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

% *Date of Judgment: 7th August, 2018*

+ **FAO(OS) 335/2016**

RAJINDER MEHRA

..... Appellant

Through: Mr.Arvind Bhatt and Mr.Kuber Giri,
Advocates with petitioner in person.

versus

RAJESH TULI AND ANR

..... Respondents

Through: Mr.Ripu Daman Bhardwaj, CGSC and
Mr.T.P. Singh, Advocate for
respondent/L&DO.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 05.09.2016 passed by the learned Single Judge of this Court, by which an application being I.A. No.2697/2016 filed under Section 151 CPC has been rejected.
2. In this case, probate of a will of late Sh.Vidya Bhushan Mehra who died on 30.09.1984 was granted on 28.01.1985. Post the grant of probate the appellant had approached the L&DO for mutation of the property. L&DO called upon the appellant/applicant Rajinder Mehra to file an affidavit of the Executor of the Will stating that he had no beneficial interest in the bequeathed property, and consequently, he had handed over possession of the property to the beneficiary.

3. Admittedly, as submitted by counsel for the appellant, on account of family discord, the Executor of the said Will is not cooperating with the appellant and the executor has refused to provide the affidavit and for this reason the mutation is being held up.

4. Counsel for the L&DO has relied upon an office order to justify calling upon the appellant to file an affidavit of the executor. Copy of the office order No.3/89 dated 15.02.1989 has been handed over which reads as under:-

“No.24(7)/76-CDN

Date 15.02.1989

Office Order No. 3/89

Subject :- Substitution on the basis of Letter of Administration granted by the Court under Section 276 of Indian Succession Act 1925.

It has been observed that in certain cases the lessee leave behind a will bequeathing the property in favour of one of his legal heirs and appoint another person or the beneficiary himself/herself as Executor for the purpose of the Administration of the property and this office mutate the property in the name of the Executor/Administrator till he executes an assent deed under Section 333 and 334 of the Indian Succession Act 1925.

The matter has, therefore, been reviewed in consultation with the Assistant Legal Adviser and it has been decided as follows:

- 1. When the beneficiary and the Executor/Administrator is one and the same person the property should be mutated straightway in favour of the beneficiary in accordance with the will.*
- 2. In cases where the Executor/Administrator happens to be another person, but he gives us a letter that he has no beneficial interests in the bequeath property and has also handed over the possession of the property to the beneficiary the property Will be mutated in the name of the beneficiary without insisting upon the assent deed as the assent given by the Administrator is sufficient to the vesting of beneficial interest and legal title to the beneficiary in accordance with the will.*

*(Krishan Gopal)
Public Relations Officer”*

5. Counsel for the appellant has handed over another office order No.5/2009 dated 29.05.2009 which deals with the substitution on the basis of a 'Will'. Same is also reproduced below:-

"No.24(735)09/CND/167

Date 29.05.2009

Office Order No. 5/2009

Sub :- Substitution on the basis of a 'Will'.

As per the existing policy for substitution on the basis of a 'Will' by lessee, in case of death of the lessee, no objection affidavits of all legal heirs of the deceased lessee are required to determine the genuineness of the 'Will'. If that is not possible, the beneficiaries are asked to get the 'Will' probated through a Competent Court of Law. In case of certified copy of probate is submitted, affidavits, death certificate or other documents are not required. Now the DDA has decided to dispense with the requirement of NOC from all other family members or legal heirs.

This issue has been examined in consultation with M/o Law & Justice & in view of judicial announcements. M/o Law has opined, that a probate means a copy of the will certified under the seal of a competent court with a grant of administration of the estate to the executor of the Testator. A probate granted by a competent court is conclusive evidence of the validity of the 'Will' until it is revoked and no evidence can be admitted to impeach it except in a proceeding to revoke the probate. The grant of the probate decides the genuineness of the 'Will' and the executor right to represent the estate. Accordingly, it is felt that once a person come forward with a probate duly granted by a competent court, there is no need of requirement of 'NOC' from other family members or legal heirs and death certificate etc. in the process of substitution of title depending upon the merit of each particular case. In case no probate is sought, the beneficiary has to submit NOC from all other family members or legal heirs as there is no family members.

Therefore, it has now been decided to dispense with the requirement of NOC from other legal heirs in the cases where the substitution is to be carried out on the basis of a probate of a 'Will' depending upon the merit of each particular case.

Yours Faithfully,

(Surendra Singh)

Dy. Land and Development Officer

Tel. No. 23061325."

6. Learned counsel for the appellant submits that the second office order superceded the first office order and even otherwise the office order does not have any legal force. It is contended that as per the office order No.3/89, the Executor/Administrator has to submit a letter that he has no beneficial interest in the bequeathed property. He further submits that the stipulation is a meaningless stipulation as the Will itself, of which probate has been granted, would show that the Executor had no beneficial interest in the bequeathed property. As far as the possession is concerned since the executor had no interest in the property, the stipulation is of no consequence. Additionally, he submits that as per office order No.5/2009, Deputy Land and Development Officer has taken note of the fact that once the probate has been granted, copy of the Will certified under the seal of a competent Court with a grant of administration of the estate to the Executors is conclusive evidence of validity of the Will until it is revoked. It is also stated that the grant of probate decides the genuineness of the Will and the Executors right to represent the estate. The office order also prescribed that once a person comes forward with a probate duly granted by a competent Court, there is no requirement of an NOC from other family members or legal heirs and death certificate etc.

7. Having regard to the office order No.5/2009 dated 29.05.2009, we are of the view that it is not necessary for the Executor to provide the letter as per office order No.3/89, subject to the applicant providing the certified copy of the Will and the probate.

8. We may also note that L&DO has not received any objection from the executor that the property should not be mutated in favour of the appellant

herein. It would however be open for the L&DO to safeguard its interest by calling upon the appellant to furnish a surety/indemnity bond.

9. The appeal is disposed of accordingly.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 7, 2018

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