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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th August, 2019

+ **FAO 452/2017 & CM No. 41599/2017**

DR VIRENDRA KUMAR MATHUR Appellant
Through: Mr. Aly Mirza and Mr. Rishabh
Pant, Advocates

versus

STATE & ORS Respondents
Through: Mr. Abhishek Narang, Advocate
for R-7

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had approached the court of District & Sessions Judge with petition (registered as probate case no.14/2015 – later 78/2016) praying for grant of letters of administration in respect of the estate of late Dr. (Mrs.) Usha Mathur, wife of Late Sh. Satish Saxena, daughter of late Mr. Shiam Narain Mathur, the estate particularly including a residential property described as flat bearing no.K-103, Shree Ganesh Apartments, 93, Patparganj, Delhi.

2. Besides the first respondent / State, the other possible claimants / legal heirs of the deceased Mrs. Usha Mathur were shown in the fray as second to seventh respondents. It is stated that the petitioner (now the appellant) is one of the four brothers of late Mrs. Usha Mathur.

Two of the other brothers were shown in the array as second and third respondents, the fourth brother Madhujai Vachaspati having pre-deceased her. It is also stated that besides these, Mrs. Usha Mathur had one more sibling, a sister, who also had pre-deceased her, her children having been impleaded as fourth to sixth respondents. Besides this, the seventh respondent Sangita Lall, daughter of the third respondent was also impleaded for reasons which would be clear from the narration hereinafter, she indisputably not being in the normal line of succession.

3. The petitioner / appellant had pleaded that late Mrs. Usha Mathur had died intestate, she having left behind no other relatives as successors.

4. The petition for grant of letters of administration was contested by the third and seventh respondents (i.e. one of the brothers of the deceased and the daughter of the said brother respectively) by a joint objection petition seeking rejection of the petition on the grounds that there had been concealment of material facts, false averments having been made. In this context, reference was made by the objectors (i.e. third and seventh respondents) to a letter dated 15.05.2015 addressed by the appellant (petitioner before the trial court) to the Registrar of Cooperative Societies, and a legal notice dated 30.06.2015 also addressed to the Registrar of Cooperative Societies with copies endorsed to the third and seventh respondents, sent for and on behalf of the petitioner. It was submitted that the averment in the petition that no other application / proceeding was pending elsewhere was

false in view of the said two documents. In addition, it was pointed out that the averments in the petition did not make any reference to the fourth brother i.e. Madhujai. Vachaspati, his widow (Mrs. Sheel Patel Vachaspati) not having been included in the fray.

5. The additional district judge accepted the objection on the first score and dismissed the petition for grant of letters of administration holding the appellant guilty of concealment of material facts. Noticeably, no opinion was expressed with regard to the defect of non-joinder of the widow of the fourth brother as a party.

6. Feeling aggrieved, the order dated 24.08.2017 dismissing the objection for grant of letters of administration has been challenged by the appeal at hand.

7. While this appeal has been pending, the third respondent passed away. On the application made by the appellant, his legal heirs i.e. his widow were substituted in his place, the seventh respondent being already in the fray.

8. The seventh respondent had earlier joined the third respondent in putting up a contest. After the substitution, in the wake of his death, the seventh respondent has come up with a reply without joining her mother i.e. the widow of the deceased third respondent. The said reply, it appears, was presented in the registry but returned with some objections. The learned counsel for the seventh respondent has placed before the court the said reply, which is taken on record.

9. In the reply, objection is taken to the maintainability of the appeal at hand, reference being made in this context to Section 96 read with Section 2(2)(b) CPC. The objection is wholly devoid of merit in as much as this appeal can be maintained under Section 299 of the Indian Succession Act of 1925 read with Section 104 of the Code of Civil Procedure, 1908 (CPC).

10. Having heard the submissions on both sides, this court finds the impugned order to be unjust and unfair deserving to be vacated. The reasons may be set out hereinafter.

11. A perusal of the letter dated 15.05.2015, and legal notice dated 30.06.2015, which have been referred to in the objections of the third and seventh respondents leading to the impugned order being passed, would show that after the death of Mrs. Usha Mathur, the members of the family had reasons to suspect that certain documents may be lying in the subject premises which may include documents in the nature of her last Will and testament, they (the members of the family) having resolved and intended to visit the premises to find the facts first hand. At the time of their visit, it was noted that the premises had been put under lock and seal, possibly of the Registrar of Cooperative Societies. It appears that the seventh respondent had approached the said authority staking some claim in the property in question. It is not clear though, even from the pleadings (including objections) of the seventh respondent, or for that matter of the third respondent, as to what possibly could have been the basis of such claim staked by the seventh respondent in the said property.

12. Be that as it may, it is against the above backdrop that the appellant approached the court of District Judge with the petition for grant of letters of administration. To his credit, reference must be made to application which was also moved by him in the course of the said proceedings invoking the provision contained in order XXVI Rule 9 and Section 151 of CPC praying for appointment of a local commissioner so that the inventory of the goods and documents lying in the subject premises could be prepared and copies thereof made available in as much as the same would throw some light on the right to succeed in the estate of the deceased. In the said application for local inspection, a clear averment was made about the seventh respondent having moved some application (assumably before the Registrar Cooperative Societies) on the claim of she being “*nominee of the deceased*”. It is pertinent to add here that in the averments made so far there is not a whisper of any claim by the seventh respondent of she being the nominee of the deceased in respect of the said property.

13. The third or seventh respondents (objectors before the District Judge) have not disclosed in any manner the nature or status of proceedings, if any, having a bearing on the subject, pending before any forum or court till date. Merely because the Registrar Cooperative Societies may have acted on the request of the seventh respondent for putting the subject premises under his lock and key do not give rise to the pleading to the effect of some proceedings being pending, being questioned. As is submitted by the appellant, to his knowledge, there

is no objection, application or proceeding pending in any forum or court. Whether or not the plea of ignorance is true would be a subject matter of detailed inquiry. It could not have been assumed by the Additional District Judge that the pleadings were false only because there was some reference made to a claim made by the seventh respondent in some application to the Registrar Cooperative Societies of she being the nominee, it having led to sealing of the premises by that authority.

14. For the foregoing reasons, the order dated 24.08.2017 of the Additional District Judge dismissing the petition for grant of letters of administration is set aside. In the result, proceedings in the probate case (78/2016) stand revived on the file of the Additional District Judge, who is directed to proceed further, in accordance with law. For clarity, it may be added that objection to the exclusion of the widow of the fourth brother from the array is kept open.

15. The parties are directed to appear before the Additional District Judge on 16.10.2019.

16. The appeal and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 28, 2019

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