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

C.R.P. 46/2015

KAMLESH KUMARI & ANR

..... Petitioners

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Ankit Jain, Mr. Sachin Jain and Ms.
Mallika Bhatia, Advs.

Versus

ROHTAS GOYAL

..... Respondent

Through: None.

AND

+ C.R.P. 144/2015

KAMLESH KUMARI & ANR

..... Petitioners

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Ankit Jain, Mr. Sachin Jain and Ms.
Mallika Bhatia, Advs.

Versus

STATE & ANR

..... Respondents

Through: Mr. Santosh Kumar Tripathi, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.08.2017

**CM No.31034/2017 in Review Petition No.349/2017 in C.R.P.
No.46/2015 & CM No.31028/2017 in Review Petition No.348/2017 in
C.R.P. No.144/2015**

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

C.R.P. 46/2015 & C.R.P. 144/2015

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Review Petition No.349/2017 in C.R.P. No.46/2015 & Review Petition No.348/2017 in C.R.P. No.144/2015

3. Review is sought of judgment dated 5th October, 2015 dismissing both the Revision Petitions under Section 115 of the Code of Civil Procedure, 1908 (CPC).

4. The petitioners preferred SLPs No.957/2016 & 1004/2016 against the aforesaid judgment and which was disposed of on 4th August, 2017 with permission to the petitioners to seek review and with liberty to the petitioners to, if remain aggrieved, also challenge the judgment dated 5th October, 2015.

5. The senior counsel for the petitioners, on enquiry, states that the Review Petitions have been filed within the time granted by the Supreme Court.

6. The petitioners applied for Succession Certificate with respect to debts and securities of the husband and father respectively of the petitioners. The petitioners also instituted a suit against one Rohtas Goyal being the nominee of the bank locker in the name of the husband and father respectively of the petitioners for mandatory injunction to open the same and to deliver the contents thereof to the petitioners.

7. The petitioners sought a decree on admissions in the suit, pleading that the written statement of the said Rohtas Goyal did not disclose any defence. The said application was dismissed holding that since Sandhya Goyal is also claiming to be the second wife of the deceased, till the respective rights of the petitioners on the one hand and Sandhya Goyal on the other hand are decided, the suit could not be decreed. The said Sandhya

Goyal though was impleaded as party to the suit, the said order was reversed by this Court. Similarly, the petitioners in the petition for Succession Certificate also applied under Order XII Rule 6 of CPC which was also denied.

8. The Revision Petitions were preferred aggrieved therefrom.

9. *Prima facie* it appears that a proceeding for Succession Certificate is summary in nature and cannot be converted into a contentious suit to declare respective rights of petitioners.

10. It is the contention of the senior counsel for the petitioners that since Sandhya Goyal admits the petitioner No.1 to be the first wife and has been unable to show any document of dissolution of marriage of the deceased with the petitioner No.1, there is nothing for adjudication in either of the proceedings.

11. The said aspects remained to be considered in the judgment dated 5th October, 2015 and it appears that a case for review is made out.

12. Issue notice to the respondents by all modes including *dasti* and through the counsel for the respondents before the Trial Court returnable on 16th November, 2017.

13. Notice is accepted by the counsel for the respondent No.1 State in C.R.P. No.144/2015.

RAJIV SAHAI ENDLAW, J.

AUGUST 28, 2017

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