

\$~6

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

% *Date of Judgement: 30th January, 2019*

+ RFA(OS).90/2018

MONIKA HURT

..... Appellant

Through Mr. S. Mukerjee, Mr. R.K. Joshi and
Mr. Saurabh Joshi, Advocates

versus

SMITA ARORA & ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 22.11.2018 passed by a learned Single Judge of this Court by which a suit filed by the plaintiff/appellant herein has been dismissed on the ground that there is no cause of action in favour of the plaintiff to seek a negative declaration with respect to the Will.
2. In this case, the appellant/plaintiff had filed a suit seeking declaration that the Will dated 23.02.1990 executed by Late Sh. R.P. Arora in favour of his daughters Late Ms. Raksha Arora, Ms. Sneha Prabha and brother Kanwal Kishore Manchanda is null and void and is of no effect and also prayed other reliefs. The learned Single Judge has

observed in para 13 that for the present, there is no cause of action in favour of the plaintiff/appellant herein. Paras 11 to 13 reads as under:

“11. Merely because the officials of the DDA in their minutes have observed so, does not make the suit if otherwise not properly constituted, maintainable.

12. A document as a Will, is to be challenged as and when propounded. The case of the plaintiff in fact is that the testator of the Will was not entitled to execute the Will with respect to the properties aforesaid since he was not the exclusive owner thereof and the predecessor of the plaintiff, along with the testator, was the owner of one of the properties mentioned in the Will. With respect to the other property, it is stated that the predecessor of the plaintiff, along with somebody else, was the owner thereof and the testator had no rights with respect to that property.

13. As of today, the defendant no.1, according to the plaintiff, save for earlier having obtained mutation, is not claiming any rights adversely to the plaintiff on the basis of the Will aforesaid. It is thus felt that there is no cause of action for the plaintiff to seek a negative declaration with respect to the Will. The plaintiff has not sought declaration of ownership. The suit is a device to get over the decree for partition, proceedings for setting aside whereof are pending and is thus not maintainable in law.”

3. We find no infirmity in the impugned order dated 22.11.2018 passed by the learned Single Judge of this Court as the learned Single Judge had observed that there was no cause of action based on the fact that the defendant no.1 is not claiming any rights adversely to the plaintiff on the basis of the Will. However, Mr. Mukerjee, learned counsel for the appellant/plaintiff submits that now a cause of action has arisen in

favour of the appellant and he would seek appropriate remedy as would be available to the plaintiff/appellant in accordance with law.

4. While the appeal is dismissed, in case a cause of action has arisen in favour of the appellant, the appellant is entitled to seek such remedies as may be available to her in accordance with law. Liberty, as prayed, is granted to the appellant to take such remedies as and if available in accordance with law.

5. The appeal stands disposed of in above terms.

CM.APPL 53255/2018(stay)

6. The application stands disposed of view of the order passed in the appeal.

G.S.SISTANI, J.

JYOTI SINGH, J.

JANUARY 30, 2019

pst