

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

% **Date of decision: 26th September, 2019**

+ **TEST.CAS. 69/2019 & IA No.13486/2019 (u/O VI R-17 CPC)**
ANIL SOMANI **Petitioner**

Through: Mr. Sanjiv Bahl, Ms. Apoorva
Bahl and Mr. Pawan Agarwal,
Advs.

Versus

STATE & ANR. **Respondents**

Through: None.

AND

+ **TEST.CAS. 70/2019 & IA No.13487/2019 (u/O VI R-17 CPC)**
ANSHUL SOMANI & ANR. **Petitioners**

Through: Mr. Sanjiv Bahl, Ms. Apoorva
Bahl and Mr. Pawan Agarwal,
Adv.

Versus

STATE & ORS. **Respondents**

Through: None.

AND

+ **TEST.CAS. 71/2019 & IA No.13485/2019 (u/O VI R-17 CPC)**
ANIL SOMANI & ORS. **Petitioners**

Through: Mr. Sanjiv Bahl, Ms. Apoorva
Bahl and Mr. Pawan Agarwal,
Adv.

Versus

STATE & ANR. **Respondents**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This order is in continuation of the following common order
passed in these matters on 19th September, 2019:

3. All these three petitions seek Letters of Administration on the basis of documents claimed to be the validly executed last Will of the testator/testatrix subject matter of each case.
4. The petitioner/s in none of the cases have produced the alleged original Will or the Death Certificate, as is the requirement in such proceedings.
5. Moreover with respect to the testatrix subject matter of Test. Cas. No.69/2019, it has not been pleaded how she acquired the property bequeathed under the Will and none of the heirs of the testatrix, under Section 15(2) of the Hindu Succession Act, 1956 in the event of intestacy, have been impleaded.
6. As far as Test. Cas. No.70/2019 is concerned, Letters of Administration on the basis of Will dated 14th December, 1985 of Smt. Leelawati Somani is sought; however the said Smt. Leelawati Somani under the said document dated 14th December, 1985 bequeathed her estate in favour of Shri Siri Kishan Somani who is also pleaded to have since died and left a Will dated 9th October, 2015 in favour of the petitioners in Test. Cas. No.70/2019.
7. I have enquired from the counsel for the petitioner/s, how Letters of Administration on the basis of Will dated 14th December, 1985 of Shri Siri Kishan Somani can be granted to the petitioners as the petitioners are not the beneficiaries under the said Will and no relief with respect to the Will dated 9th October, 2015 alleged of Shri Siri Kishan Somani in favour of the petitioners has been claimed, neither in Test. Cas. No.70/2019 nor in any other petition.

8. *The counsel for the petitioner/s states that proof of Will dated 9th October, 2015 of Shri Siri Kishan Somani is not required because in a partition suit pending between the parties the said Will has not been disputed.*

9. *However that does not answer the legal query as to how Letters of Administration on the basis of a Will can be granted to a person other than the beneficiary. Moreover there is no explanation pleaded as is now sought to be given.*

10. *I have further enquired from the counsel for the petitioner/s that if a partition suit is already pending between the parties, then the Wills with respect to which these petitions have been filed must have been pleaded therein and an issue must have been framed with respect to validity thereof and the need for these petitions.*

11. *The counsel for the petitioner/s states that these petitions have been filed by way of abundant caution because a limitation is provided for filing a Test. Cas.*

12. *However as far as Delhi is concerned, to claim a right under a document claimed to be the Will, it is not necessary to seek probate/Letters of Administration thereof/in respect thereto. Reference in this regard may be made to **Bharat Bhushan Sabharwal Vs. Ram Bhasin** 2010 SCC OnLine Del 653 [SLP(C) No.11990/2010 whereagainst was dismissed on 10th September, 2010], **Sardar Khushwant Singh Vs. Kirpal Singh** 2010 SCC OnLine Del 86, **Capt. (Retd.) O.P. Sharma Vs. Kamla Sharma** (2009) 158 DLT 631 (DB), **Rajan Suri Vs. The State** 2005 SCC OnLine Del 1290, **Sardar Prithipal Singh Sabharwal Vs. Maj. (Retd.) Jagjit Singh Sabharwal** 1996 SCC OnLine Del 334 and **Behari Lal***

Ram Charan Vs. Karam Chand Sahni 1996 SCC OnLine P&H 226 (DB).

13. The counsel for the petitioner/s states that there are some judgments to the effect that when the Will is disputed, a probate is essential.

14. As far as I know, it is so required when the proof of the Will is not subject matter of any pending litigation; when the Will is subject matter of a pending litigation, then ordinarily there is no need for simultaneously filing a Test. Cas. with respect thereto and which only leads to multiplicity of proceedings and delay.

15. The counsel for the petitioner/s has been cautioned that if the petitioner/s want to pursue these petitions, the proceedings in the partition suit stated to be pending before this Court will have to be stayed and/or the two proceedings will have to be clubbed and with the resultant delay in disposal of the partition suit also. Unless the petitioner/s are desirous of delaying the partition suit no purpose is seen in filing these petitions.

16. The counsel for the petitioner/s seeks adjournment to show case law.

17. List on 26th September, 2019.”

2. The counsel for the petitioner/s has filed (i) IA No.13486/2019 in Test.Cas. No.69/2019 to amend the petition to plead the source of the property bequeathed under the document claimed to be the validly executed last Will of the deceased testatrix therein; (ii) IA No.13487/2019 in Test.Cas. No.70/2019, also for amendment, to plead the properties bequeathed by the testatrix Leelawati Somani

under the document claimed to be her validly executed last Will to be her self-acquired properties; and, (iii) IA No.13485/2019 in Test.Cas. No.71/2019, also for amendment of the petition to amend the Schedule of properties annexed to the petition.

3. The counsel for the petitioner/s also states that in all the applications aforesaid, the petitions are also sought to be amended to plead that the original documents claimed to be the Will in each of these petitions have been filed in the partition suit.

4. The counsel for the petitioner/s, in support of the contention contained in paragraph 13 of the order dated 19th September, 2019 aforesaid, has relied on:

(A) ***Chiranjilal Shrilal Goenka Vs. Jasjit Singh*** (1993) 2 SCC 507. It is argued that the matter reached the Supreme Court from a judgment of this Court referring to arbitration, the suit one of the disputes wherein was as to validity of a document claimed to be the Will, as well as a Probate Case seeking probate of the said document as Will. It is contended that the Supreme Court held the jurisdiction to grant probate to be exclusively of the Probate Court and not arbitrable; and,

(B) ***Gurmeet Singh Chopra Vs. Taruna Chopra*** MANU/DE/0845/2010. The said judgment is in a petition under Article 227 of the Constitution of India with respect to refusal of the Trial Court to permit additional evidence to be led in a suit with respect to the document claimed to be the Will.

Relying on *Binapani Kar Chowdhury Vs. Sri Satyabrata Basu* AIR 2006 SC 2263, it was observed that the jurisdiction to adjudicate the genuineness and validity of the Will is exclusively of the Probate Court and the Civil Court does not have jurisdiction to adjudicate about the genuineness of the Will.

5. I have enquired from the counsel for the petitioner/s, whether the property subject matter of *Chiranjilal Shrilal Goenka* supra was situated in Bombay, inasmuch as the probate case subject matter thereof was pending in the Bombay Court.

6. The counsel for the petitioner/s states that it is not very clear from a reading of the judgment.

7. Attention of the counsel for the petitioner/s is invited to the consistent view of the Supreme Court in *Clarance Pais Vs. Union of India* (2001) 4 SCC 325, *Kanta Yadav Vs. Om Prakash Yadav* MANU/SC/0971/2019 and this Court, in addition to the cases cited in order dated 19th September, 2019 also in *Rajan Suri Vs. State* AIR 2006 Del 148, *Banwari Lal Charitable Trust Vs. UOI* 2009 SCC OnLine Del 2981, *Anand Prakash Vs. Ram Kala* ILR (2010) III Del 404 and *Baleshwar Dayal Sharma Vs. Bimla Gupta* 2018 SCC OnLine Del 13326 held that while right as a legatee/beneficiary under a document claimed to be a Will cannot be claimed in Bombay, Calcutta and Madras, without seeking probate thereof, it is not so in Delhi, where to claim right as a beneficiary under a document claimed

to be the Will, it is not essential to have the same probated or to institute a Test.Cas. with respect thereto.

8. Even otherwise, all that ***Chiranjilal Shrilal Goenka*** supra held is that it is not competent for the Arbitrator to grant probate and the said judgment is not a judgment on the proposition that wherever in a suit, a document claimed to be the Will is propounded or put up to defend a claim, a Test.Cas. is required to be filed to prove the said Will and which will result in leading to either dismissal of the proceeding in which the document was propounded or to stay thereof.

9. I have also enquired from the counsel for the petitioner/s, whether ***Binapani Kar Chowdhury*** supra relied upon in judgment ***Gurmeet Singh Chopra*** supra of this Court emanated from Calcutta, inasmuch as if so, the position with respect to Calcutta is also different as aforesaid, from that with respect to Delhi.

10. The counsel for the petitioner/s states that he has not verified the same.

11. Else, ***Gurmeet Singh Chopra*** supra also refers to ***Chiranjilal Shrilal Goenka*** supra and which has been distinguished hereinabove.

12. Else, the position of law is clear. Reference in this regard may be made to ***Dinesh Chand Vs. State*** MANU/DE/7106/2007, ***Chetan Dayal Vs. Aruna Malhotra*** MANU/DE/3893/2012, ***Manmohan Vs. Baldev Raj*** MANU/DE/4137/2017, ***Mukesh Sharma Vs. Maheshwar Nath Sharma*** 2017 (162) DRJ 216 and ***Sardar Khushwant Singh*** supra holding that validity of a document claimed to be a Will can also

be adjudicated in a civil suit (may be not a suit for injunction simplicitor), particularly a partition suit.

13. The counsel for the petitioner/s in support of his contention as recorded in paragraph 11 of the order dated 19th September, 2019 has also referred to ***Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur*** AIR 2008 SC 2058.

14. However, in order dated 19th September, 2019, it has already been held that if the question of validity of a document claimed to be a Will has already arisen and in issue in a civil suit, particularly a partition suit, the need for seeking Probate/Letters of Administration on the basis of the said document would not arise and thus the question of limitation is not attracted.

15. The counsel for the petitioner/s, on enquiry, with respect to the query contained in paragraph 7 of the order dated 19th September, 2019 aforesaid has referred to Section 233 of the Indian Succession Act, 1925 but which is with respect to a residuary legatee. I have thus enquired, as to how the petitioners in Test.Cas. No.70/2019 qualify as a residuary legatee.

16. The counsel for the petitioner/s refers to ***In Re: Narendra Nath Mitra*** MANU/WB/0032/2012 to contend that the residuary legatee in Section 233 of the Indian Succession Act has been equated with a universal legatee and the petitioners in Test.Cas. No.70/2019 qualify as a universal legatee.

17. However, in view of the petitions being not found to be maintainable for other reasons stated in the order dated 19th September, 2019 and order above, need to return a finding on this aspect is not felt.

18. The petitions are thus disposed of as not maintainable with liberty to the petitioner/s to prove the document claimed to be the Will subject matter of these petitions in the partition suit being CS(OS) No.2952/2015 stated to be pending in this Court.

No costs.

SEPTEMBER 26, 2019
‘bs’..

RAJIV SAHAI ENDLAW, J.