate for
R-2 to R-5.

INDERMEET KAUR, J.

1 Present petition under Section 278 of the Indian Succession Act (hereinafter referred to as the 'said Act') seeks letters of administration of the assets of the deceased Rajesh Sharma. The petitioner before this Court is Ramesh Chand Sharma the son of the deceased. Deceased is stated to have left behind the following movable and immovable properties, details of which find herein as under:

Immovable properties

S.No.		
1	House property bearing no.C-243, Gali no.12, New Usmanpur, Delhi-110053	Rs.32,49,2000/-
2	House property bearing no.C-363, Gali NO.12, New Usmanpur, Delhi 11053	Rs.21,74,200/-
3.	House property bearing no.Flat No.C-603 (LIG), Sector-19, Noida (UP)	Rs.29,31,400/-

Movable properties

S.No.	Details of properties	Valuation
1	Balance in Saving bank account No.307602010004287	Rs.97,000/-
2.	Three FDRs in the name of the deceased lying at Union Bank of India, Branch Shahdara, Delhi	Rs.2,60,000/- Rs.1,87,000/- Rs.2,75,000/-
3	Balance in Saving Bank Account No.1961101000008 at Canara Bank, Branch Subroto Park, AFGIS, New Delhi	Rs.15,337.90

2 Contention is that the deceased has left behind five class-I heirs including the present petitioner i.e. widow of the deceased, four sons and one daughter (arrayed as respondents). Prayer is that since the

petitioner is a class-I heir and the deceased has died intestate letters of administration be granted in his favour.

3 Reply has been filed by respondent no.3 (brother of the petitioner) contesting the petition. It is stated that the petitioner has concealed material facts; the sole motive of the plaintiff is to harass his mother and other siblings. Petitioner has no affection for his family. Deceased Rajesh Sharma had died intestate on 24.02.2011. At that time he was living in C-243, Gali No.12, New Usmanpur, Delhi. All the aforementioned properties belong to the deceased. Property at C-243, Gali No.12, New Usmanpur, Delhi is a two storied house where the widow of the deceased is residing along with her elder son i.e. respondent no.3 and his family; it is being used as their residence. Property bearing No.C-363, Gali No.12, New Usmanpur, Delhi is a temporary construction and is presently in a precarious condition and requires repairs and maintenance. Property No. C-603 (LIG) , Sector-19, NOIDA is also a residential property. The answering respondent has no knowledge about the FDRs alleged by the petitioner. Submission is that there was an oral partition which had been effected between the family members during the life time of Rajesh Sharma as the deceased was apprehensive

that the petitioner would create problems with his mother and would disturb the family peace. To ensure family harmony and peace, the deceased had as per this arrangement desired that the property bearing no.C-603 (LIG) Sector-19, NOIDA be given to the petitioner. The value of this property was more than 30 lacs and since the total value of the property of the deceased was about Rs.90 lacs, each of the five legal heirs were entitled to a property valued at Rs.18 lacs each. Accordingly, for the petitioner to enjoy the property at NOIDA and to get the property mutated in his name he had to pay Rs.12 lacs to the respondent nos.2 to 5 as per the arrangement but the same has not been complied with. Contention is that the petitioner has a grave ill-will against his mother and other siblings and no useful purpose would be served in granting letters of administration to the petitioner. The petition be dismissed.

4 Rejoinder has not been filed.

5 Record shows that time and again since it was a family dispute the matter had been sent for mediation. On the application under Order XXXIX Rule 1 and 2 CPC the parties had also been directed to maintain status quo qua the title, possession and construction of the aforementioned properties.

6 Mediator has submitted its report dated 14.7.2014 reporting a case of non-settlement. Record of the mediation shows that on several dates i.e. on 13.5.2014, 22.5.2014, 02.06.2014, 03.7.2014 and 14.7.2014 parties along with their respective counsels had appeared before the Mediator and the matter was discussed at length but the mediation ended at a non-settlement.

7 Learned counsel for the respondents have place reliance upon a judgment of a Bench of this Court reported as MANU/DE/4848/2013 Shubhra Singhal Vs. State and Ors. to support his submission that in an eventuality where all the legal heirs are at cross fire with one another and there is no possibility of a settlement, all talks of mediation having failed this would be a fit case, where petition should be dismissed; submission being that the whole purport of the grant of letters of administration would stand frustrated and the petition necessarily would have to be aborted; the parties would not be remediless, it would be open to the parties to file a suit for partition.

8 Arguments have been refuted. It is pointed out that letters of administration are an exercise of discretion by the concerned Courts and the submission of the learned counsel for the respondent that the letters

of administration would no serve useful purpose is a mis-belief. Further submission being that if this Court is not inclined to grant letters of administration in favour of the plaintiff alone it may do so in favour of all the parties.

9 Submission being reiterated that since the respondent himself has stated that the property bearing No.C-363, Gali No.12, New Usmapur, Delhi is in a dilapidated and precarious condition, in such a situation if the properties of the deceased are not preserved, these would become wasted and as such it would be expedient to grant letters of administration. To support this submission learned counsel for the petitioner has place reliance upon a judgment of this Court reported as 2009 Legal Eagle (Del) 640 Raj Rani Bhasin Vs. State as also the judgment of the Supreme Court reported as 2003 AIR (SC) 3669 Delhi Development Authority Vs. Vijay C.Gurshaney

10 Record has been perused.

11 On the perusal of the record and the facts as transpire from the factual matrix of the case, it appears that the parties are at loggerheads with one another. The petitioner is the elder brother of respondents No.

3 to 5. He is the son of respondent No. 2. Except for the petitioner, all

other class I heirs of deceased Rajesh Sharma are on one side. Mr. Jayant K. Mehta, Advocate is representing all the respondents although a formal written statement had been filed by respondent No. 3 alone. It is their case that the petitioner had no love and affection for their deceased father even during his lifetime and that is why an oral family settlement had been entered into between the parties. This Court has been informed that property No.C-243, Gali No. 12, Usmanpur was the residents of the parents of the parties where their widowed mother is presently living. The second property i.e. property bearing No.C-363, Gali No.12, New Delhi although not in a very good condition has been tenanted out to a third persons and the rent is being received by the respondents.

12 Letters of administration may be granted to a grantee under Section 218 of the said Act. This Section provides that where any person has died intestate, the administration of his estate may be granted to a person who according to the rules, for the distribution of the estate applicable in the case of the deceased, would be entitled to the whole or any part of the deceased's estate. Under the Hindu law, a class I legal heir is entitled to estate of the deceased father if his father has died

intestate. There is no dispute to the proposition that the petitioner who is the son of the deceased can file such a petition. Section 273 of the said Act provides that once letters of administration have been given to a party, it shall have effect over all the properties of the deceased, both moveable and immoveable. It is however settled position at law that the person to whom letters of administration are granted does not thereby entitled to the property or estate of the deceased; the estate will succeed according to law of succession applicable to the deceased.

13 The purpose of grant of letters of administration is only to enable the administrator so appointed by the Court to collect/assimilate the properties of the deceased and to deal with the various authorities with whom the properties of the deceased may be vested or recorded and thereafter the same be transferred in the names of the successors in accordance with law of succession applicable to the deceased. The administrator in the course of the proceedings is required from time to time to file the accounts in the Court with respect to the administration of the estate of the deceased.

14 The power to grant letters of administration is a discretionary power which is vested with the Court and where acrimony between the

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parties (as in the instant case) is not only evident from the pending litigation and the pleadings made in the present proceedings but is even otherwise writ large and the parties are not able to see eye to eye and even the Court having made several efforts to reconcile their differences through mediation yet the efforts for mediation having failed, the purport of a grant of letters of administration would be an exercise in futility. The case of the other class I heirs (the respondents) is that parties had already entered an oral family settlement during the lifetime of their father and the properties have been divided; the first property No. C-243, Gali No. 12, Usmanpur is in the possession of their widowed mother; the second property i.e. C-363, Usmanpur has been rented out and the respondents are collecting rent from that property. The petitioner has also failed to explain the assets that he has to collect of the deceased in order to administer them. In these circumstances, this Court is of the view that no useful purpose would be served in allowing the prayer made in the present petition.

15 A Bench of this Court in Shubhra Singhal (supra) while dealing with a dispute of a similar nature between two daughters and their step-mother qua the estate of the deceased had in this context noted that the

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settled principle of law is that the Court will not allow its time and resources to be taken up by a proceeding which is to ultimately abort. In that case, the Court had noted the grievances and grudges between the parties were never ending; they could not have been settled even by grant of letters of administration and the only remedy available to such a party was to file a suit for partition.

16 This Court is of the view that in the present case also, since the parties are not seeing eye to eye, even if the letters of administration are granted in favour of the petitioner, it would wholly impossible for him to able to distribute the estate of the deceased between the rightful claimants. The proper course would be for the parties to file a suit for partition. A suit for partition is admittedly distinct from an administration suit and the administration of the estate may ultimately even lead to a partition but where it has been noted that there is no need for administration and it would almost be impossible for the grantee of the letter of administration to administer the estate of the deceased (in the light of the factual matrix of the present case), the remedy available to the parties would be to seek a remedy of partition.

17 Accordingly, in exercise of its discretionary power, the Court

deems it fit to dismiss the petition. Ordered accordingly.

18 Petition disposed of.

JANUARY 20, 2014
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INDERMEET KAUR, J