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

+ CM(M) 859/2015

LATESH YADAV

..... Petitioner

Through: Mr.Kunal Rawat, Advocate

versus

THE STATE & ORS

..... Respondents

Through: Mr.J.B.Saini & Mr.B.B.Bhatia, Advs.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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16.05.2017

1. Mr.Kunal Rawat, learned counsel for the petitioner assails that the impugned order dated 9th April, 2015 having been passed without jurisdiction. The learned Probate Court in its proceeding dated 9th December, 2013 has made observation to this effect as under:-

“09.12.2013

Present: Sh.Kunal Rawat, Ld.Counsel for the petitioner

None for the respondent

Witness Neetu Yadav in person with counsel

Ms.Monisha Rai.

PW3 examined and discharged. Cross examination is treated as nil as none has appeared on behalf of respondent despite repeated calls since morning. Counsel Sh.Rawat, close his evidence.

During the course of consideration, it has come to the notice of the Court that the property subject matter of the suit is situated outside the territorial jurisdiction of this Court at

Mahender Garh and Sona in Haryana which are admittedly beyond the value of ₹10,000/-. The Court has incurred doubts about the maintainability of the present petition before this Court. Ld. Counsel Sh.Rawat, prays for grant of one week's time.

At request, put up for further proceedings on 17.12.2013.

Sd/-

(ADJ-6/Central/Delhi)”

2. Thereafter on various dates the effective proceedings could not be conducted and ultimately when the application under Order VII Rule 10A CPC was filed by the petitioner herein, the same was dismissed for the following reasons:-

“I have also gone through the application under Order 7 Rule 10A CPC which is pending consideration since long. None appear to address it and make any further arguments. Careful perusal of the Will of deceased when read in conjunction with the list of properties filed by the petitioner reveals that several properties not situated in the jurisdiction of this Court are enlisted therein. The ld. Predecessor Court observed the same in its order dated 9.12.13 and thus put a question mark regarding the maintainability of the present petition. It is recorded in the said order that ‘several properties situated at Mahender Garh and Sona in Haryana which are admittedly beyond the value of ₹10,000.’

*The jurisdiction is vested in a District Judge to grant Probate/Letters of Administration in all cases within his own District only under **Section 264 of Indian Succession Act, 1925**. Conclusiveness of such a grant is provided under **Section 273** of the Act. The grant by the High Court is to have effect throughout several states in India. However, situation is different in case of such grant made by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such District Judge and such a District Judge certifies that the value of the property and estate affected beyond the limits of the state does not exceed ten thousand rupees. This is not the case here. In such eventuality,*

the petition in the Court of District Judge itself would be not maintainable and consequently, question of its return under Order 7 Rule 10A CPC shall not arise.

*The petitioner's counsel had relied upon case titled **Ziff-Davis Inc. Vs. Dr.J.K.Jain & Ors. reported in MANU/DE/3024/2005** on the above aspect. However, to my mind, the same has been misread. The question involved there was enhancement of pecuniary jurisdiction by virtue of an amendment made by a plaint to the petitioner, it is based on powers conferred under Section 24 CPC.*

*The second case relied in this context is the judgment in **Shriram Pistons & Rings Ltd. Vs. Mr.Manju Awasthy 68 (1997) DLT 112** to the effect that Section 15 CPC cannot come in the way of transferring a suit to a superior Court. Again the same pertains to transfer where the Court of Civil Judge had transferred the case to District Judge. It does not pertain to the aspect of 'maintainability' itself. This petition ought to have been filed in the Hon'ble High Court having concurrent jurisdiction in order to give effect to the proviso appended to Section 273 of Indian Succession Act, 1925. In result, the application is dismissed. As a consequence thereof, the petition is found to be not maintainable and is accordingly dismissed.*

File be consigned to record room.

*Sd/-
(ADJ-6/Central/Delhi)
09.04.2015"*

3. Learned counsel for the respondents does not dispute that some of the properties, which are subject matter of the probate case are situated outside the territorial jurisdiction of the learned Probate Court, Central District, Delhi. He also does not dispute that if the Court does not have the territorial jurisdiction to try the case, that Court does not have the jurisdiction to dismiss the probate case as 'not maintainable'.
4. In such circumstances, the order impugned dated 9th April, 2015 on the application under Order VII Rule 10A CPC passed by the learned Probate Court is set aside as being passed without any jurisdiction.

5. The probate case No.483/06 is restored to its original position.
6. The learned Judge, Probate Court, after giving an opportunity to the parties to make submissions on the issue of jurisdiction, shall decide the issue in accordance with law.
7. Parties are directed to appear before the learned Probate Court, Central District on 31st May, 2017.
8. A copy of this order be sent to the learned Trial Court for information and compliance and be also given dasti to learned counsel for the parties under the signature of the Court Master.

PRATIBHA RANI, J.

MAY 16, 2017

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