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

+ **FAO 34/2015 & CM No.2186/2015**

ANIL DEEP SINGH KALSI

..... Appellant

Through: Mr. Sanjeev Sindhwani, Senior
Advocate with Mr. Aman
Nandarajog, Advocate

versus

STATE & ORS

..... Respondents

Through: Mr. Mohit Khanna, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **04.05.2016**

With the consent of the learned senior counsel, Mr. Sanjeev Sindhwani as well as learned counsel for the respondent, the following order is passed:

The present appeal has been filed by Mr. Anil Deep Singh Kalsi, appellant/ respondent No.4 in Probate Petition No.34/2007, titled Jasdeep Singh Kalsi & Anr. v. State & Ors., in which Jasdeep Singh Kalsi, respondent No.1/petitioner had propounded a Will dated 21st December, 1987, purported to have been made by his father, Late Sardar Ajit Singh Kalsi.

Appellant/respondent No.4 had set-up a counter-Will dated 1st July, 1997, purported to have been made by the same deceased/testator, Late Sardar Ajit Singh Kalsi.

Despite the fact that the issues were framed with regard to both the Wills by the learned Additional District Judge-XII, Central District, Delhi, and both the parties had adduced their respective evidence, but curiously the learned Additional District Judge fell into error by adjudicating issue No.1 only pertaining to the Will dated 21st December, 1987 and did not adjudicate issue No.2, though that was the Will purported to have been made by the deceased/testator later point in time. For facility of reference, the issues which were framed, read as under:

- “1)Whether the Will dated 21.12.1987 propounded by the petitioners is the duly executed last and final Will of Sardar Ajit Singh Kalsi in sound disposing mind? OPP*
- 2) Whether the Will dated 1.7.97 propounded by respondent No.4 is the duly executed last and final Will of Sardar Ajit Singh Kalsi in sound disposing mind? OPR-4”*

Subsequently, during the pendency of the aforesaid probate petition itself, Anil Deep Singh Kalsi, appellant/respondent No.4 had filed a separate probate petition titled Anil Deep Singh Kalsi v. State & Ors. in Test Case No.57/2009 in the High Court of Delhi, where both the learned counsel for their respective parties, who incidentally happen to be the parties in the present appeal also, have made a statement that, whatever evidence has been recorded before the learned Additional District Judge in probate case bearing No.34/2007 be read in evidence in the aforesaid case also.

I have been informed that certified copies of the evidence recorded in the probate case No.34/2007 of the respective sides have already been filed.

In view of the aforesaid facts, the learned counsel for the parties have agreed that, as in the present appeal issue No.2 was not decided by the trial court, therefore, the judgment dated 10th July, 2014 and the subsequent

correction made under Section 152 of the Code of Civil Procedure, 1908 on 21st July, 2014 be set aside and both the probate petitions be decided together. The record of the entire case, bearing probate petition No.34/2007 be transferred to the High Court of Delhi, in exercise of powers under Section 24 of the CPC and be tagged where the probate petition, that is, Test Case No.57/2009 is pending so that both these cases are decided by one common order.

Accordingly, the aforesaid judgment dated 10th July, 2014 and the subsequent correction made on 21st July, 2014 are set aside. The learned Additional District Judge is directed to transfer the record to the Registrar-General of this Court, in exercise of powers under Section 24 of the CPC, and the same shall be placed before the Court, subject to orders of Hon'ble the Judge Incharge (Original Side). The parties are directed to appear before the learned Judge Incharge (Original Side) on 25th May, 2016.

The appeal is accordingly disposed of.

Dasti.

V.K. SHALI, J

MAY 04, 2016

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