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

+ TEST.CAS. 53/2006

SUSHILA GOPALAN AND ANR.

..... Petitioners

Through: Mr. Manu Nayar, Ms. Meenakshi
Bhatia and Ms. Maitreyee Joshi,
Advs.

versus

STATE

..... Respondent

Through: None.

AND

+ TEST.CAS. 54/2006

SUSHILA GOPALAN & ANR.

..... Petitioners

Through: Mr. Manu Nayar, Ms. Meenakshi
Bhatia and Ms. Maitreyee Joshi,
Advs.

versus

STATE

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.11.2018

IA No.10003/2018 (under Section 10 of the CPC), IA No.15360/2018 (u/S 151 of the CPC) and IA No.15361/2018 (u/S 10 of the CPC) in Test. Cas. No.53/2006.

IA No.10000/2018 (under Section 10 of the CPC), IA No.15362/2018 (u/S 151 CPC) and IA No.15363/2018 (u/S 10 of the CPC) in Test. Cas. No.54/2006.

1. The petitioner, in these Testamentary Cases seeking probate/letters of administration, with respect to (a) the documents dated 6th November, 2003 and 15th March, 1999 claimed to be the validly executed last Will of Smt. Sheela Devi wife of late Shri R.L. Chawla; and, (b) document dated 3rd June, 1995 claimed to be the validly executed last Will of late Shri R.L. Chawla, respectively has filed these applications seeking stay of proceedings

in both these testamentary cases stating, that the documents seeking probate/letters of administration of which these testamentary cases have been filed are also subject matter of probate petitions pending in the Court of Ms. Sujata Kohli, Additional District Judge, Tis Hazari Court, Delhi filed by one Kamla Mehinderatta seeking probate thereof as the Will of the said deceased persons and in which probate petitions, though filed after these testamentary cases, recording of evidence is substantially complete.

2. I have enquired from the counsel for the petitioners/applicants, what purpose will be served by staying further proceedings in these testamentary cases, awaiting the outcome of the proceedings aforesaid pending before the Court of Additional District Judge. It is felt that whichever way the proceedings pending before the Additional District Judge are decided, will be determinative and the parties cannot be permitted a second round to prove or disprove the documents as the Wills of the deceased, in these proceedings, in which issues even have not been framed.

3. The counsel for the petitioners/applicants agrees but expresses apprehension that if the petitioner in the probate petitions pending before the Additional District Judge does not take appropriate steps for proving the documents claimed to be the Will and/or to cross-examine the witnesses of the parties who have filed objections, and those probate petitions are dismissed, the petitioners/applicants would also suffer.

4. I am unable to agree. The petitioners/applicants are admittedly a party to the probate petitions pending before the Additional District Judge. The position of all the parties, in the probate petitions, who are supporting the document of which probate is sought, is the same, even if are impleaded as respondent. It is thus always open to the petitioners/applicants, even though

respondents in those probate petitions, to, if feel that the petitioner in those probate petitions is not taking the requisite steps for proving the documents claimed to be the Wills, lead evidence to prove so. Similarly it is always open to the petitioners/applicants supporting those probate petitions, to cross-examine the witnesses of the parties opposing those probate petitions. Of course this will be subject to the learned Additional District Judge, before whom the probate petitions are pending, issuing necessary direction to avoid duplication and ensure that no delay is caused thereby. The apprehension expressed is thus not tenable in law.

6. There is always possibility of more than one person being beneficiary of a Will and all beneficiaries not joining in filing petition seeking probate/letters of administration of the document as a Will. Probate, under Section 222 of the Indian Succession Act, 1925 can be applied for and granted only to the appointed Executor, who may not be a beneficiary under the Will. In such circumstances, the beneficiaries under the Will or the beneficiaries who have not joined in filing of probate/letters of administration petition and have been impleaded as respondent therein, cannot be left at the mercy of the Executor or the beneficiaries who have applied. At the same time, each beneficiary cannot be permitted to separately apply for probate/letters of administration. The same if permitted, will lead to several rounds of proceedings, to prove the document as a Will, with each successive proceeding improving over the earlier and the witnesses to the document claimed to be the Will also having an opportunity to change their statement.

7. It is for this reason only that I have hereinabove observed that the position of all parties in a probate petition is the same, as in a suit for

partition, and there is no such thing as a plaintiff and a defendant.

8. The counsel for the petitioners/applicants states that the aforesaid serves the purpose of the petitioners/applicants and in view thereof no purpose will be served in keeping these petitions pending.

9. The applications are disposed of with above observations.

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10. These testamentary cases are thus disposed of with liberty to the petitioners/applicants to, in the probate petitions aforesaid pending before the Court of the Additional District Judge, in accordance with law take appropriate steps for proof of the documents as Wills and/or cross-examine the witnesses of the parties objecting to the said documents being the validly executed Wills of the deceased persons.

11. No costs.

12. The dates of 15th November, 2018 and 15th January, 2019 in these testamentary cases are cancelled.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 13, 2018

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