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

+ **FAO(OS) 718/2015**

**JYOTSNA S BIRES**

..... Appellant

Represented by: Mr.G.V.Rao, Advocate with  
Mr.A.K.Upadhyay, Advocate

versus

**LT COL AMAR SINGH SABHARWAL & ORS** ..... Respondents

Represented by: Mr.Harish Malhotra, Sr.Advocate  
instructed by Mr.Uttam Datt,  
Advocate for R-1 and R-2

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

% **22.02.2016**

1. Testamentary Case 53/2009 has been disposed of by the learned Single Judge noting that nobody was opposing the will dated January 29, 2008 executed by Raj Bala Sabharwal, probate whereof was prayed for.
2. The grievance of the petitioner that a property at Ambala Cant was disposed of during the pendency of the probate petition is no ground to challenge the impugned order inasmuch as the same is a subject matter of Suit No.64/2015 pending in this Court, and needless to state if the seller is a person who has not acquired title to the property in question at Ambala under the will dated January 29, 2008, the effect of the sale would be decided in said suit. We note that as per the will the property has been bequeathed to the petitioner with a right of residence in favour of the

husband of the deceased. It appears that the husband of one daughter of the testator relied upon a will purportedly executed by Raj Bala Sabharwal and appears to have been dealing with the property.

3. In view of the fact that parties by consent have accepted the will dated January 29, 2008, probate whereof has been granted, the learned Single Judge has rightly held that the petitioner has to work her way through concerning the property at Ambala and for which she has already filed a suit. We note that the learned Single Judge has directed parties to maintain status quo qua said property till December 31, 2015 so that by said date the petitioner can obtain an order in her favour in Suit No.64/2015.

4. At this stage learned counsel for the petitioner says that the real grievance of the petitioner is that the learned Single Judge who is seized of Suit No.64/2015 is not taking up the injunction application filed.

5. If this is the grievance, we are surprised that the impugned order which is based on consent in Testamentary Case 59/2009 is challenged. The appellant may challenge the order passed in the suit deferring hearing of the application for interim injunction filed by her and raise such grounds as are permissible.

6. There is another grievance raised, that an application filed under Section 340 Cr.P.C. is pending and that the Testamentary Case has been disposed of.

7. We note that Crl.M.A.No.4299/2013 has not been dealt with by the learned Single Judge. The file of the Testamentary Case has been consigned to the record room with a live application therein. The appellants is permitted to move an application bringing said patent error to the notice of the learned Single Judge, who would decide Crl.M.A.No.4299/2013

inasmuch as disposal of the Testamentary Case does not automatically result in disposal of said application.

8. The appeal is dismissed.
9. No costs.

**PRADEEP NANDRAJOG, J.**

**MUKTA GUPTA, J.**

**FEBRUARY 22, 2016**

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