

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

+ **FAO No.1/2017**

% **10th October, 2017**

SUBHASH CHAND & ANR. Appellants

Through: Mr. Vijay Kishan Jetley,
Advocate.

versus

THE STATE & ORS. Respondents

Through: Mr. Parmod Kumar Singhal,
Adv. for R-2.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Learned counsel for the appellants argues two aspects for challenging the impugned judgment dated 15.9.2016 passed by the trial court granting letters of administration with respect to a Will registered on 3.6.1993 of late Smt. Gobindi Devi.

2. The first aspect which is argued is that Smt. Gobindi Devi was not the owner of that share of H.No. 230, Gali no.11, Anand Parbat, Delhi-5 as mentioned in the Will because she was the owner in

fact only of a lesser share, and therefore, the letters of administration could not have been granted.

3. Secondly it is argued that the grant of letters of administration in Delhi is discretionary and since it is not mandatory to apply for letters of administration, therefore, the letters of administration could not have been granted in this case as Smt. Gobindi Devi was not the owner of the share to the extent as stated in the Will registered on 3.6.1993 in the property bearing H.No. 230 Gali no.11, Anand Parbat, Delhi-5.

4. So far as the aspect that the probate court does not decide title of a property, this principle also extends to the principle that the probate court does not specify or decide what is the extent of ownership interest of a deceased testator in a property. In fact it is for this reason in para 52 of the impugned judgment it is stated by the trial court that it is clarified that the question of title, share and ownership of the aforementioned Anand Parbat property has not been decided by the impugned judgment. This is rightly so observed by the trial court because the question of extent of title or share of the deceased Smt. Gobindi Devi in the aforesaid property would be decided in

appropriate civil proceedings between the parties. I therefore reiterate what is stated in para 52 of the judgment of the trial court with the further clarification that the extent of share of Smt. Gobindi Devi in H.No. 230 Gali no.11, Anand Parbat, Delhi-5 is not decided by the impugned judgment dated 15.9.2016 and which aspect will be decided in any civil proceedings with respect to the aforesaid house bearing no. 230, Gali no.11, Anand Parbat, Delhi-5.

5. So far as the second aspect that grant of letters of administration is discretionary because it need not have been applied for in Delhi, all that is required to be stated is that no doubt seeking of letters of administration in Delhi is not mandatory but that does not mean that letters of administration need not at all be applied for and that it cannot be granted. In the present case, the letters of administration has been granted and since the only grievance of the appellants is that the Will registered on 3.6.1993 of Smt. Gobindi Devi incorrectly describes her extent of share in H.No. 230 Gali no.11, Anand Parbat, Delhi-5, it has already been clarified above that the title and extent of share of Smt. Gobindi Devi in the aforesaid property will

be decided in appropriate civil proceedings which any of the parties may choose to initiate.

6. No other issue is pressed on behalf of the appellants.

7. The appeal is therefore dismissed except to the extent of observations made hereinabove.

OCTOBER 10, 2017/ib

VALMIKI J. MEHTA, J

