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

+ CM (M) 445/2022 and CM APPL. 22857/2022 (Stay)

MOHD. AQIL & ANR. Petitioners
Through: Mr. Rajinder Mathur and Mr.
Tarun Mathur, Advs.

versus

LATE MOHD. ZAHID THROUGH LEGAL
REPRESENTATIVES & ORS. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)% **13.05.2022**

1. The order impugned dated 4th January, 2022 in this petition, preferred under Article 227 of the Constitution of India, reads thus:

“Present: Sh. H. Rehman Ld. Counsel for plaintiff.
Sh. S. K. Dutta Id counsel for defendant no. 2 to 4.

On earlier occasion, I have heard arguments on preliminary issue no. 1 which is as follows:

1. Whether both the Wills dated 15.01.2003 allegedly executed by late Shri Mohd. Ashqueen are genuine and are valid as per Shariyat Law? (OPD-1)

As per this issue, the onus is upon defendant no.1 to prove whether the Wills dated 15.01.2003 are genuine or not and are valid.

As far as the first part of this issue is concerned i.e. whether the Wills are genuine or not, it requires evidence. As far as the later part of the issue i.e. whether they are valid or not as per Muslim Law applicable to Sunni Muslims (as stated by parties that they are Sunnies), even 1/3rd part of



estate can be bequeathed through Will, so this cannot be decided at this stage also and it requires evidence. So, in these circumstances, the issue cannot be decided without leading evidence.

Put up for PE on 18.04.2022.

Sd.
(**Rakesh Pandit**)
ADJ-09/Central/THC/Delhi
04.01.2022”

2. All that the impugned order states, is that the issue of genuineness and validity of the Will dated 15th January, 2003 allegedly executed by Late Shri Mohd. Ashqueen would be decided after the evidence is led in the matter.

3. This is entirely a matter of discretion of the learned Trial Court. To a query from the Bench, as to whether there is any mandate, in law, requiring the learned Trial Court necessarily to decide the aforesaid issue as a preliminary issue without leading evidence, learned Counsel for the petitioners answers in the negative; however, he submits that the issue was one which *could* have been decided as a preliminary issue without leading evidence and that, therefore, the learned ADJ erroneously felt that the matter would require leading of evidence.

4. Article 227 of the Constitution of India is not a provision under which the High Court monitors the progress of the case in the Court below. It is a provision which only empowers the High Court to exercise its power of superintendence over the functioning of the Courts below. If the Court below is functioning in a manner, which is not in accordance with law, as calls for supervisory correction, the



High Court would interfere.

5. In *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*¹ and *Surya Dev Rai v. Ram Chander Rai*², the Supreme Court has gone to the extent of holding that even an error in the order of the Court below is not amenable to interference under Article 227 of the Constitution of India.

6. The Court under Article 227 of the Constitution of India is concerned more with the functioning of the Court below and not with the correctness of the order under challenge.

7. Learned Counsel for the petitioner is not able to canvass a proposition that there was any mandate, in law, requiring the learned ADJ to necessarily decide Issue No. 1 as a preliminary issue. All that he says is that it could have been so decided.

8. That, in my view, is not sufficient to make out the case for interference under Article 227 of the Constitution of India.

9. This petition is completely misconceived and is, accordingly, dismissed. Miscellaneous applications are also disposed of.

C.HARI SHANKAR, J

MAY 13, 2022/r.bararia

¹ (1972) 1 SCC 898

² (2003) 6 SCC 675