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

+ **CM (M) 1/2020 & CM APPLs. 8-11/2020**

BIMAL KAPOOR

..... Petitioner

Through: Mr. Mukesh M. Goel and Ms. Pooja Kashyap,
Advocates.
(M:9810910319)

versus

STATE & ORS.

..... Respondents

Through: Mr. B. S. Mathur, Advocate for R-1.
(M:9873724057)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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06.01.2020

1. The Petitioner/Plaintiff - Mr. Bimal Kapoor (*hereinafter*, “*Petitioner*”), filed a suit for Partition, in respect of the assets of his father - Late Mr. Om Prakash Kapoor. The Petitioner’s brother - Mr. Janak Raj Kapoor and his wife, Ms. Kuldeep Kapoor (*hereinafter*, “*Respondent Nos.2 & 3*”) have filed a Probate Petition bearing No. 92/2014 in respect of the Will of Late Mr. Om Prakash Kapoor dated 21st June, 2011.
2. The present petition arises out of the probate petition, which has now been listed for final hearing before the Trial Court. The petition impugns the order dated 4th December, 2019, which dismissed the Petitioner’s application seeking recall of three of Respondent Nos.2 & 3’s witnesses, on the ground that the Petitioner has gathered some subsequent information.
3. In brief, the case of the Petitioner is that the son of Mr. Janak Raj Kapoor informed the third brother - Mr. Vinod Kapoor, who lives in UK, about the execution of a Will by Mr. Janak Raj Kapoor on the same date as that of the father i.e., on 21st June, 2011. This fact is stated to have come to

the knowledge of the Petitioner only in June, 2019, when it is claimed that Mr. Siddharth Kapoor, son of Mr. Janak Raj Kapoor, sent a WhatsApp message to Mr. Vinod Kapoor. Thereafter, it is claimed that enquiries were made by the Petitioner, leading to the filing of the application under Order XVIII Rule 17A CPC seeking recall of the three witnesses for further questioning, which was rejected by the Trial Court.

4. The submission of Id. counsel for the Petitioner is that the fact that Mr. Janak Raj Kapoor executed a Will on the same date as his father would be a relevant circumstance in establishing the genuinity of the Will dated 21st June, 2011 by the father - Late Mr. Om Prakash Kapoor. On a query from the Court, Mr. Mathur, Id. counsel appearing for Mr. Janak Raj Kapoor, submits that his client does not deny the execution of the Will dated 21st June, 2011 and he also does not deny his presence before the Sub-Registrar on the said date.

5. Considering the overall facts and circumstances, and the fact that the Id. counsel for Mr. Janak Raj Kapoor has agreed to place before the Id. Trial Court a copy of the Will dated 21st June, 2011 executed by his client, it is directed that a copy of the said Will be placed by Respondent Nos.2 & 3 before the Id. Trial Court, within a period of one week. The Trial Court shall, thereafter, proceed to hear the probate petition finally, without recalling any of the witnesses and without permitting any further evidence in the matter. The Petitioner is permitted to make all legal submissions in respect of his objections to the grant of probate. The issues raised in the probate petition would be decided by the Trial Court without being influenced by the observations made in the impugned order dated 4th December, 2019.

6. The petition along with all pending application is disposed of in the above terms. Copy of the order be given *Dasti* under signature of the Court Master.

PRATHIBA M. SINGH, J.

JANUARY 06, 2020/dk