

\$~A-29

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

+ **CM(M) 731/2016 & CM No.27498/2016**

KULDEEP SINGH KHATRI & ANR Petitioner

Through **Mr.M.S.Rohilla and Mrs.Ruchika
Verma, Advs.**

versus

STATE & ORS Respondent

Through **Mr.Hemant Arya, Adv. for R-1**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

02.08.2016

%

1. By the present petition the petitioner seeks to impugn the order dated 17.5.2016 passed by the trial Court dismissing the application under Order VI Rule 17 CPC filed by the petitioner. The petitioners had filed a Probate Petition seeking to probate the Will dated 24th June, 2010 made by Late Shri Attar Singh Khatri. By the application under Order VI Rule 17 CPC the petitioner sought to amend Annexure A which wrongly gives a heading “List of near relatives of the deceased Smt.Baljeet Kaur”. The amendment sought was that this heading has to read as “List of near relatives of the deceased Shri Attar Singh Khatri.” Further amendment was sought in Annexure B where the list of immoveable properties left behind by the deceased Shri Attar Singh Khatri was mentioned without giving details of the properties in question.

2. By the impugned order, the trial Court dismissed the application on the ground of it being vague, not specific and containing property which was not part of the Will at all.

3. Learned counsel appearing for the petitioner submits that advance copies have been served on the respondents. He submits that respondents No.2 and 3 are not contesting the petition. Learned counsel appearing for respondent No.1 has entered appearance. Affidavit of service on respondent No.4 has been placed on record with the original postal receipt. Learned counsel for the petitioner submits that the counsel appearing for respondent No.4 had refused to accept an advance copy of the notice.

4. As far as the proposed amendment to Annexure A is concerned, it is a mere typographical mistake inasmuch as the probate is sought of the Will of Late Shri Attar Singh Khatri regarding the properties in question.

5. A perusal of the copy of the Will dated 24th June, 2010 stated to have been executed by late Shri Attar Singh Khatri shows that he has listed his immovable properties as follows:-

“i) Agricultural Land situated in the revenue estate of Village TIKRI, KALAN, Delhi.

ii) Amount in bank account.

iii) Agricultural Land situated in the revenue estate of Village RAIPUR, Distt. SONEPAT (HARYANA).

iv) Agricultural Land situated in the revenue estate of Village ASAMABAD, Distt. SONEPAT (HARYANA).”

6. The proposed amendment merely seeks to add the following detail.

“i) Agricultural land measuring 5 Bighas and 6 Biswa falling in Khassa Nos.76/12/2 (0-10) and 13 (4-16), situated within the revenue Estate of Village Tikri Kalan, Delhi.”

iii) Agricultural land situated at (1) Village Raipur, Distt. Sonapat, Haryana falling in Khewat No.12, No.15,

Kh.No.36/11-7-12 measuring 8 Marla; Khewat No.141, Kh.No.19/25, /1, measuring 3 Marla-total agricultural land measuring 2208 Sq.yds.;

(2) Village Asamabad, Distt. Sonapat, Haryana; This land has been acquired by the Govt. and compensation has been paid by the Govt. and the same is lying with the Bank.

(3) Residential plot measuring 200 Sq.yds. in Plot no.289, and plot no.228 measuring 1 Marla situated in Village Raipur, Sonapat, Haryana.”

7. A perusal of the above shows that the properties at village Tikri Kalan, Village Raipur, Village Asamabad, Distt. Sonapat, Haryana are mentioned in the Will. However, there is no mention in the Will about the residential plot in village Raipur, Sonapat. Learned counsel for the petitioner submits that he would delete the reference to the said residential plot in the application. Hence, in view of the above, it is clear that the said amendment which is now sought is regarding the details of the property which are already mentioned in the Will. To that extent, the impugned order has erroneously noted that these are properties, that do not form part of the Will.

8. Reference maybe had to the judgement of the Supreme Court in the case of ***Abdul Rehman and Anr.Vs. Mohd. Ruldu and Ors. 2012 11 SCC 341***. Relevant paras read as follows:

“18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

9. The proposed amendment is merely procedural and necessary to completely adjudicate the disputes between the parties.

10. The said order is accordingly set aside and the amendment application is allowed subject to the deletion which is stated above. Petition stands disposed of.

JAYANT NATH, J

AUGUST 02, 2016

n