

\$~A-48

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

+ CM(M) 784/2016 & CM Nos.29558-29559/2016

ROSHNI & ORS

..... Petitioner

Through

Mr.Anil Garg and Mr.Jitesh Talwani,
Advs.

versus

RAVINDER SWAROOP

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

16.08.2016

CM No. 29559/2016

Exemption allowed, subject to all just exceptions.

CM(M) 784/2016 & CM No.29558/2016

1. By the present petition the petitioner seeks to impugn the order dated 2.7.2016 by which the application of the petitioner under Order VII Rule 14 CPC was dismissed. By the said application the petitioner sought to bring on record an alleged registered Will dated 2.12.1992 of Smt.Anguri Devi who was impleaded as defendant No.1. It was contended that since the said Smt.Anguri Devi expired in December, 2015, hence it was necessary to file the present documents.

2. The trial court dismissed the application noting firstly, that defendant No.1 Smt.Anguri Devi had been given up by the plaintiff in the suit. Secondly, the trial court noted that it was the stand of the petitioners that deceased Smt.Anguri Devi had sold the property to the petitioner/Roshni Devi before institution of the suit. Hence, the trial court concluded that the

defendant's contention to prove devolution of rights on the basis of the said Will is self-contradictory as a person who has already sold her property could not bequeath the same. Thirdly, it was also noted that issues which were framed on 10.2.1999 did not have any issue regarding title of the property in question. Based on these grounds, the application was dismissed by the impugned order. The trial court also noted that the matter is an old matter pending since 1989. Defendants have failed to lead evidence despite having been given last and final opportunity. Instead, the present application is filed.

3. Learned counsel for the petitioner has submitted that there was no question of having filed the registered Will earlier as the said Smt.Anguri Devi has only expired now in 2015.

4. In my opinion, there are no reasons to interfere with the impugned order. There is no issue framed regarding title of the suit property. Secondly, it is the contention of the petitioners that they have bought the suit property from late Smt.Anguri Devi prior to filing of the suit. The title documents of defendant No.2 ought to have been filed when her written statement was filed by the petitioner. Even otherwise, if the Will was executed in 1992 and is one of the alleged title documents relied upon, it could have been filed earlier.

5. There is no merit in the petition. Same is dismissed. All pending applications also stand dismissed.

JAYANT NATH, J

AUGUST 16, 2016

n