

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

+ **FAO No. 218/2017**

% **15th May, 2017**

SMT. SHILPA RANA Appellant

Through: Mr. Amit Rao, Advocate.

versus

STATE (NCT OF DELHI) Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.18176/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

FAO No.218/2017 and C.M. No.18175/2017 (stay)

2. This first appeal is filed by the appellant, petitioner in the trial court, impugning the judgment of the probate court below dated 25.3.2017 whereby the probate court has dismissed the petition for grant of letters of administration with the Will annexed dated 20.4.2012 of the deceased mother of the petitioner one Smt. Pooja Nijhawan. The probate court below has dismissed the petition seeking letters of administration on the ground that the Will talks of exclusion

of other legal heirs but the other legal heirs have not been made a party to the petition. The court below has also held that the appellant has not filed any proof that she was the daughter of the deceased Smt. Pooja Nijhawan.

3. In my opinion, the court below has unfortunately gone on a total off tangent because if a person avers that there are no other legal heirs, and citation has also been issued in the newspaper for inviting objections to the petition, but no one has come forward claiming to be the legal heir of the deceased mother Smt. Pooja Nijhawan, then, the statement of oath of the appellant has to be taken as sufficient for the purpose of the appellant being taken as the sole natural legal heir of the deceased mother Smt. Pooja Nijhawan. This is all the more so because if a probate is wrongly granted alleging that there is only one legal heir whereas there were other legal heirs, then, the other legal heirs can always apply to the court for revocation of the probate under Section 263 of the Indian Succession Act, 1925. Therefore there was no reason for the court below to decline the grant of the letters of administration with the Will annexed simply on the ground that allegedly there are other legal heirs who have not been made parties to the case. A note in a Will which has used a general expression of 'exclusion of other legal heirs' will not mean that by magic some imaginary legal heirs will

come into existence when there is only one sole natural legal heir of the deceased being the appellant and who was the daughter of the deceased Smt. Pooja Nijhawan.

4. In the present case the appellant has gone to great lengths to ensure that the Will in question dated 20.4.2012 executed by mother Smt. Pooja Nijhawan is proved on record. Appellant filed not only her own deposition as affidavit by way of evidence but also filed affidavits by way of evidence of both the attesting witnesses of the Will. Appellant also filed a surviving certificate issued by the SDM with respect to the appellant being the legal heir of the deceased. This surviving certificate dated 27.6.2014 issued by the SDM has been exhibited as Ex.PW8/A (collectively running into 18 pages). A total of eight witnesses have been examined by the appellant to prove the Will, the factum of ownership of Smt. Pooja Nijhawan of the bequeathed immovable property, death of Smt. Pooja Nijhawan etc etc.

5. In view of the above, it is seen that the deceased Smt. Pooja Nijhawan died on 18.6.2012 and which was proved by means of the death certificate as Ex.PW1/4. The Will was proved through the attesting witness as Ex. PW1/2. The Will was duly registered with the Sub Registrar-II, Kashmere Gate, Delhi and the form of registration was proved through the record keeper/clerk who deposed as a

summoned witness PW-4. Both the attesting witnesses being Sh. Vijay Kumar and Sh. Ganga Ram have appeared and deposed as PW-2 and PW-3. As already stated above, it was an uncontested case and there is no cross-examination of any of the witnesses of the appellant.

6. In view of the above discussion, this appeal is allowed. Appellant is granted letters of administration with the Will annexed with respect to the Will dated 20.4.2012 of Smt. Pooja Nijhawan Ex. PW1/2. Appellant will be granted letters of administration with the Will annexed and there is no need of the appellant to file any surety bond or administration bond because the appellant is the sole beneficiary and the sole natural legal heir of the deceased Smt. Pooja Nijhawan. There is no need for filing of surety bond or administration bond because in the present case there is no administration of the Will required with the appellant acting as a trustee of the implementation of the Will.

7. The appeal is allowed and disposed of in the aforesaid terms.

MAY 15, 2017
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VALMIKI J. MEHTA, J