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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 2nd August, 2016

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CM(M) 1486/2010 & C.Ms.No.21145/10, 7500/12

PRAVEEN BHUTANI

..... Petitioner

Through: Mr. P.D. Gupta, Senior Advocate,
with Ms. Manpreet Kaur, Advocate

versus

MADAN MOHAN SETHI & ANR

.....Respondents

Through: Mr. Arun Bhardwaj and Mr.
Sanjeev Sindhwani, Senior
Advocates, with Mr.P.S. Bindra,
Advocate for respondent No.1

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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(O R A L)

In the connected two appeals i.e. RFA No.245/1998 and RFA No.96/2005 and this Civil Miscellaneous (Main), the commonality is that applications under Order 22 Rule 4 of CPC are pending decision in these three cases. At the outset, both sides do not dispute that the order deciding the application under Order 22 Rule 4 of the CPC in C.M.(Main) shall be the order in the similar two pending applications in the connected two appeals. In this background, the impugned order of 23rd September, 2010 in C.M.(Main) is taken to be the lead matter.

The factual matrix which is common in the connected two appeals and C.M.(Main) is culled out by the trial Court in the impugned order of 23rd September, 2010 and needs no repetition. It

would be suffice to note that C.M.(Main) arises out of a suit for injunction filed by *M/s. Praveen Bhutani Estates (Pvt.) Limited* in respect of one property which is subject matter of the connected two appeals and the C.M.(Main). It is not in dispute that Ms. Nirmal Shyam Kumari Sethi was alive when the decree in the connected two appeals was passed in her favour and she was also alive when a suit for injunction was filed wherein she was impleaded as defendant No.2. It would be relevant to note that the petitioner/applicant- *Mr.Praveen Bhutani* who wishes to step in the shoes of Ms.Nirmal Shyam Kumari Sethi on the strength of a Will of 19th December, 2001, is also a Director of *M/s. Praveen Bhutani Estates (Pvt.) Limited* and the other two Directors of *M/s. Bhutani Estates* are his wife and his father. The permanent injunction sought by *M/s. Praveen Bhutani Estates (Pvt.) Ltd.* is to restrain appellant-Mr.M.M. Sethi in connected appeal (*who was already suffered a decree in the connected appeal which is subjudice*) from interfering in the ingress and egress in the Ground Floor of the suit property. Impugned order rejects petitioner's application for substitution by noting that without seeking a probate in respect of the Will relied upon, he cannot seek his substitution in the suit for injunction. Impugned order allows the application for impleadment by the natural legal heirs of Late Ms.Nirmal Shyam Kumari Sethi and dismisses petitioner's similar application.

The challenge to the impugned order is on the ground that in Delhi, the Will does not need to be probated. To submit so,

learned senior counsel for the petitioner has relied upon a Division Bench decision of this Court in *Captain (retd.) O.P. Sharma & Anr. vs. Kamla Sharma & Ors.*, 158 (2009) Delhi Law Times 631 (DB). Reliance is also placed on behalf of the petitioner on Supreme Court decision in *Binapani Kar Chowdhury vs. Sri Satyabrata Basu & Anr.*, (2006) 10 SCC 442 to submit that Section 213 of the Succession Act bars the passing of a final order or decree in the absence of probate or letters of administration in respect of a Will but does not bar the substitution of a person on the basis of a Will. Reliance is also placed upon Supreme Court decision in *Suresh Kumar Bansal vs. Krishna Bansal & Anr.*, (2010) SCC 162 to submit that a legatee of unprobated Will of the deceased landlord can seek substitution in eviction proceedings to avoid the delay in its decision and in the said decision, apart from the natural legal heirs of the deceased landlord, the legatee of the unprobated Will was permitted to be brought on record with a rider that in the event of probate of the Will is not granted, the natural legal heirs of the deceased landlord would be entitled to get the possession on the basis of inheritance. Thus, it is submitted that the impugned order deserves to be set aside and petitioner's applications under Order 22, Rule 4 of CPC ought to be allowed in this petition and the connected two appeals.

On behalf of the contesting respondents, it is submitted by learned Senior Counsel that since the probate proceedings are pending and so in view of the mandate of Rule 5 of Order 22 CPC,

no purpose would be served in getting an inquiry done in respect of the Will on which petitioner relies. It is urged that the appropriate course in such a case would be to await outcome of the probate proceedings.

Learned senior counsel for the contesting respondents have relied upon Apex Court decision in *Jaladi Suguna (deceased) through LRs vs. Satya Sai Central Trust & Ors.*, (2008) 8 SCC 521 to submit that in an application under Order 22 Rule 4 of CPC, it is mandatory that an inquiry under Rule 5 of CPC is conducted before such an application is allowed.

Upon considering the submission advanced by both the sides and on perusal of impugned order, similar applications in connected appeals, the material on record and the decisions cited, I find that in view of the dictum of a Division Bench of this Court in *Captain (retd.) O.P. Sharma (supra)*, in Delhi, to enforce a Will, probate is not required. So the impugned order rejecting petitioner-*Praveen Bhutani's* application under Order 22 Rule 4 of CPC on this ground cannot be sustained. It is no doubt true that provisions of Rule 4 and 5 of Order 22 of CPC are mandatory as declared by Apex Court in *Jaladi Suguna (supra)*, but this aspect has been considered by the Supreme Court in a later decision in *Suresh Kumar Bansal (supra)* wherein substitution of natural heirs as well as the legatee of the Will was permitted in eviction proceedings, so that tenant is not unduly benefitted but with a rider that if the legatee fails to get the Will probated, then the natural

legal heirs would be entitled to the possession of the property on the basis of inheritance.

The right of a legatee to pursue legal proceedings on the basis of unprobated Will cannot be curtailed as Section 213 of the Succession Act bars passing of a decree or final order in a case which involves a claim by a legatee. It has been so declared by Supreme Court in *Binapani Kar Chowdhury (supra)*. During the course of hearing, learned senior counsel for the contesting respondents has sought to distinguish the Supreme Court decision in *Suresh Kumar Bansal (supra)* by submitting that the ratio of this decision would apply to eviction proceedings and cannot be made applicable in a contentious matter like instant one where petitioner/applicant-*Praveen Bhutani* is a stranger and the trial Court has rightly refused to substitute the applicant while impleading the natural legal heirs of Late Ms.Nirmal Shyam Kumari Sethi.

In the facts and circumstances of this case, this Court finds that the Supreme Court decision in *Suresh Kumar Bansal (supra)* cannot be distinguished on the premise that it related to a landlord-tenant dispute because in the connected appeals, there is a decree of possession against appellant-M.M. Sethi by terming him to be an unauthorized occupant in the suit premises. Rather, the facts of Supreme Court decision in *Suresh Kumar Bansal (supra)* are quite akin to the case in hand, as in the said case, probate proceedings were pending and the natural legal heirs as well as the legatee of

the Will were allowed to contest the proceedings to avoid multiplicity of litigation. The rider of fate of Will determining the locus of legatee at the conclusion of suit/appeal proceedings obviates the necessity of an independent inquiry under Rule 5 of Order 22, CPC. This facilitates the salutary purpose of expeditious conclusion of pending suit/appeal proceedings to enable the natural legal heirs or the legatee (subject to outcome of probate proceedings) to have the fruits of decree.

Consequently, the impugned order of 23rd September, 2010 in C.M. (Main) petition is hereby set aside and petitioner/applicant-Praveen Bhutani's application for substitution in the suit for injunction is hereby allowed with a rider that in the event of petitioner/applicant not succeeding in the probate proceedings, the natural legal heirs of Late Ms.Nirmal Shyam Kumari Sethi would be entitled to the fruits of the decree. With the aforesaid rider, the application under Order 22, Rule 4 of CPC by applicant-*Praveen Bhutani* in the connected two appeals also stands allowed while not commenting on the merits of the case. Thus this petition i.e. C.M.(Main) stands accordingly allowed and the two applications under Order 22 Rule 4 of CPC in the connected two appeals are also allowed in the aforesaid terms.

(SUNIL GAUR)
JUDGE

AUGUST 02, 2016
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