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

+ **FAO(OS) 326/2017**

DARSHAN SINGH BILKHU (@MILKHU) Appellant
Through Mr. Satish Tamta, Sr. Advocate with
Mr. Vikramaditya Bhaskar,
Advocates

versus

STATE & ORS Respondents
Through Mr. Pradeep Dewan, Sr. Advocate
with Mr. Rajiv Samaiyar, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **05.11.2019**

CM Appl.No. 47353/2017 (delay)

1. For the reasons stated in the application, the delay of 36 days in filing the appeal is condoned and the application is disposed of.

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2. The present appeal is directed against an order dated 13th September, 2017 passed by the learned Single Judge dismissing the Testamentary Case No. 28/1991 filed by the present Appellant under Sections 276 and 300 of the Indian Succession Act for grant of probate of a purported Will dated 29th May, 1990 of his later father Pargan Singh Milkhu who expired on 31st May, 1990 at 131, Harrowdene Road, Wembley, England.

3. Under the Will, the properties bequeathed consisted of a house in Karol Bagh, a house in Village Nangal Khurd in Punjab and movable properties of two cars, jewellery in a Safe Deposit of the Punjab National Bank, two watches and money in various bank accounts.

4. The Respondents Nos. 2 to 12 resisted the Probate Petition by contending that the Appellant was not the son of late Mr. Milkhu; that the Petitioner's real name was Dersen Singh, who was a fictitious person and therefore not entitled to grant of probate. It was denied that late Mr. Milkhu had executed any such Will dated 29th May, 1990 and that such document was forged and fabricated. According to them, Mr. Milkhu had left behind a Will in 1971 while he was in Uganda. The properties mentioned in the alleged Will dated 29th May, 1990 were stated to be joint family properties which could not have been bequeathed by Mr. Milkhu.

5. On the basis of the pleadings the following issues were framed by the learned Single Judge by an order dated 24th October, 2005:

“1) Whether the petitioner is Darshan Singh Bilkhu (Milkhu) being the person who is named in the will dated 29.05.1990?OPP

2) Whether the petitioner is the son of Late Shri Pargan Singh Milkhu being the beneficiary of the will dated 29.05.1990?OPP

3) Whether Late Shri Pargan Singh Milkhu had executed a legal and valid will dated 29.05.1990? OPP

4) Whether Late Shri Pargan Singh Milkhu was not of a sound disposable mind at the stage of execution of the will? OPD

5) Relief.”

6. The learned Single Judge took up issues 3 and 4 together and rightly noted that the burden of proving the Will dated 29th May, 1990 lay on the Appellant. It was noted by the learned Single Judge that the Will was an unregistered document which had cuttings and bore the signature of one Renu Khanna. The Will was not proved by producing either of the attesting witnesses. No plausible explanation was put forth by the Appellant for this. The signatures of the witnesses were also not proved by examining anyone. Further, it transpired that at the relevant time the Appellant was residing in Canada, whereas the testator, being a UK citizen, was in England. The person through whom the Appellant is supposed to have learnt of the Will, as also the person from whom the Appellant received the Will, were not examined. There was a mismatch in the date of the verification which was 18th April, 1991 and the date of the Will which was 29th May, 1991. This mismatch was also not explained. No evidence was led to show that there Mr. Milkhu was in a sound state of mind at the time of execution of the Will.

7. For all of the aforementioned reasons both issues 3 and 4 were decided against the Appellant. Issues No.1 and 2 were not pressed by the Respondents No.2 to 12. It was noted by the learned Single Judge that no credible evidence had come on record that the deceased was not the Appellant's father.

8. Having heard learned counsel for the Appellant at some length, this Court is unable to take a different view in the matter. There was ample opportunity for the Appellant to have the attesting witnesses examined and to explain the

discrepancy in the dates appearing in the alleged Will. It is seen that the Appellant was not even able to examine the persons through whom he learnt of the Will and thereafter purportedly obtained a copy thereof. There were too many questions which arose from the perusal of the Will which remained unanswered.

9. The Court is therefore satisfied that no error has been committed by the learned Single Judge in dismissing the Testamentary Case No. 28/1991.

10. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 05, 2019

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