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

Date of Decision:- 03.04.2019

+ **FAO(OS) 62/2019**

PRAVEEN KAPILA

..... Appellant

Through Mr.Jagjit Singh, Adv.

versus

NAVIN SOI & ANR

..... Respondent

Through Ms.Sonia A.Menon, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J(ORAL)

CAV.346/2019

Counsel for the respondents/caveators enters appearance.

The caveats stand discharged.

C.M. No.15533/2019

Exemption allowed, subject to all just exceptions.

C.M. No.15534/2019

By this application, the applicant seeks condonation of three days delay in filing the present appeal. Counsel for the respondents fairly does not oppose the application.

For the reasons stated in the application, the same is allowed and the delay of three days in filing the appeal is condoned.

The application stands disposed of.

FAO(OS) 62/2019 & C.M. No.15532/2019

1. The appellant has preferred the present appeal to assail the judgment dated 14.02.2019 passed by the learned Single Judge in Test Case No.12/2013. The said Testamentary Case had been preferred u/s 276 of the Indian Succession Act, 1925 for grant of probate of Will dated 11.03.2010 executed by late Ms.Pushpa Kumari Soi. The said Testamentary Case had been instituted by the respondent no.1.

2. The appellant herein preferred his objections in the said proceedings on the premise that after execution of the Will set up by the respondent, the testator late Ms.Pushpa Kumari Soi had executed a registered partition deed dated 12.09.2011, wherein she had relinquished her right in the property - which is the subject matter of the Will, in favour of the appellant/objector. The submission of appellant was that since the said estate did not exist on the demise of the testator, probate could not be granted in respect of Will in question.

3. The submission of the learned counsel for the appellant is that Section 2(f) defines “probate” to mean a copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator. The submission is that in probate proceedings, the Court should examine as to what constitutes the estate of the testator, and if an issue arises with respect to the title of a particular property claimed to be in the estate of the testator, then probate should not be granted in respect of the Will, till the title of such property is determined by the competent Court.

4. This submission of the petitioner has been rejected by the learned Single Judge in the following manner:-

*“12. It is settled law that title disputes cannot be gone into in probate Proceedings. In **Kanwarjit Singh Dhillon Vs, Hardyal Singh Dhillon &Ors.**, AIR 2008 SC 306, the Apex Court has held as under:-*

"10.:. ...It was, therefore, not competent for the Probate Court to determine whether late S. Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his will. The Probate Court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the will were joint ancestral properties or acquired properties of the testator.” (emphasis supplied)

*13. The judgment of the Apex Court in **H. Venkatachala Iyengar** (supra) referred to by learned counsel for respondent no.2 does not state that a probate Court is competent to determine the question of title of the suit properties. Accordingly, the said judgment offers no assistance to learned counsel for respondent no.2. Consequently, the legality, validity and the effect, if any, of the partition deed dated 12th September, 2011 cannot be adjudicated upon in the present proceedings.*

14. Accordingly, the issue of ownership of the property no. Y-34, Hauz Khas, New Delhi 110016 by the testatrix is left open to be adjudicated upon in appropriate legal proceedings, if so initiated by either party. The rights and contentions of all parties are with regard to title of the deceased testatrix in property no. Y-34, Hauz Khas, New Delhi 110016 are left open.”

5. At the outset, we may observe that the learned counsel for the respondent/caveator has pointed out that the appellant has already instituted a separate suit founded upon the registered partition deed date 12.09.2011 to stake his claim in respect of the property in question. Counsel for the respondents further points out that the subject matter of the Will is not only the property in respect whereof the appellant claims exclusive right on the basis of the partition deed dated 12.09.2011, but there are other properties also which form the subject matter of the Will and the estate of the testator.

6. We do not find any merit in the submission of the learned counsel for the appellant. The scope of the probate proceedings is limited to examining the Will that the petitioner may set up as the last and final Will of the testator. The grant of probate, or letters of administration, does not have the effect of recognising or declaring the title of the testator in respect of the estate bequeathed and, consequently, of the legatee if there are competing claims in respect of the said estate.

7. The learned Single Judge while rejecting the aforesaid objections of the appellant has taken note of the decision in ***Kanwarjit Singh Dhillon*** (*supra*), wherein the Supreme Court has held that it is not competent for the Probate Court to determine whether the testator had, or had not, the authority to dispose of the suit properties, which he purported to have bequeathed by his will. The Probate Court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties

bequeathed by the will were joint ancestral properties or acquired properties of the testator.

8. The aforesaid being the position, the learned Single Judge has left it open to the parties to agitate their rights in respect of the property which forms the subject matter of the Will, in appropriate proceedings which, as noticed above, have already been instituted.

9. We do not find any merit in this appeal and the same is dismissed alongwith the pending application.



(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 03, 2019

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