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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (OS) 2580/2014**

SUREKHA SAXENA Plaintiff

Through: None.

versus

PRABHAT PRADHAN & ORS Defendants

Through: Mr. Raghav Saroop and Ms. Inderjeet
Saroop, Advocates for D-2.
(M:9818864767)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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23.01.2019

1. None appears on behalf of the Plaintiff. The matter was passed over in the morning and none appears even on the second call.
2. The present suit seeks partition of property bearing No.Y-5, Green Park, New Delhi-110016 measuring 200 sq. yards owned by late Shri Shanti Swaroop Pradhan. The plaint proceeds on the basis that Shri Shanti Swaroop Pradhan died intestate on 18th January, 1999.
3. It has been brought to the notice of this Court that a probate petition was pending in respect of a Will dated 14th September, 1987 executed by Shri Shanti Swaroop Pradhan in favour of his wife, Smt. Bimla Pradhan. The said probate petition has now been decided vide order dated 14th December, 2018 by which the Court has granted probate in the following terms: -

“57. In view of the above discussion, since the petitioner is the named executor of the Will dated 14.09.1987, she is

held entitled for Probate of the said Will.

58. Letter of Probate with copy of the Will i.e. Ex. PW1/R2 will be issued to the petitioner on the prescribed form VI but it would be subject to – (i) filing of appropriate stamp/Court fee; ii) furnishing of Administration Bond and Surety Bond by the petitioner, both of which can be filed within a period of one and half month from today; (iii) petitioner will furnish full and true inventory of the said property and credits, and exhibit the same in the Court within six months from the date of grant of Certificate on prescribed Form No. 178 and; (iv) to render true account of said property and credits within one year on prescribed Form No. 179.

59. Further, it is made clear that allowing of the petition for grant of Probate would not tantamount to be any declaration of the title of the deceased to the estate/s mentioned in the Will.

60. The petition was accompanied with the copy of the Will Mark-A and copy of the Will which was exhibited as EX.PW1/R2, both of which shall remain a part of the judicial file, in terms of Section 294 of the Indian Succession Act, 1925 and will not be returned to the petitioner.”

4. Since the Will dated 14th September, 1987 of late Shri Shanti Swaroop Pradhan has been accepted by the Court and a probate has been granted in favour of one of the legal heirs i.e. his wife, the present suit for partition is no longer maintainable as it is based on the premise that late Shri Shanti Swaroop Pradhan had died intestate.

5. A copy of the judgment dated 14th December, 2018 has already been placed on record.

6. The suit is, accordingly, dismissed.

PRATHIBA M. SINGH, J.

JANUARY 23, 2019

Rekha