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

+ CM(M) 71/2017 and CM Nos. 2317-18/2017

SARDAR SATINDER SINGH & ANR Petitioners

Through Mr.Vineet Sharma and Mr.Puneet
Sharma, Advocates

versus

SARDAR HARJINDER SINGH Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

20.01.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 10.11.2016 by which an application under Section 151 filed by the respondent for permission for cross-examination of additional witness and to prove the additional documents was allowed.

2. The respondent has filed the suit for partition, permanent and mandatory injunction with regard to the suit property situated at Chand Mohalla, Gandhi Nagar, Delhi-110031. The property was owned by late Sh.Sardar Pritam Singh, the father of the parties before this court. The stand of the petitioners was that late Sh. Pritam Singh had executed a Will dated 27.06.2000 whereby he had bequeathed the suit property to his grandchildren. The issues were framed on 19.02.2013. Issue No. 5 is as to

whether the Will dated 27.06.2000 was genuine and valid Will of late Sardar Pritam Singh (OPD).

3. After evidence has been completed of the parties, the respondent has now moved the present application under Section 151 CPC stating that he has recently come to know that the father of the parties had received multiple body injuries including the head injuries. Hence, he seeks to place on record the documents which he has received under RTI of the medical treatment of his father from General Hospital, Gurgaon and original envelop of documents received under RTI from Principal Medical Officer, General Hospital, Gurgaon. He also seeks to have the permission to produce additional witness to prove the said documents.

4. The trial court by the impugned order noted that the additional evidence is necessary and relevant for the adjudication of the case and allowed the application subject to cost.

5. Learned counsel for the petitioners has strongly argued that the impugned order ignores that in the replication filed by the respondent, he has not said that the father was not in a sound deposing mind. He has also admitted execution of the Will. He submits that hence, the respondent cannot be permitted to lead additional evidence.

6. The issues were framed on 19.02.201. The onus to prove the genuineness of the Will is on the petitioners. In essence, the respondent is actually seeking to produce what would be evidence in rebuttal. Further the evidence which is sought to be produced is necessary for the purpose of determining whether the Will dated 27.06.2000 of Sh.Sardar Pritam Singh has been validly executed. The trial court in his discretion has allowed the application. There are no reasons to interfere with the impugned order by

this court in exercise of its powers under Article 227 of the Constitution of India.

7. With the above observations, the present petition and all pending applications stand dismissed.

JAYANT NATH, J

JANUARY 20, 2017
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