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

+ FAO(OS)No.7/2018 and CM No.1592/2018

% Date of decision : 18th January, 2018

MANJULA SODHI & ORS Appellants
Through : Mr. Pavan Duggal, Adv.

versus

STATE OF NCT OF DELHI & ORS Respondents
Through : None.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. By way of the instant appeal, the appellants assail the order dated 29th November, 2017 passed by the Id. Single Judge in IA No. 5552/2017 (*under Order VII Rule 14 of the CPC*) in Testamentary Case No.22/2009, whereby the original Will dated 7th June, 1991, filed by the respondent no.2, has been permitted to be taken on record.
2. We have heard Mr. Pavan Duggal, Id. counsel for the appellants, who appears for the appellants herein (*respondent nos.2 to 4 in the probate case.*)
3. It appears that Ms. Nalini Lal (*respondent no.2 herein*) had filed

a petition seeking grant of probate of the Will dated 7th June, 1991, claimed by her to have been executed by her mother Late Smt. Raj Sodhi.

4. So far as the relationship of the parties is concerned, Smt. Nalini Lal and Late Shri V.K. Sodhi (*husband of Smt. Manjula Sodhi – appellant no.1 and father of Keshav Sodhi – appellant no.2 and Arjun Sodhi - appellant no.3*) were siblings and children of the testator Late Smt Raj Sodhi. This probate petition was filed in the year 2009 which was registered as Testamentary Case No.22/2009.

5. It appears that the petition which was filed was not accompanied by the original Will and only a true typed copy thereof was filed on record. It was at the stage of recording of evidence, that the respondent no.2 sought to file I.A.No.5552/2017 under Order VII Rule 14 to bring the original of the Will dated 7th June, 1991 on record. This application was staunchly contested by the appellants herein.

6. It is to be noted that at this stage, the appellants also filed I.A.No.5942/2017 (*under Sections 63, 68 and 272 of the Indian Succession Act, 1925*) praying that the probate petition be dismissed for the reason that the original of the Will had not been filed along with the main petition in accordance with Section 276 of the Indian Succession Act.

7. Both these applications were considered by the Id. Single Judge and disposed of by the order dated 29th of November 2017 whereby the prayer made in I.A.No.5552/2017 stands rejected. This order has been assailed by way of the present appeal.

8. In the order, the ld. Single Judge has accepted the appellants' contention that an objection with regard to the non-filing of the original Will stood taken as part of the preliminary objections to the probate petition in their reply which was filed by the appellants in the year 2009. However, it was noted that this objection had not been pressed till after the respondent no.2 had sought leave to bring the same on record by way of I.A.No.5552/2017. It stands recorded that I.A.No.5942/2017 for rejection of the petition was filed only thereafter.

9. Before us, Mr. Pavan Duggal, ld. counsel for the appellants has assailed the finding of the ld. Single Judge to the effect that Order VII Rule 14 CPC would apply to the proceedings under the Indian Succession Act. In support of this contention, it has been primarily urged that the Indian Succession Act is a special Act and would therefore, prevail the provisions of the Code of Civil Procedure, general enactment. Unfortunately, this does not answer the question which has been raised. Ld. counsel for the appellants objects to the applicability of the procedure prescribed under the Code of Civil Procedure to proceedings under the Indian Succession Act. The same is not supported by the case law which has been placed before us.

10. Reliance has been placed by ld. counsel for the appellants on paras 7 and 21 of the pronouncement of the Supreme Court reported at ***AIR 2003 SC 1928, Subal Paul v. Malina Paul & Anr.*** It cannot be disputed that the Indian Succession Act is a special enactment Act. Clearly where remedy of an appeal is specifically provided under the statutory scheme, it would override the provisions of the general

enactment i.e. the Code of Civil Procedure, so far as availability of the remedy of an appeal is concerned. However, in the present case, we are not concerned with the substantive right of an appeal to a court with regard to the orders passed under the Indian Succession Act. This judgement would have no bearing on the question which is required to be considered by us.

11. So far as the other judgment of the Supreme Court reported at ***AIR 2005 SC 514, Iridium India Telecom Ltd. v. Motorola Inc.***, relied upon by ld. counsel for the appellants is concerned, the same also has no application to the fact situation and the issue under consideration before us.

12. The last judicial precedent reported at ***1986 Rajdhani Law Reporter 2013, H.P.S. Chawla v. State*** has been placed before us by Mr. Pavan Duggal, ld. counsel for the appellants. This judgment also does not deal with the issue raised before us. It has considered the impact of non-filing of an original Will along with the petition under Section 276 of the Indian Succession Act. It cannot be denied that the requirement of compliance with the statutory provisions is *peremptory* and has to be so complied with. However, so far as non-compliance thereof and an effort to rectify the same is concerned, we find that even in this judicial pronouncement, in para 18, the court had entertained an application for placing on record the original Will, at a stage after the filing of the petition. This prayer was not entertained for the reason that the petitioner had failed to file the signed copy/copies of the annexures without which the Will was not complete. For this reason, this judgment also has no application to the

present case.

13. Mr. Pavan Duggal, Id. counsel for the appellants has also drawn our attention to I.A.No.5457/2017 which was filed by the respondent no.2 under Order XVI Rule 1(2) of the Code of Civil Procedure. By this application, the respondent no.2 had sought issuance of summons to the Record Keeper/concerned officer from the office of the Special Registrar, Asaf Ali Road, Delhi-110001 with the concerned record i.e., Book No.2651 Document No.607, Page No.156-157 dated 07.06.1991 for proving the Will dated 07.06.1991.

14. This application therefore, clearly manifests that the respondent no.2 is not relying on a self-serving document couched as a Will but is claiming that the Will actually stands registered with the office of the Sub-Registrar.

15. We also find that the Id. Single Judge has noted that the petition filed by the petitioner/respondent no.2 did not deserve to be dismissed for the reason that the same had been pending for eight years and that even though the appellants before us in their reply took an objection with regard to the non-filing of the Will in the petition but had themselves opted to file the application for such relief only in the year 2017, that too after the petitioner/respondent no.2 had applied under Order VII Rule 14 of the Code of Civil Procedure.

16. So far as the delay in making the prayer for bringing on record of the original Will is concerned, the Id. Single Judge has amply compensated the appellants by imposition of adequate costs quantified at ₹20,000/-.

17. We find no legally tenable ground to interfere with the

impugned order dated 29th November, 2017 passed by the ld. Single Judge is made out.

18. This appeal is therefore, dismissed. The pending application does not survive for adjudication and also stands dismissed. There shall be no order as to costs.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 18, 2018

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