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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TEST.CAS. 103/2008 & IA No.14035/2008 (u/O 39 R-1&2 CPC)
SHYAM SUNDER GUPTA AND ANOTHER Petitioners

Through: Mr. M.K. Chawla, Adv.

Versus

STATE

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.10.2016

1. This petition was filed seeking probate of a document dated 25th August, 1995 stated to be the validly executed last Will of the deceased Shanti Devi.
2. No notice of the petition was issued.
3. The order dated 14th January, 2009 records that the Will in question was the subject matter of adjudication before the Civil Judge in a civil proceeding in which all the concerned parties including the petitioners were impleaded and the petitioners were unable to prove the Will and had preferred an appeal which was pending consideration.
4. The subsequent order dated 13th February, 2009 records that the first appeal preferred against the judgment of the Civil Judge disbelieving the Will had been dismissed and the second appeal preferred was pending; in light thereof, the proceedings in this petition were adjourned *sine die* with liberty to the petitioners to apply for revival after the decision of the second appeal.

5. The petitioners did not apply for revival and the Registry of its own after nearly six years, on 17th September, 2015 listed the matter when Court notice was ordered to be issued to the petitioners.

6. On 19th May, 2016, the counsel for the petitioners stated that the proceedings were pending in the Supreme Court and the Special Leave Petition had been admitted. In the light thereof, the matter was adjourned to today.

7. Today, none appeared for the petitioners despite passover. However after I commenced dictating the order, Mr. M.K. Chawla, Advocate appears for the petitioners and states that a review petition has been filed in the Supreme Court.

8. It thus appears that the appeal preferred to the Supreme Court also stands dismissed.

9. It having been held in the civil proceedings that the document of which probate as a Will is sought in this proceeding is not the validly executed last Will of the deceased and the said finding having been affirmed till the Supreme Court, this probate petition, to determine and adjudicate the same question again, does not lie and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 27, 2016

‘gsr’..