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

+ **CM (M) 169/2019 & CM APPL. 4654/2019 (stay)**

ANIL KAULA

..... Petitioner

Through: Mr. Kanwal Chaudhary, Mr. Mayur
Srivastava and Mr. Sidhant Gupta,
Advocates. (M:9810050567)

versus

RAJIV KAULA & ORS.

..... Respondents

Through: Mr. Anupam Srivastava and Dr.
Chandra Shekhar, Advocate for R-1.
(M:9650073888)
Mr. Ankur Mahindro, Mr. S.
Chaudhary and Mr. Ankush Satija,
Advs. for R-2 & 5. (M:9891051888)
Mr. Jagrup Singh Hazra, Advocate for
R-3 & 4. (M:9810548817)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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13.02.2020

1. The present petition challenges the impugned order dated 27th November, 2018 by which the application under Sections 45 & 73 of the Indian Evidence Act, 1872 filed by the Petitioner/Defendant No.1 (*hereinafter 'Defendant No.1'*) in the suit has been rejected.
2. A suit was filed by the Respondent No.1/Plaintiff - Mr. Rajiv Kaula (*hereinafter 'Plaintiff'*) in respect of the estate of his father, Late Mr. Prithvi Nath Kaula. During the pendency of the suit, the Defendant No.2 - Smt. Asha Kaula, who was the wife of Late Prithvi Nath Kaula, has passed away. Questions have arisen in respect of her Will dated 19th March, 2012 and the following additional issues were framed in the suit on 16th December, 2017.

*“1. Whether the Will dated 19.03.2012 propounded by the plaintiff is legal and valid Will? OPP
2. Whether the Will dated 19.03.2012 executed by the deceased/defendant No.2 is forged and fabricated? OPD-1.”*

3. The Plaintiff and the other legal heirs have also led their evidence, including the evidence of two attesting witnesses. They have also summoned the Sub-Registrar, Lucknow in order to prove the registration of the said Will and a doctor to prove the sound mind of Smt. Asha Kaula – Testator.

4. Since one of the issues in the suit is as to whether the Will is forged and fabricated, the Defendant No.1 moved an application seeking the relief that the said Will be sent to CFSL, Lodhi Road or FSL, Rohini in order to compare the signatures. The said application has been rejected by the Trial Court, which has come to the conclusion that the onus to prove that the Will is forged and fabricated, was upon the Defendant No.1 and at this stage there is no need to send the Will to the CFSL/FSL.

5. Ld. counsel for the Defendant No.1 submits that the Testator’s signatures are available on record through the Kishan Vikas Patra and Sale Deed dated 22nd March, 2006. Thus the CFSL/FSL, which are expert bodies, would be able to compare the signatures and arrive at a conclusion as to whether the signatures of the Testator are forged and fabricated or genuine. Such reference to the CFSL/FSL would also help the Court in adjudicating the suit, inasmuch as the mere fact that the attesting witnesses appeared in the witness box, would not mean that the signatures on the Will are not forged. Ld. counsel relies upon the judgment of the Supreme Court in ***H. Venkatachala Iyengar v. B. N. Thimmajamma & Ors, AIR 1959 SC 443.*** It is further submitted on behalf of the Defendant No.1 that recently, the

facilities of the CFSL/FSL have also been revamped, and accordingly, they now have the infrastructure and expertise to render an early opinion on the genuineness of the Will.

6. On the other hand, ld. counsel for the Plaintiff submits that the issues have already been cast, and the onus has also been clearly determined. The Plaintiff and other legal heirs have led their evidence in order to support the fact that the Will is valid and genuine. In his turn, the Defendant No.1 has to prove the forgery and fabrication of the Will, which cannot be done by merely sending the Will to the CFSL/FSL. Ld. counsel also relies upon the judgment of the Supreme Court in ***Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy (Dead) Thr. LRs. & Anr., [Civil Appeal Nos.7818-7819 of 2009, decided on 27th August, 2019]*** to submit that even if the CFSL/FSL gives a report as an expert body, the same would not take precedence over the evidence led by the parties. Ld. Counsel submits that a similar view has also been taken in ***Rajiv Oberoi v. State of NCT of Delhi & Anr., [Test Cas.57/2011, decided on 20th February, 2014]***. It is further submitted on behalf of the other legal heirs that the Trial Court judgement is a reasoned judgment and the same does not warrant any interference under Article 227 of the Constitution of India.

7. The Court has considered the two additional issues, as also the submissions of the parties and the impugned order. Clearly, with regard to the question of forgery and fabrication of the Will, the onus is upon the Defendant No.1 to prove that the Will is forged and fabricated. The manner in which a Will is to be proved and its genuineness is to be established is quite well settled, and does not require reiteration in any manner. The only question is as to whether at this stage, the Will is to be sent to the CFSL/FSL

for examination or not. The evidence of the Plaintiff and other legal heirs is almost reaching its conclusion and the onus to prove that the Will is forged and fabricated is on the Defendant No.1. The Defendant No.1 would have the liberty to lead expert evidence, and any other evidence if needed, in order to prove that the Will is forged and fabricated. Such expert/s, who may be deposed by the parties, would also have an opportunity to examine the will, which is on record, and any other documents. The expert would also be subjected to cross examination. The Court, after examining the evidence of both the parties, would, have to arrive at a conclusion as to whether the Will is forged and fabricated or genuine. It is up to the Court to decide as to whether at any stage in the matter, it requires an independent third party expert evidence. The said expert evidence cannot become a substitute to the evidence to be led by Defendant No.1, who has the burden to prove forgery and fabrication. Trial Court has clearly observed that the expert evidence need not be referred to '*at this stage*'. Accordingly, the impugned order dated 27th November, 2018 does not warrant any interference. After evidence is led by the parties and upon perusal and examination of the same, if the trial Court feels that there is a need to send the Will to the CFSL/FSL, the Court may take a view at that stage. The Defendant No.1 is permitted, in accordance with law, to lead expert evidence to discharge its onus. The Defendant No.1 to file a list of witnesses before the Trial Court within a period of two weeks from today.

8. The petition along with the pending applications is disposed of in the above terms.

PRATHIBA M. SINGH, J.

FEBRUARY 13, 2020/dk