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

+ TR.P.(C.) 47/2022

SH. SANDEEP GARG

..... Petitioner

Through: Mr. Monish Panda with Mr. Nirmalya Shukla, Advocates.

versus

STATE & ORS.

..... Respondents

Through: Mr. Nipun Katyal, Advocate for respondent No.1
Mr. Sanchit Garga with Mr. Nikunj Jain, Advocates for respondent Nos.2 and 4.
Mr. Anupam Pandey, Advocate for respondent Nos.3, 5 and 6.

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*Date of Decision: 15th July, 2022.***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)****CM APPL.30866/2022 (exemption)**

Exemption allowed subject to all just exceptions.

TR.P.(C.) 47/2022

1. This is a transfer petition seeking transfer of Probate Petition numbered P.C.No.12 of 2022 titled as *Sandeep Garg vs. State and Others*, pending before the learned Additional District Judge, South District, Saket, Delhi.

2. Briefly the facts are that Smt. Rama Prakash, widow of Late Sh. Ved



Prakash executed the Will bequeathing the self acquired immovable and movable property as well as immovable and movable property received by the Will dated 01.12.2008 from her husband in favour of her daughters, i.e., respondent Nos.2 to 6 and Narayan Seva Sansthan, Udaipur. The petitioner was named as Executor No.2 of the Will along with Mr. Pradeep Goel, S/o Sh. D.P. Goel, who was Executor No.1. Smt. Rama Prakash expired on 20.09.2017. Sh. Pradeep Goel – Executor No.1 also expired and thus the petitioner is the sole executor of the Will. It has been submitted that initially respondent Nos.2 to 6, who are the only Class-I heirs had agreed to execute the Will without probate but later the petitioner had to file a Probate Petition due to certain disputes that arose between the respondent Nos.2 to 6. It has been stated that the disputes were later resolved and the petition was withdrawn on 28.09.2019 on the request of respondent Nos.2 to 6 with a liberty to approach the Court in the event there is any requirement for initiating a fresh probate.

3. It has further been submitted that in the year 2022, after the respondent Nos.2 to 6 failed to arrive at a settlement for execution of the Will dated 12.03.2012, the petitioner filed a probate petition under Section 276 of the Indian Succession Act, 1925 before the District Court, Saket for grant of probate. It has been submitted that PC No.12 of 2022 is at an advanced stage, wherein citations in terms of Section 283(1)(c), (2) and (3) of the Indian Succession Act, 1925 has already been issued and published in newspapers. The Court of the learned Additional District Judge has not received objections in response to the published citations. It has further been submitted that respondent Nos.3, 5 and 6 have already submitted their



response stating their no objections to the Probate as per the Will of the Testatrix. Respondent Nos.2 and 4 have to file their objections to the Probate.

4. While the matter rested thus, the respondent No.2 moved an application objecting to the jurisdiction of the learned Additional District Judge in view of the bar under Proviso (b) to Section 273 of the Indian Succession Act, 1925.

5. It is an admitted fact that the estate of Testatrix, apart from immovable and moveable properties in Delhi, also comprises of immovable property at Bhopal, Madhya Pradesh, the value of which is more than ten thousand rupees.

6. Proviso to Section 273 of the Indian Succession Act, 1925, provides as under:-

“Provided that probates and letters of administration granted—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees, shall, unless otherwise directed by the grant, have like effect throughout the other States.

The proviso to this section shall apply in India after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before



the date of the separation, or after that date in proceedings which were pending at that date.

The proviso shall also apply in India after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.”

7. Learned counsel for the petitioner submits that a bare perusal of the proviso to Section 273 makes it clear that the Court of learned District Judge will have no power to issue probate certificate if the value of the property, beyond the limit of his territorial jurisdiction, exceeds ten thousand rupees. It is an undisputed fact that the immovable property at Bhopal is more than ten thousand rupees, though valuation has not been done.

8. Learned counsel for the petitioner submits that in order to avoid any further complication, it would be in the interest of justice that P.C. No.12 of 2022 titled as ***Sandeep Garg vs. State and others***, is withdrawn from the Court of learned Additional District Judge, South District, Saket, Delhi and tried by this Court.

9. Mr. Sanchit Garg, learned counsel for respondent Nos.2 and 4 submits that in principle, he agrees with the proposition as raised by learned counsel for the petitioner. However, the objection is that the petitioner may withdraw the probate petition from the South District and file it afresh before this Court. Learned counsel for respondent Nos.2 and 4 has also stated at bar that respondent Nos.2 and 4 are not disputing the Will, but conduct of the executor of the Will and mode of execution of the Will. Learned counsel for



the petitioner has objected to the statement made by learned counsel for the respondent Nos.2 and 4.

10. I have heard the parties and perused the records. However, I consider that this Court cannot go into the merits of the case and it has to be seen by the Court issuing the probate.

11. Thus in view of the provisions of Section 273 of the Indian Succession Act, 1925 and Section 24, CPC and taking into account the fact that P.C .No.12 of 2022 is at an advance stage, as the necessary citations have already been issued and 3 out of 5 legal heirs have already filed their no objections, considers that, there would be no purpose of directing the petitioner to withdraw the petition from the District Court and file it afresh for it would only lead to further prolonging the litigation.

12. In the given circumstances and in the interest of justice, Probate Petition numbered as P.C .No.12 of 2022 titled as ***Sandeep Garg vs. State and Others***, is withdrawn from the Court of learned Additional District Judge, South District, Saket, Delhi for trial of the same by this Court.

13. Principal District and Sessions Judge, South is directed to send the record of P.C .No.12 of 2022 in physical as well as digital form to this Court within 15 days from receipt of this order.

14. Parties are directed to appear before the learned Registrar General, Delhi High Court on 17th August, 2022.



NEUTRAL CITATION NO: 2022/DHC/003110

DINESH KUMAR SHARMA, J

JULY 15, 2022

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