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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 678/2015 & C.M. No.13085/2015

SURENDER KUMAR

..... Petitioner

Through Mr. Umesh Sharma, Adv.

versus

MADAN LAL & ORS

..... Respondents

Through Mr. Nitin Khanna, Adv. for R-1 to R-3.
Mr. R.K. Jain, Adv. for R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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21.01.2016

The petitioner is aggrieved by the impugned order dated 24.04.2015 vide which the application filed by him under Section 151 of the CPC read with Section 213 of the Indian Succession Act (for holding that the present suit is liable to be dismissed as the rights of the parties are based on a will which can be decided only by the Probate Court) had been dismissed.

Record shows that the present suit is a suit for partition and rendition of accounts which had been filed by the plaintiff against the defendants. Written statement was filed. Issues were framed on 07.04.2008. Issues No. 2 & 4 are relevant and read herein as under:-

“2. Whether the suit of the plaintiff as framed is barred by the provisions of Section 25 of the Indian Succession Act? OPD

4. Whether late Shri Ram Dass bequeathed his right, title and interest in the property NO. 313/40, Inder Lok, New Delhi and the first floor and

second floor of the property No. 313/48, B6, Inder Lok in favour of defendants No. 2 & 3 who are grandsons. If so what' is its effect? OPD-3"

Contention of the learned counsel for the petitioner is that the right, title and interest in the suit property is based upon the Will of the deceased late Sh. Ram Dass which has been alleged by the defendants and validity and invalidity of the Will cannot be the subject matter and scope of a civil suit; it is the Probate Court alone which can decide such an issue. To support this submission, learned counsel for the petitioner has placed reliance upon 50 (1993) DLT 266 (SC) Chiranjilal Shrilal Goenka Vs. Jasjit Singh & Others.

These submissions have been refuted.

This Court is not in agreement with the submissions made by the learned counsel for the petitioner. The judgment relied upon by the learned counsel for the petitioner will also not apply to the factual matrix of the instant case. In that case, the only issue before the Court was the validity and invalidity of the Will. The present suit encompasses several reliefs; the suit is in fact a suit for partition and rendition of accounts. The plaintiff in the plaint himself had stated that a Will is sought to be set up by the defendants of late Sh. Ram Dass which is not a genuine Will. In the written statement, the defendant had disclosed the details of the Will. It had been stated that a registered Will dated 10.01.1995 had been executed by the deceased in favour of defendants No. 2 & 3. Pursuant thereto, issues had been framed.

The present suit has been filed on 08.12.2014 i.e. more than six years after the date of framing of issues which had arisen in this suit.

Where a civil Court is seized of several matters including the relief of partition and rendition of accounts which had been claimed, it would not be for the Probate Court to answer these issues; if this was the only issue which was in dispute, it would be within the domain of the Probate Court to answer it but not in the present case as there are several other issues which have to be adjudicated upon. This would in fact amount to making the filing of a probate a necessary command which the neither party has preferred and even otherwise, it is admitted fact that probate of a Will is not required in Delhi. If a Will is made in Delhi relating to an immoveable property by Hindu, no probate is required and for this proposition, learned counsel for the respondent has placed reliance upon a Bench of this Court reported as AIR 2006 Delhi 148b Rajan Suri and Anr. Vs. The State and Anr.

In this background, the impugned order suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 21, 2016

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