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

+ TEST.CAS. 46/2013

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Judgment dated 6th October, 2016

SURESWH KUMAR JAJODIA & ANR Petitioners

Through : Mr. Naresh Kumar Sharma, Adv. for
Mr. Raj Kumar Mittal, Adv.

versus

STATE

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (Oral)

1. This is a petition under Section 276 of the Indian Succession Act for grant of probate of the Will dated 5.9.2008 of late Sh.Jugal Kishore Jajodia, who died at Gandhidham on 25.9.2008. It may be noticed that there is no executor to the Will dated 5.9.2008.
2. Notice in the present probate petition was issued on 5.7.2013 to the State. Valuation report has been filed. Citation was also published in the daily, 'The Statesman'.
3. The petitioners have filed the affidavits in the form of no objections of close relations, being, Smt.Nirmala Devi Khemka, Smt.Urmila Devi Sarawgi, Smt.Neelam Devi Agarwal and Smt.Rajni Devi Poddar.
4. Petitioner no.1 has filed his affidavit, which has been marked as Exhibit PW-1/1. In the affidavit, PW-1/1 has deposed that his father, late Sh.Jugal Kishore Jagjodia, died on 25.9.2008 at Gandhidham, Gujarat, leaving behind two sons and four daughters. Late Sh.Jugal Kishore Jagjodia had executed a Will on 5.9.2008, a copy of which has been

marked as PW-1/A. Death certificate has been exhibited as Exhibit PW-1/C and the details of immovable and movable properties in respect of which probate is brought has been exhibited as PW-1/D.

5. Evidence has also been filed of Sh.Krishna Murari, petitioner no.2 herein. Evidence of Sh.Raj Kumar Jagjodia (PW-3), one of the attesting witnesses to the Will dated 5.9.2008 has also been filed. Affidavit of Sh.Raj Kumar Jagjodia has been marked as Exhibit PW-2/A. As per the testimony of this witness, late Sh.Jugal Kishore Jagjodia had executed the Will dated 5.9.2008, which was duly attested by Sh.Vishwanath Joshi and PW-3.
6. I have heard learned counsel for the petitioners and also perused the affidavits placed on record. Having regard to the submissions made and taking into consideration the evidence placed on record I am of the view that there is no legal impediment for grant of letters of administration to the Will dated 5.9.2008 of late Sh.Jugal Kishore Jagjodia in favour of the petitioners. Accordingly, present petition is allowed. Letters of administration of the Will dated 5.9.2008 of late Sh.Jugal Kishore Jagjodia shall be granted in favour of the petitioners subject to the petitioners' filing necessary court fees and furnishing administrative and surety bond.
7. The petition stands disposed of.

CONT.(CAS) /2016(to be numbered)

8. It may be noticed that vide order dated 30.10.2014, the SDM was directed to file the valuation report. Since the valuation report was not filed, the Joint Registrar issued notice under Order XVI Rule 12 CPC to the concerned SDM through Deputy Commissioner, South Delhi, to show cause as to why the valuation report has not been filed. Even thereafter the SDM did not bother to file the valuation report. On

24.3.2015 the Joint Registrar again issued notice under Order XVI Rule 12 CPC to the concerned SDM and Deputy Commissioner (South Delhi) was directed to file his report regarding the service on the notice under Order XVI Rule 12 CPC to the concerned SDM. Despite the notice having been issued, the concerned SDM has not filed the valuation report nor the Deputy Commissioner (South Delhi) has filed any report. The matter was placed before the Court. On 10.8.2016, the court passed the following order:

“O R D E R
% 10.08.2016

- 1. It is noted by the Joint Registrar in the order dated 27th May 2015 that despite notice under Order XVI Rule 12 CPC being issued to the concerned Sub Divisional Magistrate („SDM”) through Deputy Commissioner South Delhi, the valuation report in respect of the property bearing No. E-107, Greater Kailash-II, New Delhi – 110 048 has not been filed.*
- 2. Notice be now issued to the SDM, Greater Kailash-II, New Delhi to remain present in Court on the next date, i.e., 6th October 2016.*
- 3. A copy of this order be delivered, within one week from today, through Special Messenger to the Deputy Commissioner South Delhi for him to personally to ensure the presence of the concerned SDM, Greater Kailash-II and to ensure his presence in Court on the next date of hearing.*
- 4. List on 6th October 2016.”*

9. Although the valuation report has been filed, the SDM has not bothered to appear in the Court. Counsel for the State, who was present in Court, was requested to look into the matter. Till the rising of the Court, the SDM has not come.

10. Issue notice to show cause as to why contempt proceedings be not initiated against the SDM, Greater Kailash-II, New Delhi, returnable on 18.11.2016. SDM, Greater Kailash-II, New Delhi, is directed to remain present in Court.

G.S.SISTANI, J

OCTOBER 06, 2016

msr

