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

+ C.R.P. 115/2016 & CM Nos.28044-28045/2016

NITIN WIG Petitioner
Through Mr.P.P.Ahuja, Adv.

versus

CHANDER PARKASH MEHRA & ORS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
03.10.2016

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1. By the present petition the petitioner seeks to impugn the order dated 1.4.2016 by which application filed by the petitioner under Order VII Rule 11 CPC has been dismissed. The background facts are that the petitioner has filed a petition for probate of the Will of late Shri Suraj Prakash Mehra who is stated to have died on 16.12.2006 regarding the Will and Testament dated 13.6.1990. It appears that the uncle of the petitioner Shri Chander Prakash Mehra/respondent No.1 had also filed a probate petition in respect of alleged Will dated 15.3.1977 said to have been executed by Shri Suraj Prakash Mehra. The bone of contention appears to be that Shri Suraj prakash Mehra has died without leaving behind any natural heir of Schedule I.
2. The stand of the petitioner in the application under Order VII Rule 11 CPC was that in terms of Section 276 (1) of the Indian succession Act a probate can be granted only for a writing which is the last will and testament. He submits that the Will which is relied upon by the petitioner,

namely, Will dated 13.6.1990 is the last will and hence probate petition filed by Shri Chander Prakash Mehra respondent No.1 is not maintainable.

3. The trial court vide judgment noted the principles of Order VII Rule 11 CPC and also noted that evidence is going on in the matters and hence dismissed the application holding that Order VII Rule 11 CPC would not apply.

4. In my opinion, there is no infirmity in the impugned order. The fact of the matter is that the two probate petitions are being tried by the same court. Obviously the question would be as to which was the last Will and Testament of Shri Suraj Prakash Mehra, one propounded by the petitioner or the one propounded by the respondent. This issue cannot be adjudicated upon in an application under Order VII Rule 11 CPC.

5. The petition is without merits and is dismissed.

JAYANT NATH, J

OCTOBER 03, 2016

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