

\$~10

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

+ **FAO 125/2017**

KRISHAN KUMAR

..... Appellant

Through Mr. Arman, proxy counsel

versus

STATE & ORS

..... Respondents

Through Mr. Ankur Chhibber and Mr. Bhanu
Gupta, Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **14.11.2017**

1. This first appeal is filed under Section 294 of the Indian Succession Act, 1925 impugning the judgment of the Probate Court below dated 12.02.2016 whereby the probate petition has been dismissed on account of non-examination of at least one attesting witness of the Will dated 02.03.2005 executed by deceased testatrix Smt. Murti Devi w/o Sh. Puran Singh.
2. It may be noted that the appellant/petitioner is one son of the deceased testatrix and the other two sons and one daughter of the deceased testatrix were impleaded as respondent nos.2 to 4 to the petition and who had given their no objections to the grant of probate in favour of the appellant/petitioner.
3. Learned counsel for the appellant prays that two opportunities may be given to the appellant and in these opportunities the appellant will ensure

that he will summon at least one attesting witness to the Will dated 02.03.2005 so as to prove the Will.

4. Accordingly, this appeal is allowed and the impugned judgment dated 12.02.2016 is set aside and the appellant is granted two opportunities to lead evidence of one of the attesting witnesses to the Will so as to prove the subject Will dated 02.03.2005 of the deceased testatrix Smt. Murti Devi w/o Sh. Puran Singh.

5. The appellant to appear before the District & Sessions Judge, North West, Rohini Courts, Delhi on 8th December, 2017 and the District & Sessions Judge will mark the probate case for disposal to a competent Court, in accordance with law, and the observations made in the present order.

VALMIKI J. MEHTA, J

NOVEMBER 14, 2017

nn