

\$~15

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

+ TEST.CAS. 73/2016

RAJWATI & ANR

..... Petitioners

Through: Mr. Kanwar Udai Bhan Singh
Sehrawat, Adv.

Versus

STATE & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

11.05.2018

1. The two petitioners viz. Rajwati and Sushma seek probate of the document dated 9th April, 2013 stated to be the validly executed last Will of Suraj Mal @ Surja son of Sh. Ganga Ram and last resident of village Kharkhari Jatmal, near Najafgarh, New Delhi who is stated to have died on 31st May, 2014.
2. The petition was entertained and notice thereof ordered to be issued to the close relatives and citation also ordered to be issued.
3. The order dated 22nd November, 2016 recorded that the respondents no.2 to 6 viz. (ii) Lal Singh, (iii) Ghanshyam, (iv) Roop Chand, (v) Rahul, and, (vi) Saroj had been served. However, only the respondent no.2 appeared in person.
4. The order dated 19th January, 2017 records that citation had been published and the respondents had also been served.
5. Vide order dated 18th July, 2017, on the application of the petitioners, it was directed that no third party interest be created in the undivided share

of the deceased in land bearing Khasra Nos.6/23 (6-06), 7/2/2 (4-07), 7/3 (4-16), 7/8 (4-16), 7/9 (5-05) and 7/13 (4-16) total ad-measuring 30 Bigha 6 Biswas situated in the revenue estate of village Kharkhari Jatmal, Tehsil Najafgarh, New Delhi and *status quo* be maintained with respect thereto.

6. The order dated 23rd October, 2017 records that valuation report sought from the Sub-Divisional Magistrate had been submitted and that since none had appeared for respondents no.2 to 6, they were being proceeded against *ex parte* and the petitioner was directed to lead evidence.

7. The petitioners, in their *ex parte* evidence, have examined the petitioner no.1 as PW1 and one Amit Kumar Yadav as PW2.

8. The petitioner No.1 in her evidence has proved the Death Certificate of the deceased Suraj Mal @ Surja as Exhibit PW1/1 and the revenue record of the aforesaid land as Exhibit PW1/4.

8. PW2 Amit Kumar Yadav has proved as Exhibit PW1/6, the document dated 9th April, 2013 registered on the same day, as the validly executed last Will of the deceased Suraj Mal @ Surja.

9. However, finding that Exhibit PW1/6 does not appoint the petitioner as executor, I have drawn the attention of the counsel for the petitioner to Section 222 of the Indian Succession Act, 1925 and enquired as to how probate can be granted to the petitioner.

10. The counsel for the petitioner states that he mistakenly sought probate and further states that the petition be treated as one for grant of letters of administration with copy of the Will annexed under Section 228 of the Succession Act.

11. Considering that this Court also entertained the petition and cautioning the counsel for petitioners to be careful in future, the said request is allowed.

12. The petition is allowed.

13. Upon the petitioner depositing the requisite stamp duty and furnishing administration bond of the value of the property subject matter of the Will with one surety of the like amount, Letters of Administration are ordered to be granted with respect to the estate of the deceased Suraj Mal @ Surja mentioned in his Will Exhibit PW1-6, jointly to the petitioners, with copy of the Exhibit PW1/6 annexed.

14. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

MAY 11, 2018

‘gsr’..