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

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Date of Decision: 20th July, 2017

+ FAO 560/2016

SUDHA GUPTA

..... Appellant

Through: Ms. Neha Garg and Mr. Nitin Garg,
Advts.

versus

THE STATE

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 01st September, 2016 whereby the learned Trial Court has dismissed the petition on the ground of lack of the territorial jurisdiction apart from holding the petition to be premature.
2. The appellant is the mother of late Manish Gupta and she instituted a petition for grant of letters of administration under Section 278 of the Indian Succession Act, 1925 in respect of the estate of her son, namely, flat No.A-401, Pioneer Park, Gold Course Extension Road, Sector-61, Gurgaon, Haryana. The appellant pleaded that the deceased had fixed place of abode at A-1/232, Ground Floor, Janakpuri, New Delhi-110058.
3. Section 270 and 271 of the Indian Succession Act deal with the jurisdiction of the Court to entertain a petition for probate and letters of

administration. Under Section 270 of the Indian Succession Act, the Court within whose jurisdiction the deceased had a fixed place of abode or within whose jurisdiction the movable or immovable property is situated, is competent to entertain the petition for grant of letters of administration. Section 271 shall apply where the deceased had no fixed place of abode at the time of his death. Sections 270 and 271 are reproduced hereunder:-

Section 270 - *When probate or administration may be granted by District Judge.*—*Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.*

Section 271 - *Disposal of application made to Judge of district in which deceased had no fixed abode.*—*When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.*

4. In *N.S. Chopra v. State* 2014 SCC Only 333, this Court examined Section 270 and 271 of the Indian Succession Act and observed that the Court has jurisdiction to entertain the petition for grant of letters of administration if the deceased had a fixed place of abode or any movable/immovable property within its jurisdiction. Para 8 and 9 of the judgment are reproduced herein:-

“8. A reading of Section 270 of the Indian Succession Act, 1925 clearly lays down that if the deceased had a fixed place of residence or any of the movable or immovable property within the jurisdiction of the court where the petition is filed, then that court has the jurisdiction to entertain the same and it may grant the letters of administration. Section 271 of the Indian Succession Act, 1925 can be treated to be an exception to Section 270 inasmuch as it lays down that if the deceased did not have a fixed place of residence in the jurisdiction of the District Judge where the petition is filed, then the District Judge of that district may refuse the application if in his judgment it is just and convenient for another District Judge where he had fixed place of residence to grant the same or alternatively he may grant letters of administration only limited to the extent to the property which is situated in that district.

9. A conjoint reading of these provisions would show that the legislative intent is that the person applying for letters of administration ought to file a petition at a place where he had fixed place of residence or where the movable/immovable property is situated or conversely before the District Judge where such a petition is filed may limit the grant of letters of administration only to the properties which are situated in the said district.”

(Emphasis supplied)

5. Reference be also made to **Kanta v. State**, AIR 1985 Delhi 453 and Test Case No. 23/2006 titled **Gita Bawa v. State** decided on 5th October, 2007, in which the Court discussed the scope of 270 of Indian Succession Act.

6. In the present case, the appellant stated in para 5 of the petition that the deceased had a fixed place at abode at A-1/232, Ground Floor, Janakpuri, New Delhi-110058 at the time of his death. The copy of the identity card issued by Election Commission of India of the deceased was

filed by the petitioner. In that view of the matter, learned District Judge had clear jurisdiction to entertain the petition for letters of administration.

7. With respect to the Trial Court's observation that the petition was premature, learned counsel for the appellant submits that she could not file the documents relating to the aforesaid property before the Trial Court as the Trial Court dismissed the petition at the initial stage itself. It is submitted that the appellant has filed the relevant documents before this Court. It is submitted that the deceased paid Rs.34,97,188/- to the builder/promoter and the balance money is yet to be paid. It is submitted that the petitioner shall file the relevant documents relating to the subject property before the Trial Court.

8. This Court is of the view that the Trial Court had clear jurisdiction to entertain and try the petition for grant of letters of administration as the deceased had fixed place of abode at Delhi at the time of his death. This Court is further of the view that the petition was not pre-mature.

9. The appeal is allowed and the impugned order dated 01st September, 2016 is set aside. The case is remanded back to the District Judge who shall entertain and try the petition in accordance with the law.

10. The appellant is permitted to file the relevant documents relating to the property bearing No. A-1/232, Ground Floor, Janakpuri, New Delhi-110058 before the Trial Court.

11. The appellant shall appear before the Trial Court on 18th August, 2017.

12. The Trial Court record be returned back.

13. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

JULY 20, 2017
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J.R. MIDHA, J.

