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

+ C.R.P. 116/2022

MR. K.P.R. NAIR

..... Petitioner

Through: Mr. Arun Bhardwaj and Mr. J.S. Bakshi, Sr. Advocates with Mr. Bharat Deepak, Mr. Abhishek Mohan Sinha and Mr. Tarun Kapoor, Advocates.

versus

JYOTIKA OGUZ

..... Respondent

Through: Mr. Sanjeev Sindhvani, Sr. Adv. with Mr. Abhishek Batra and Mr. Irfan Ahmed, Advocates

+ C.R.P. 117/2022

MR. K.P.R. NAIR

..... Petitioner

Through: Mr. Arun Bhardwaj and Mr. J.S. Bakshi, Sr. Advocates with Mr. Bharat Deepak and Mr. Abhishek Mohan Sinha, Advocates.

versus

MRS MEENAKSHI SARDANA & ANR.

..... Respondents

Through: Mr. Sanjeev Sindhvani, Sr. Adv. with Mr. Abhishek Batra and Mr. Irfan Ahmed, Advocates

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Date of Decision: 18th August, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL.35741/2022 (exemption) in C.R.P. 116/2022

CM APPL.35935/2022 (exemption) in C.R.P. 117/2022



Exemptions allowed subject to all just exceptions.

Both the applications stand disposed of.

C.R.P. 116/2022, CM APPL.35740/2022 (stay) & C.R.P. 117/2022, CM APPL.35934/2022 (stay)

1. The present revision petition has been filed challenging the order dated 20.07.2022 whereby application filed by the petitioner under order 22 Rule 4 CPC being filed by the petitioner has been dismissed by the learned trial court inter alia holding as under:

“In the instant petition U/S 263 Indian Succession Act, it is alleged by the petitioners that the revocation of the grant of probate of Will of Mrs. Rajamma S. Madden has been sought as the fraud has been played upon the probate court by not impleading the necessary parties i.e. all her legal heirs who were entitled to her property. The present petition U/S 263 Indian Succession Act has been filed by the legal heirs of Mrs. Rajamrma who were not made parties in the probate petition regarding the probate of Will of deceased Mrs. Rajamrma S. Madden and their right to sue survives even if Saraswathi Amma, who is stated to be the sister of Mrs. Rajamrma S. Madden, is not made a party in the present petition U/S 263 Indian Succession Act and hence, the instant petition filed by the petitioner U/S 263 Indian Succession Act cannot be dismissed as abated for non impleadment of LRs of Saraswathi Amma. So far as the right of Saraswathi Amma in the property of Mrs. Rajamma S. Madden which was inherited by Ms. Rajamma from her husband is concerned, she (Saraswathi Amma) is neither entitled to the said property in view of section 15(2)(b) of Hindu Succession Act, 1956 nor any property was bequeathed in her favour by Ms. Rajamma S. Madden vide her Will which was got probated. Therefore, Saraswathi Amma cannot be said to be a necessary party to the present petition.

In view of the abovesaid facts and circumstances, I am of the opinion that there is no merit in the instant application u/O 22 Rule



4 CPC filed on behalf of non applicant Mrs. KPR Nair seeking dismissal of the present petition u/s 263 Indian Succession Act as abated. Consequently, the instant application u/O 22 Rule 4 CPC r/w sec. 151 CPC stands dismissed and disposed of.”

2. Learned senior counsel for the petitioner has submitted that the learned trial court has fallen into a grave error by dismissing the revision petition predominantly on two grounds:

(i) The learned Trial Court has given a finding that late Ms.Saraswathi Amma is not entitled to any property/estate left by Ms.Rajamma S.Madden which she inherited from her husband Mr.Santosh Madden in view of Section 15 (2) (b) of the Hindu Succession Act, 1956. It has been submitted that Ms.Rajamma S.Madden did not die intestate but she left behind her registered Will. Thus, the provisions of Section 15 (2) (b) of the Hindu Succession Act, 1956 are not applicable.

(ii) In the initial petition for Probate petition being P.C.No.5/2014 Ms.Saraswathy Amma was a party and the present proceedings arise out of the same probate petition. These proceedings are applications filed under Section 263 of Indian Succession Act, 1956 for revocation of the probate by the legal heirs of late Mr.Sandosh Madden, husband of late Mrs.Rajamma S.Madden. Learned senior counsel has submitted that in view thereof the order is liable to be set aside.

3. Sh.Sanjeev Sindhvani, learned senior counsel for the respondent has opposed the petitions on the following grounds:

(i) That this court has no jurisdiction to entertain the revision petition as there is no illegality or misuse of the jurisdiction by the learned trial court.



(ii) That the learned trial court has given a finding under Section 15 (2) (b) of the Hindu Succession Act, 1956 on the basis of submissions made by the learned senior counsel for the petitioner herein.

4. After some arguments, both the learned senior counsels have submitted that the appropriate directions may be passed to the following effect:

(a) The executor of the will i.e. Mr.K.P.R.Nair shall move an appropriate application for impleading of the legal heirs late Ms.Saraswathi Amma.

(b) That the question under Section 15 (2) (b) of the Hindu Succession Act, 1956 shall remain open and both the parties shall be at liberty to advance their arguments and contentions on the said issue.

5. In view of the submissions made by the learned senior counsels for both the parties, this court considers that the present impugned order 20.07.2022 is liable to be set aside with the following direction:

(i) The executor of the will i.e. Mr.K.P.R.Nair shall move an appropriate application for impleadment of legal heirs of late Ms.Saraswathy Amma. The executor of the will shall ensure that the legal heirs of late of late Ms.Saraswathi Amma appears before the court and for their service the proceedings before the learned Trial court are not delayed.

(ii) The question under Section 15 (2) (b) of the Hindu Succession Act, 1956 shall remain open and the learned trial court shall determine this issue in accordance with law at the appropriate stage.

(iii) The learned trial court shall make an endeavour that the proceedings under Section 263 of the Indian Succession Act, 1956 are not delayed and concluded expeditiously preferably within six months.



6. Mr. Arun Bhardwaj, learned Sr. Advocate, on instructions of Mr. Bharat Deepak has stated that they shall fully cooperate in the expeditious disposal of the proceedings under section 263 of the Indian Succession Act, 1956.

7. With these observations, both the petitions and the pending applications are disposed of.

DINESH KUMAR SHARMA, J

AUGUST 18, 2022

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