

\$~1

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

+ CS(OS) 1224/1997

SARABJIT KAUR

..... Plaintiff

Through: Mr. Arup Sinha, Advocate with
Mr. Khowaja Siddiqui, Advocate

versus

JASMIT SINGH & ORS.

..... Defendants

Through: Mr. Preet Pal Singh, Advocate for
D-1 to 4.

Mr. Tanuj Khurana, Advocate with
Mr. Vikramjeet Singh, Mr. Hitesh
Kaushik, Advocates for D-6 to 10

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

21.01.2020

1. The plaintiff has filed this suit for partition in respect of the estate of her late father Sardar Inder Singh.
2. During the course of proceedings in this suit, defendant No.2 filed a copy of a will dated 07.01.1982, in defence to the present proceedings. Defendant Nos.3, 6 and 10, in the written statement filed in the suit, specifically averred that by virtue of the will, Sardar Inder Singh has bequeathed his entire movable and immovable assets in favour of his three sons. An issue to this effect was also framed by the order dated 09.08.1999.
3. It is submitted that the said defendant had applied for probate of the will dated 07.01.1982 before the competent Court, being the Court of the Additional District Judge, Varanasi in Probate Case No.20/2004. The original plaintiff in the present suit, Ms. Sarabjit Kaur was arrayed as

CS(OS) 1224/1997

page 1 of 2

defendant No.3 in the probate proceedings. After her death, her legal representatives were impleaded in the probate proceedings. The probate Court, by a judgment dated 09.01.2019, has granted probate of the said will. It is undisputed that, under the said will, the original plaintiff was not entitled to any share in the estate of deceased.

4. The contention of the defendants regarding probate of the will has been noted in the orders passed in this suit on 22.07.2019, 21.10.2019 and 25.11.2019. Learned counsel for the plaintiff was granted opportunities to take instructions on the consequences of the said judgment.

5. Mr. Arup Sinha, learned counsel appearing on behalf of the plaintiff, does not dispute the factual position hereinabove. He also states that the legal representatives of the original plaintiff have not challenged the judgment of the probate Court. However, he submits that they may, at a later stage, seek to challenge the said judgment.

6. In view of the fact that the period of limitation for filing an appeal against the judgment dated 09.01.2019 has lapsed a long time ago, and the order of probate remains unchallenged, I am of the view that the plaintiffs are not entitled to any reliefs in the suit.

7. The suit is therefore dismissed. However, in the event the order of the probate court dated 09.01.2019 is subsequently stayed or set aside, the plaintiff may take proceedings in accordance with law.

8. All interim orders are vacated.

PRATEEK JALAN, J

JANUARY 21, 2020/ j's
CS(OS) 1224/1997

page 2 of 2