

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

+ **FAO No. 349/2017**

% **8th September, 2017**

PRITPAL SINGH SAWHNEY (DECEASED) THROUGH LRS.

..... Appellant

Through: Mr. Gurvinder Singh, Adv.

versus

STATE AND ORS.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 299 of the Indian Succession Act, 1925 impugns the judgment of the probate court below dated 5.6.2017 whereby the petition seeking probate/letters of administration of the Will dated 2.4.1996 of Smt. Shakuntala widow of late Sh. Inder Singh was dismissed. Probate petition has been dismissed as the appellant/petitioner in spite of repeated opportunities failed to lead evidence.

2. Learned counsel for the appellant has drawn the attention of this Court to the earlier order dated 12.5.2017, and which is also impugned in the present appeal, whereby the application under Order XXII Rule 4 CPC for bringing on record the legal heirs of the deceased respondent no.2 was dismissed, and in which application stand of the appellant/petitioner was that respondent no.2 was a bachelor and therefore he did not leave behind any legal heirs. Counsel for the appellant/petitioner has drawn the attention of this Court to the family tree filed by the respondent no.2 himself as per which respondent no.2 is shown to be unmarried. Learned counsel for the appellant/petitioner also argues that the other respondents being respondent nos. 3 and 4 being the nephews of the testator have already given NOCs for grant of the probate of the Will dated 2.4.1996 of late Smt. Shakuntala.

3. Learned counsel for the appellant states that appellant will under all circumstances ensure that the entire evidence of the appellant is positively completed within three opportunities inasmuch as the main case is an old case.

4. I agree with the counsel for the appellant that there is no need to bring on record any legal heirs of the deceased respondent no.2 and therefore, the impugned order dated 12.5.2017 is set aside inasmuch as the respondent no.2 had died a bachelor. Trial court erred in requiring the appellant to prove that the respondent no.2 died bachelor because a negative aspect cannot be proved but only a positive aspect can be proved.

5. In view of the above, this appeal is allowed and disposed of by setting aside the impugned judgment dated 5.6.2017 and the earlier order of the trial court dated 12.5.2017. It is held that there is no need to bring the legal heirs of deceased respondent no.2 on record. Also, appellant will ensure that such they complete their evidence positively within three opportunities before the trial court.

6. Appellant will appear before the District and Sessions Judge (North West), Delhi on 17th October, 2017 and the District and Session Judge will mark the probate petition to a competent court for disposal in accordance in with law.

SEPTEMBER 08, 2017/ib

VALMIKI J. MEHTA, J