

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 964/2017, CM No.33061/2017 (for placing on record additional documents) & CM No.32324/2017 (for stay)
ANIL KUMAR JAIN Petitioner

Through: Mr. Nishant Datta & Mr. Pradeep
Bhardwaj, Advs.

Versus

NARESH JAIN & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **11.09.2017**

CM No.33062/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) No.964/2017

3. This order is in continuation of the earlier order dated 5th September, 2017.
4. The petitioner, under cover of CM No.33061/2017, has filed the documents which the petitioner was directed to file vide order dated 5th September, 2017.
5. The petitioner has also produced a copy of the order dated 5th September, 2017 in the probate case (from which this petition arises) which however shows that the petitioner did not, on that date, file before the Probate Court written arguments which the petitioner / objector had earlier been directed to file.
6. The same amounts to the petitioner taking adjournment before the Probate Court and which the petitioner vide order dated 5th September, 2017 was prohibited from taking.

7. Resultantly, the Probate Court has now posted the matter on 12th September, 2017 for filing by the petitioner of written arguments.
8. Though this petition is liable to be dismissed only for the reason of the petitioner having violated the order dated 5th September, 2017 but the counsel for the petitioner has been heard on merits as well.
9. The counsel for the petitioner has contended i) that the deceased was possessed of two immovable properties i.e. one at Sadar Bazar, Delhi which was in the tenancy of the deceased and the other in Veer Nagar, New Delhi of which the deceased was a co-owner; ii) that the deceased died in the year 2005 and the probate case from which this petition arises was filed in the year 2008; iii) however even before filing of the probate case, the respondent no.1 herein, and who is the petitioner in the probate case, in the year 2006 surrendered the tenancy rights in the Sadar Bazar, Delhi property; iv) that it is the plea of the petitioner / objector in his objections that document of which probate has been sought has been fabricated after 2006; v) that the respondent no.1 herein, and who is the petitioner in the probate case, has in reply to the objections of the petitioner / objector pleaded that the deceased in his lifetime only had surrendered the tenancy rights in the Sadar Bazar, Delhi property; vi) that it is the plea of the petitioner / objector that the aforesaid is a suspicious circumstance; vii) that the documents which the petitioner / objector now wanted to file at the stage of final arguments and which has been declined and impugning which this petition has been filed are rent receipts of Sadar Bazar property showing payment of rent in advance till 2006.
10. No merit is found in the aforesaid contentions.

11. At this stage, I may state, that for exercising rights under a document claimed to be the Will, there is no need as far as the city of Delhi is concerned, to obtain probate. Reference if any required in this regard can be made to *Behari Lal Ram Charan Vs. Karam Chand Sahni* AIR 1968 P&H 108 (DB), *Capt. (Retd.) O.P. Sharma Vs. Kamla Sharma* (2009) 158 DLT 631 (DB).

12. Not only so, in the aforesaid facts and circumstances, no error is found in the impugned order holding the documents which the petitioner, at the stage of final arguments wanted to file and prove are not relevant for the adjudication of the probate case.

13. The Probate Court is not concerned with the title of the deceased to any property and is only concerned with the valid execution of the document of which probate is sought as a Will.

14. I have in fact enquired from the counsel for the petitioner, whether the document of which probate is sought is with respect to Veer Nagar, New Delhi property only.

15. The counsel for the petitioner states that the Will is with respect to all the properties of the deceased.

16. At this stage, the counsel for the petitioner seeks to withdraw the petition.

17. Dismissed as withdrawn.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 11, 2017

‘gsr’..