

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

+ **RSA No. 182/2017**

% **17th July, 2017**

JAI SINGH Appellant

Through: Mr. Parminder S. Goindi,
Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below; of the trial Court dated 4.4.2016 and the first appellate Court dated 6.5.2017; by which the courts below have dismissed the suit seeking relief of injunction as premature. The suit has been dismissed as premature inasmuch as the disputes in the suit pertained to an immovable property belonging to late Smt. Jallo Devi and with respect to the estate of Smt. Jallo Devi, Smt. Saraswati Devi/respondent no.2 had obtained probate of a Will dated 12.1.1983

by which Smt. Jallo Devi had bequeathed her estate to the respondent no.2/Smt. Saraswati Devi and a petition for revocation of the probate was pending disposal before the concerned court.

2. The subject suit was filed by the appellant/plaintiff for injunction seeking right, title and interest in the suit property bearing plot no. 34, Sector-23B, Pocket-7, Dwarka, New Delhi and which was allotted to late Smt. Jallo Devi on account of acquiring of land belonging to her under the Land Acquisition Act. By the suit appellant/plaintiff claimed that he was the son of Smt. Roopo Devi and which Smt. Roopo Devi was the sole legal heir and child of Smt. Jallo Devi (wrongly mentioned Smt. Lajjo Devi in para 1 of the plaint) and that appellant/plaintiff has succeeded to the estate of late Smt. Jallo Devi. Effectively by the suit the respondent no.1/defendant no.1/Delhi Development Authority was sought to be restrained from allotting the suit property to the respondent no.2/defendant no.2/Smt. Saraswati Devi.

3. In this suit an issue arose with respect to the injunction suit simplicitor not being maintainable, and therefore, appellant/plaintiff filed an application for amendment of the plaint for

seeking the relief of declaration, and during the hearing of which an application under Order VI Rule 17 CPC the suit plaint was rejected under Order VII Rule 11 CPC holding that the suit is premature as the respondent no.2/Smt. Saraswati Devi had obtained a probate of a Will and a revocation petition filed by the appellant/plaintiff was pending disposal i.e only when the revocation petition would be allowed the appellant/plaintiff would have a right in the suit property of Smt. Jallo Devi and hence the suit being maintainable.

4. It is settled law by virtue of Section 41 of the Indian Evidence Act, 1872 that a judgment in a probate case is a judgment in rem. In case a person is aggrieved by grant of probate of a Will of a deceased testator, then such a person has a right to seek revocation of the judgment granting probate under Section 263 of the Indian Succession Act, 1925.

5. In the present case, the admitted fact is that the respondent no.2 has been granted a probate of a Will to the estate of late Smt. Jallo Devi and unless that probate is set aside, the appellant/plaintiff cannot file a suit seeking any relief in the nature of declaration and injunction to any right to the estate of late Smt. Jallo

Devi including the suit property. In case the petition for revocation is dismissed and the grant of probate to the respondent no.2/Smt. Saraswati Devi upheld then the appellant/plaintiff in any case would not get any right to the estate of the deceased Smt. Jallo Devi. The courts below have therefore rightly dismissed the suit as being premature.

6. In fact I have failed to understand any prejudice to the appellant/plaintiff by the impugned judgments inasmuch as in case the appellant/plaintiff succeeds in revocation of the probate only then appellant/plaintiff can file/maintain the suit seeking right to the suit property, and that in case the appellant/plaintiff fails to set aside the probate granted to the respondent no.2 of the Will of Smt. Jallo Devi then in any case the appellant/plaintiff will have no right to the estate of Smt. Jallo Devi including the suit property.

7. I put a query to the counsel for the appellant/plaintiff that all that was required to be done in case the appellant/plaintiff apprehends that the respondent no.1/defendant no.1/DDA will allot the suit property to respondent no.2 is that the appellant/plaintiff should file a judicial proceeding, and may be even an interim application in

the proceedings where revocation of probate is prayed, for maintenance of status *quo* with respect to the suit property till the issue of revocation of probate granted to Smt. Saraswati Devi/respondent no.2 is decided, but the learned counsel for the appellant/plaintiff insists on pressing the appeal as also for claiming rights to the suit property which forms the estate of late Smt. Jallo Devi.

8. Dismissed.

JULY 17, 2017/ib

VALMIKI J. MEHTA, J