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

+ TEST.CAS. 38/2007

RAM NIWAS JI MAHARAJ

..... Petitioner

Through: Mr. A.K. Gupta, Mr. S.K. Chaudhury,
Ms. Akanksha Mehta and Ms. Manshi
Khurana, Advs.

Versus

STATE

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.12.2018

1. The petition seeks probate of the document dated 14th December, 1993 as validly executed last Will of late Swami Ram Kishore Ji Maharaj.
2. The petition was presented before the District Judge and was entertained. The petition was subsequently transferred to this Court vide order dated 19th January, 2007 as the properties of the deceased, besides being situated within the territorial jurisdiction of this Court, were also situated at Haridwar, Uttarakhand, outside the territorial jurisdiction of this Court.
3. The order dated 14th November, 2018 records that the objections filed by objectors No.2 to 4 namely (i) Himmat Singh, (ii) Swami Ram Vinod Ji Maharaj, and (iii) Swami Madhab Ram were withdrawn on 2nd February, 2016, 31st July, 2018 and 1st October, 2008 respectively and that there is no other objector.

4. The counsel for the petitioner states that the petitioner has concluded his evidence and the petition is ripe for final hearing.
5. The counsel for the petitioner has been heard.
6. I have at the outset enquired from the counsel for the petitioner, whether the petitioner is the named executor in the document of which probate as a Will is sought.
7. The counsel for the petitioner replies in the negative.
8. Once the petitioner is not the named executor, the petitioner cannot, vide Section 222 of the Indian Succession Act, 1925 be granted probate and the petition as filed seeking probate is misconceived.
9. However, the petition having been entertained and having remained pending since 27th January, 1995, when it was first listed before the District Judge, it is deemed appropriate to treat the said petition as for Letters of Administration with copy of the Will annexed under Section 232 of the Indian Succession Act.
10. The counsel for the petitioner on being asked the proof of the Will states that the petitioner, besides examining other witnesses, has examined as PW-3 the official from the District & Sessions Court, Haridwar, Uttrakhand who has proved before this Court the certified copy of the statement recorded in Suit No.73/1994 of that Court of Mangal Sain Dhawan, one of the attesting witnesses to the document of which probate was sought.
11. It is further stated that the objector No.3 Swami Ram Vinod Ji Maharaj had filed a suit for injunction in the Courts at Haridwar against the petitioner herein with respect to one of the properties of the deceased at Haridwar and in which suit the petitioner had set up the document of which

probate as Will was sought in this proceeding, as the Will of the deceased and had proved the said Will by examining Mangal Sain Dhawan aforesaid, being one of the attesting witnesses to the document. It is further informed, (i) that in the said legal proceedings, the document was held to be the validly executed last Will of the deceased and the document set up by the objector No.4 as the validly executed last Will of the deceased was disbelieved; (ii) that the objector No.4 preferred a first appeal against the said judgment and which was allowed; (iii) that the petitioner preferred a Second Appeal which was dismissed; (iv) that the petitioner approached the Supreme Court by way of SLP(C) No.34832/2014 which was granted and the Civil Appeal No.3305/2015 was allowed by remanding the matter to the Second Appellate Court; (v) that the Second Appellate Court remanded the appeal to the First Appellate Court and the First Appellate Court vide judgment dated 9th September, 2016 upheld the judgment of the Suit Court of dismissal of the suit of the objector No.4; and, (vi) that the said judgment of the First Appellate Court had attained finality and no further proceedings were taken by the objector No.4.

12. The counsel for the petitioner has in Court handed over a certified copy of the judgment dated 9th September, 2016 supra and which is taken on record.

13. The counsel for the petitioner has also drawn attention to IA No.1674/2016 along wherewith the petitioner has filed the Death Certificate of Mangal Sain Dhawan and the testimony in Hindi recorded in the Haridwar Court of Mangal Sain Dhawan.

14. I have enquired from the counsel for the petitioner, the position with

respect to the second purported attesting witness to the document of which probate is sought.

15. The counsel for the petitioner though states that the said witness has not been traceable but fairly states that no evidence in this regard has been led.

16. Now that the objectors who earlier have been objecting to the grant of probate sought by the petitioner have withdrawn their objections, there is no reason to disbelieve the counsel for the petitioner. I may also record that I have not gone through the testimony in Hindi language of Mangal Sain Dhawan or the judgment dated 9th September, 2016 which has been handed over today but the counsel for the petitioner, on enquiry, states that he has gone through the testimony as well as the judgment and has made statement aforesaid on that premise.

17. On the basis of the aforesaid, the petition is allowed. Letters of Administration with copy of the document dated 14th December, 1993 as the validly executed last Will of late Swami Ram Kishore Ji Maharaj is ordered to be issued to the petitioner on the petitioner depositing the requisite stamp duty and complying with the other formalities.

18. The petition is disposed of.

19. As and when the petitioner deposits the stamp duty and furnishes administration bond in the sum of the valuation of the property with one surety for the like amount, the same be placed before the Joint Registrar (Judicial) for appropriate orders.

RAJIV SAHAI ENDLAW, J.

DECEMBER 04, 2018/‘bs’..

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