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

+ RFA(OS) 39/2016

VIPUL LIMITED

..... Appellant

Represented by: Mr.K.K.Manan, Sr.Advocate
with Mr.Atul Sharma,
Ms.Satakshi Sood, Advocates

versus

NISHI GUPTA

..... Respondent

Represented by: Mr.Santosh Kr.Tripathi, ASC
for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **10.08.2016**

CM Nos.17009-17010/2016

Allowed subject to just exceptions.

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1. Admitted facts are that late Damyanti Devi had issued cheques in the name of Vipul Infrastructure Developers Ltd. and it was her claim during her lifetime that she had booked a flat with Vipul Infrastructure Developers Ltd. During her life time she filed a suit for specific performance registered as CS(OS) 2287/2007. In the suit she impleaded Vipul Infrastructure Developers Ltd. as well as Orchid Infrastructure Developers Ltd. as defendants. The impleadment of defendant No.2 was on account of the fact that a claim was made by defendants that the project in question had been taken over by defendant No.2

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2. Damyanti Devi died on April 05, 2010. Nishi Gupta, wife of Alok Gupta : the son of Damyanti Devi filed a petition for grant of Letters of Administration with Will dated January 15, 2009 annexed. Needless to state the Class-I heirs of the deceased, apart from the State were impleaded as respondents in the petition filed by Nishi Gupta; which was registered as Test Case No.43/2012 on the Original Side of this Court.
3. The grant of Letters of Administration with will annexed was opposed by the appellant herein, pleading that Damyanti Devi had no right in the property bequeathed, which we note is D-7, Tower-B, Vipul Orchids Tower, 6 Aurbindo Marg, New Delhi. As per the appellant, Damyanti Devi was not the owner of the flat in question. As per the appellant, the will relied upon by Damyanti Devi's daughter-in-law was a forged and fabricated document. As per the appellant, the attesting witnesses to the will were in collusion with the propounder of the will.
4. Recording evidence, vide impugned order dated February 04, 2016, Letters of Administration with will annexed has been granted. Objection by the appellant to the will has been negated on the ground that the appellant has no locus to question the will.
5. It is settled law that issues of title cannot be resolved in probate proceedings. Whether or not Damyanti Devi became the owner of the property bequeathed would obviously be decided in the suit seeking specific performance filed by Damyanti Devi. Therefore, under the impugned order the daughter-in-law of Damyanti Devi cannot claim ownership rights. She can only claim the rights as the successor-in-interest of Damyanti Devi. Meaning thereby on the strength of the impugned order she would be entitled to prosecute the suit.

6. For record we note that the natural heirs of Damyanti Devi who, was a Hindu by religion, would be the Class-I heirs did not object to the grant of Letters of Administration with will annexed.
7. It appears that the appellant has filed a complaint under Section 200 of the Code of Criminal Procedure against Nishi Gupta and some persons stated in the complaint to be unknown. The complaint alleges commission of offences punishable under Sections 420/463/465/467/468/469/471/383/384/ 389/ 406/120-B IPC. Likewise on the strength of the will Nishi Gupta has filed a criminal complaint.
8. Suffice it to state that since the appellant was not granted a locus to question the will relied upon by Nishi Gupta and she succeeded in obtaining Letters of Administration with will annexed in the absence of any opposition from the appellant, no right of the appellant would be adversely affected viz-a-viz the criminal complaint filed by the appellant and the one filed by Nishi Gupta. The evidence led by the appellant in the complaint would be considered de-hors the fact that Nishi Gupta has obtained a Letters of Administration with will annexed.
9. We concur with the view taken by the learned Single Judge that the appellant had no locus-standi to oppose the grant of the Letters of Administration with will annexed and as propounded by Nishi Gupta.
10. The appeal is dismissed.
11. No costs.
12. DASTI.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

AUGUST 10, 2016

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