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

+ **FAO 228/2015 and CM No.12718/2015 (for additional evidence)**

AMARJEET KAUR (DECEASED) THR LRS & ORS Appellants
Through: Mr. Aditya Jain, Advocate

versus

THE STATE OF NCT OF DELHI & ANR Respondents
Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

02.11.2015

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1. As per the report of the Registry, the respondents have been served. There is, however, no representation on behalf of the respondents.

2. This appeal is directed against the judgment and decree dated 02.05.2015 passed by the trial court. By the impugned judgment, the trial court has rejected the petitioner's petition for grant of 'letters of administration / probate' in respect of the Will dated 03.05.2010 which, apparently has been executed by one, Mr. Patwant Singh, who is the husband of appellant no.1 and the father of appellant no.2 and 3.

2.1 The principal ground on which the trial court has rejected the petition is that, none of the attesting witnesses had been produced by the appellants before the trial court. However, on perusal of the record, it appears that in the petition filed, the appellants have made contradictory statements. In paragraph 2, the appellant avers as follows :-

“That Shri Patwant Singh was living at Delhi within the

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territorial jurisdiction of this Hon'ble Court and had his fixed abode at Delhi and had expired intestate at Delhi on 02/08/2010. Death certificate issued to this effect by the competent authority is annexed herewith for perusal of this Hon'ble court."

(emphasis is mine)

2.2 However, in paragraph 6, the appellant relies upon the Will, apparently, executed by late Sh. Patwant Singh. The averments made in paragraph 6 are as follows :-

"That the deceased Late Patwant Singh executed a Will in favour of the petitioner and the same was duly registered by the office of Sub Registrar vide document no.1864 in Book No.3, Vol. No.179 on pages 189 to 190 on dated 04/05/2010. The copy of the same is attached herewith as Annexure –C"

(emphasis is mine)

2.3 What has compounded the problem, is that, in paragraph 9, the appellants have taken a complete turn about and stated that Late Sh. Patwant Singh, at the time of his death, left behind no Will or testamentary document. The averments made in paragraph 9 are as follows :-

"That the deceased was a Hindu, governed by Indian Succession Act, 1925 and at the time of his death he had left no will or testamentary deposition whatsoever."

(emphasis is mine)

2.4 In the prayer clause, the appellants, on the other hand, have pleaded only for grant of probate in respect of the Will, purportedly, executed by Late Sh. Patwant Singh.

2.5 The trial court does not seem to have directed its attention to the foregoing contradictory averments, even while it adverted to the assertions

made in paragraph 2 of the petition. The assertion with respect to Late Sh. Patwant Singh dying “intestate” has been recorded in paragraph 2 of the impugned judgment, which reads as under :-

“...Brief facts as stated in the petition are that petitioners herein are wife, son and married daughter respective of deceased, who had expired intestate on 02.08.2010, by leaving behind four legal heirs (in short LRs) i.e. petitioners 1,2 and 3 and respondent no.2 respectively; that the deceased husband of petitioner no.1 had already debarred his son / respondent no.2 from his property; that deceased had executed a registered Will dated 03.05.2010, qua property bearing no.H.No.H-2/93, Ground Floor, Sector-16, Rohini, Delhi (in short property under Will) in favour of petitioners only, which was duly registered by the office of Sub Registrar vide document no.1864 in book no.3, Vol. No.179 on pages 189 to 190 on 04.05.2010..”

(emphasis is mine)

3. To my mind, the trial court ought to have rejected the petition on the short ground that it contained inconsistent pleas.
4. The learned counsel for the appellant being confronted with the above, seeks to withdraw the appeal and move the concerned court with an appropriate action; albeit in accordance with law.
5. The appeal and the pending application are dismissed as withdrawn with liberty as prayed for, albeit in accordance with law.

RAJIV SHAKDHER, J

NOVEMBER 02, 2015

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