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

+ C.R.P. 218/2017

GULSHAN KUMAR CHAWLA & ANR Petitioners

Through: Mr. Mrinalini Sen Gupta & Ms. Sarita
Panda, Advs.

Versus

USHA CHAWLA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.09.2017**

CM No.35675/2017 (for exemption)

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

C.R.P. 218/2017 & CM No.35674/2017 (for stay)

3. This Revision Petition under Section 115 of the CPC impugns the order [dated 21st July, 2017 in PC No.17/2017 of the Court of Additional District Judge (ADJ)-02, District West, Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner under Order VII Rule 11 of the CPC for rejection of the probate case filed by the respondent no.1 seeking probate of a document claimed to be validly executed last Will of the father of the parties.

4. The learned ADJ has dismissed the application, reasoning that the plea taken in the application under Order VII Rule 11 of the CPC of the probate case being barred by time raises a mixed question of law and fact which required evidence to be led.

5. The counsel for the petitioner has been heard.
6. The petitioner, in the application under Order VII Rule 11 of the CPC, merely stated that probate had been sought of purported Will dated 8th July, 2010 of the deceased who died in the year 2012 and accordingly the probate case filed in the year 2017 is barred by limitation. No date when the cause of action for seeking probate may have accrued was pleaded.
7. The counsel for the petitioner, on enquiry, states that Article 137 of the Schedule to the Limitation Act, 1963 would apply.
8. On enquiry, as to when according to the counsel for the petitioner, the cause of action had accrued, the counsel for the petitioner first contended that the cause of action had accrued on the date of demise.
9. The aforesaid contention cannot be accepted. As far as city of Delhi is concerned, it is not essential to obtain probate of a document claimed to be the validly executed last Will of the deceased to claim any right under the said Will. Thus it cannot be said that cause of action accrues on the date of demise. The need for claiming probate would arise only when right is asserted under the Will and the person against whom the right is asserted disputes the Will.
10. Thus, it was incumbent upon the petitioner to, in the application under Order VII Rule 11 of the CPC, to state the date when the petitioner disputed the document claimed to be the Will of the deceased and which has not been stated in the application which has been dismissed.

11. The counsel for the petitioner then draws attention to para (i) of the preliminary submissions in the reply filed by the petitioner to the probate case and which is as under:

“i. That the father of the Respondent unfortunately died on 6-11-2012. That it is inconceivable that the father of the answering Respondent would without force and coercion execute the WILL dated 08.07.2010 contrary to their own agreement dated 7-9-1993. It is submitted that on 02.10.2013 the Respondent learnt of a purported will dated 08-07-2010 and immediately objected to its authenticity and contents. The aged father of the Respondent at the time of the execution of the purported will was nearly 87 years old. Even though they were very close, the parents of the Respondent were unable to take care of his parents since he was never permanently residing in Delhi on account of his job. It has only been since April 2016, that the Respondent has retired from his job and has returned to India and permanently started residing at the said property.”

12. A perusal of the aforesaid paragraph also would show that the averments therein do not disclose from whom the petitioner on 2nd October, 2013 learnt of the purported Will and to whom the petitioner objected to its authenticity and contents.

13. The counsel for the petitioner has in the said reply neither referred to any document by which the petitioner may have so objected to the knowledge of the respondent no.1 nor during the arguments has referred to any such document. The only contention is that in the rejoinder filed by the respondent no.1 to the aforesaid reply, in the corresponding paragraph there is no denial thereof.

14. A perusal of the said corresponding paragraph shows the respondent no.1 to have denied the contents of the aforesaid paragraph and in fact the respondent no.1 has expressly denied that the petitioner ever objected to the authenticity and the contents of the Will.

15. The probate case cannot be dismissed as barred by time on such frivolous pleas and by giving a date of the cause of action from the imagination of the objector, without giving any particulars thereof.

16. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 26, 2017

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