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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 86/2020 and CM APPLs. 3043-44/2020**

SIMARDEEP KAUR

..... Petitioner

Through: Mr. Mohit Chaudhary, Ms. Srishti
Gupta, Advocates (M: 8860033260).

versus

INDERJIT KAUR (DECEASED) THR LRS & ORS Respondents

Through: Mr. Arvind Kumar Jha, Advocate for
R-1 to 4 (M: 9718630254).

Mr. Udaivir Singh Kochar, Advocate
for R-9 (M: 9250611261).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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27.01.2020

1. The present petition has been filed challenging the order dated 18th December, 2019, by which the right of the Petitioner/Plaintiff No.2(b) to cross-examine the witness on behalf of the Sardar Partap Singh Giani Charitable Trust (*hereinafter, "Trust"*) has been declined by the Trial Court.
2. The brief background is that a suit for partition has been filed by various heirs of late Mr. Partap Singh Giani. The said suit is pending. During the pendency of the suit, the wife of the deceased has also passed away. The Petitioner herein is the daughter of Mr. Kulwant Singh and the granddaughter of late Mr. Partap Singh Giani. The grievance in this case is with respect to the Will dated 5th April, 2012, which is stated to have been executed by Mrs. Inderjit Kaur, wife of late Mr. Partap Singh Giani.
3. The case of the Petitioner/Plaintiff No.2(b) is that the said Will is forged and fabricated. The submission of ld. counsel for the

Petitioner/Plaintiff No.2(b) is that though his client is claiming rights as the legal heir of her father, i.e., Plaintiff No.2(b) in the suit, she should be permitted to cross-examine any witness who puts forth a Will on behalf of the Trust, as according to her, the Will is not a valid or genuine Will.

4. On the other hand, the case of the Respondents is that the Petitioner's father has himself admitted the Will dated 5th April, 2012 and since she is only a legal heir of Mr. Kulwant Singh she cannot be permitted to cross-examine the witness on behalf of the Trust. Further, it is submitted that the Trust itself is a Plaintiff and so is the Petitioner. The pleadings do not show any adversarial interests between the parties, especially in view of the admission made by Mr. Kulwant Singh, i.e., the Petitioner's father. Thus, no permission for cross-examination ought to be granted.

5. This Court has heard Id. counsel for the parties. A perusal of the family tree which is placed on record shows that there are several legal heirs to late Mr. Partap Singh Giani who had two wives. In one of the rejoinders filed by Mr. Kulwant Singh, he does admit that a Will dated 5th April, 2012 was left behind by his mother. There is no doubt that the Petitioner is claiming rights through her father, i.e., Mr. Kulwant Singh. The averment made by Mr. Kulwant Singh in the rejoinder reads as under: -

“4. That para 4 of the Preliminary objection is wrong and denied. It is submitted that aforesaid WILL was in custody of Smt. Jatinder Kaur who along with Plaintiff No. 3 has been appointed as the executor of the WILL. It is submitted that the name of the trust is S. Partap Singh Giani Charitable Trust and the Trust is being run by the children of S. Partap Singh Giani.”

6. The Trial Court has considered this particular aspect of the matter and held that permission to cross-examine ought not to be granted. Mr. Mohit

Chaudhary, Id. counsel for the Petitioner/Plaintiff No.2(b), has taken the Court through the questions that his client wishes to raise against the Will. The observation of the Trial Court that in view of the admission made by the Petitioner's father, the interests of the Petitioner cannot be adversarial to the interests of the Respondents, appears to be correct. However, the fact that there may be other issues in respect of the Will cannot be completely overlooked. While it is correct that the Petitioner, being Plaintiff No.2(b) in the matter, is not entitled to take a stand contrary to the stand of her father, while adjudicating the genuinity and validity of the Will, the Court would be entitled to put forth any questions in respect of the Will as may appear to the Court to be necessary. Thus, though the Petitioner cannot be allowed to take a stand contrary to that of her father's, however, that does not mean that the Court cannot put forth any questions in respect of the Will.

7. It is made clear that the observations made in the impugned order and this order shall not be treated as legal and binding at that stage of final arguments and for final adjudication.

8. With these observations, the petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

JANUARY 27, 2020
MR/T