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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 12.03.2021

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CM(M) 649/2020

SURENDER NATH VERMA

..... Petitioner

Through

Mr.Ankur Mahindro, Mr.Rohan
Taneja, Advs. (Mob.
No.9891051888)

versus

ARUN VERMA & ORS.

..... Respondents

Through

Ms.Beenashaw N.Soni,
Ms.Mansi Bhatia, Advs. for R-1
to 3 (Mob. No.9810046611).

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. Though the Office Report indicates that the respondent nos.4 (c) and 7 to 9 have not been served, the learned counsel for the petitioner submits that as these respondents had been proceeded *ex parte* before the learned Trial Court, they need not be served in the present proceedings.
2. This petition has been filed challenging the order dated 22.02.2020 passed by the learned Additional District Judge-02, North, in suit, being CS No.59547/2016, adjourning the suit *sine die*.
3. The facts in brief are that the respondent nos. 1 to 3 herein had filed the Testamentary Case, being Testamentary Case No.14/2003,

pending before this Court, seeking probate of an alleged Will dated 08.12.1996 of late Shri Jawala Nath Verma. The Will relates to property bearing no. C-6/17, Model Town, Delhi-110009.

4. The petitioner herein filed the suit seeking partition of the above property and the declaration that the alleged Will dated 08.12.1996 is a nullity. It was alleged in the suit that the property having been purchased through ancestral funds could not have been bequeathed by late Shri Jawala Nath Verma. The said Suit *inter alia* makes the following prayers:-

“A. A Decree for Declaration be passed declaring the Will dated 08.12. 1996 alleged to have been executed by Shri Jawala Nath Verma to be a nullity in view of the said property bearing No.C-6/17, Model Town, Delhi-110009 being not exclusive owned by him and when the said property was acquired from the funds generated from the ancestral properties of Shri Jawala Nath Verma and the said Will to be of no consequence under the law.

B. A Decree for Partition be passed in favour of the Plaintiff and against the Defendants declaring the share of the plaintiff to the extent of 1/4th alongwith the Defendants No.4 & 5 and of the Defendants No. 1 to 3 as 1/4th collectively in respect of property bearing No. C-6/17, Model Town, Delhi - 110009 and other assets of Shri Jawala Nath Verma for which a Preliminary Decree be passed declaring the aforesaid shares of the parties and thereafter a final Decree be passed in favour of the Plaintiff and the other Defendants to partition the said properties by metes and bounds and if the said properties cannot be partitioned then the same be put to auction as provided under the law.

C. A Decree for Rendition of Accounts of the other movable assets of Late Shri Jawala Nath Verma be passed directing the Defendants No. 1 to 3 to render the true and correct accounts to the Plaintiff and the other Defendants for which a Local Commissioner be appointed as contemplated under the law.

D. A Decree for Permanent Injunction be passed restraining the Defendants, their agents, servants and employees etc. from selling, assigning and/or in any way parting with the possession or the title of the Property bearing no.C-6/17, Model Town, Delhi-110009 permanently.”

5. As noted hereinabove, by the Impugned Order, the learned Trial Court has adjourned the suit *sine die* on the ground that the Testamentary Case is pending before this Court.

6. The learned counsel for the petitioner has drawn my attention to the orders dated 13.07.2007 and 15.09.2008 in the Testamentary Case. By the order dated 13.07.2007, *inter alia* issue no. 4 was framed in the following terms:-

“4. Whether the deceased was not owner of the bequeathed property and not competent to execute the Will? OPR”

7. By the subsequent order dated 15.09.2008, this Court directed deletion of the said issue observing as under:-

“In my opinion, in a Testamentary Case as the present one, the issue no.4 does not arise and is liable to be struck off. However, if the amendment has been declined to the respondents in the suit filed by the respondents, as claimed by Mr. Mahendru in this court, then the respondents shall be entitled to apply for the amendment afresh and citing this order deleting the issues, as subsequent event and the court before which this suit is pending shall decide such application, if any in accordance with law.

Accordingly, the application is allowed and issue no.4 framed on 13.7.2007 is deleted.”

8. The learned counsel for the petitioner has also drawn my attention to the order dated 21.11.2014 in the suit, wherein this Court framed the following issues in the suit:-

“(i) Whether the plaintiff is entitled to the relief of partition of the suit property bearing No.C-6/17, Model Town, Delhi-09? OPP

(ii) Whether the alleged WILL dated 08.12.1996 of Shri Jawala Nath Verma is a nullity and of no consequence as stated in the plaint? OPP

(iii) Whether the deceased Shri Jawala Nath Verma was not competent to execute the WILL in view of the suit property having been purchased with the ancestral funds? OPP

(iv) Whether the plaintiff is entitled to the relief of rendition of accounts? OPP

(v) Relief.”

9. The learned counsel for the petitioner submits that as far as the issue no. (ii) is concerned, the same arises only in the context of as to whether late Shri Jawala Nath Verma had any right to bequeath the property hereinabove mentioned by way of a Will. He submits that the mode and/or manner of the execution of the Will dated 08.12.1996 is not an issue in the suit and is to be decided in the Testamentary Case.

10. On the other hand, the learned counsel for the respondents submits that issue no. (ii) also entails within itself the mode and manner of the execution of the Will being in challenge.

11. This Court vide its judgment dated 31.10.2019 passed in CM(M) 452/2019, ***Praveer Chandra v. Aprajita & Ors.***, has already clarified that both the probate petition and the suit for partition can proceed simultaneously. In fact, this Court in its order dated 15.09.2008 passed in the Testamentary Case has also clarified that the authority of late Shri Jawala Nath Verma to execute the Will with respect to the above mentioned property cannot be raised as an issue in the testamentary case and accordingly deleted the said issue.

12. The difficulty as expressed by the learned counsel for the respondents is, however, also found to be genuine due to the manner in which issue no. (ii) has been framed by the learned Court in the suit.

13. In view of the above and with the consent of the learned counsels for the parties, it is clarified that issue no. (ii) framed in the suit be treated as deleted and issue no. (iii) be treated to be modified to the extent as under:-

“Whether the deceased Shri Jawala Nath Verma was not competent to execute the Will in view of the suit property having been purchased with the ancestral funds and, therefore, the alleged Will dated 08.12.1996 of late Shri Jawala Nath Verma is a nullity and of no consequence? OPP”

14. In view of the above, the Impugned Order dated 22.02.2020 is set aside reframing the issue no.(iii) in the suit as mentioned hereinabove. The suit shall proceed on merits, however, it is further directed that any decree passed in favour of the petitioner in the said suit shall not be given effect without obtaining orders from the Court in the Testamentary Case.

15. The parties/their counsels shall appear before the learned Trial Court on 9th April, 2021 for further proceedings in the suit.

16. The petition is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 12, 2021/Arya