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

Date of decision: 09.08.2023

\+ CM(M) 240/2022

NANDINI ROY & ANR. ..... Petitioner

Through: Mr. Jayant Tripathi, Ms. Nayantara Roy and Mr. Sarfaraz Ahmad, Advocates

versus

STATE THROUGH CHIEF SECRETARY & ORS. ..... Respondent

Through: Mr. Divyam Nandrajog, Panel Counsel, GNCTD with Mr. Mayank Kamra, Advocate for R-1
Mr. Arjun Mitra, Advocate for R-2 and R-7

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 09.12.2021 passed by the ADJ, East District, Karkardooma Courts, Delhi ('District Judge') in Misc. DJ No. 61 of 2020, whereby the Probate Court dismissed the application filed by the Petitioners herein under Section 307 of the Indian Succession Act, 1925 ('Act of 1925') seeking permission to sell the Flat No. 037, Nirman Apartment, Mayur Vihar, Phase-I, Extension, Delhi-91 ('subject property').

1.1. The learned counsel for the Respondent Nos. 2 and 7 has entered appearance and states that the said Respondent are agreeable and consenting to the reliefs sought by the Petitioners in this petition and in the application filed under Section 307 of the Act of 1925.

1.2. The learned counsel for the Respondent No.1 i.e., GNCTD, states that he has no concern with the reliefs sought in this petition and the application filed under Section 307 of Act of 1925 and he therefore has no submissions to make in this regard.

Facts

2. It is stated that the subject property forms the part of the estate of late Kumari Reba Dasgupta who died intestate. It is stated that the parties to the petition i.e., Petitioner Nos. 1 and 2 and Respondent Nos. 2 to 7 together are her only Class-II legal heirs entitled to succeed her estate.

2.1. It is stated that the Petitioners herein on 11.12.2017 filed a petition seeking Letters of Administration and the said petition was allowed by the District Judge vide judgment dated 17.09.2018 and Letters of Administration were granted to the Petitioners herein on 12.07.2019.

2.2. It is stated after obtaining the Letters of Administration; the Petitioners herein have been maintaining the subject property and paying all its municipal dues, estate dues etc. It is stated that the Petitioners now intend to sell the subject property and divide the proceeds equally amongst the Class-II legal heirs as the Petitioners herein are not in a position to continue to maintain the subject property.

2.3. It is stated that in the aforesaid circumstances an application under Section 307 of Act of 1925 was filed before District Judge seeking permission to sell the subject property.

2.4. It is stated that Respondent Nos. 3 to 6 did not appear before the District

Judge in probate case No. 5/2018 filed under Section 278 of Act of 1925 and they were served by publication on 03.04.2018 in the said proceedings. The District Judge after being satisfied with the service, was pleased to grant the Letters of Administration.

2.5. It is stated that thereafter, when the application under Section 307 of the Act of 1925 was filed on 17.03.2020, the Respondent Nos. 3 to 6 were similarly served through publication on 18.10.2020. It is stated that however, none appeared on behalf of the Respondent Nos. 3 to 6.

2.6. It is stated that on account of non-appearance of Respondent Nos. 3 to 6 that the District Judge has declined permission to the Petitioners herein to sell the subject property. It is stated that the second reason given by the District Judge was misdescription of Respondent No. 4, which the learned counsel for the Petitioner states was inadvertent and has been duly corrected.

3. The learned counsel for the Petitioner states that the consenting four (4) legal heirs should be permitted to conduct the sale and realise the sale proceeds. He states that the consenting four (4) legal heirs are senior citizens and would be benefitted with the funds.

3.1. He states that the application has been moved bona fide and permission should be granted in terms of Section 307 of Act of 1925.

4. This Court is of the opinion that the in the facts and circumstances of this case there is no impediment in granting permission to the Petitioners herein to sell the subject property and divide the proceeds equally between the Petitioners and Respondent Nos. 2 to 7.

5. The crux of the issue is that there are eight (8) legal heirs of late Kumari Reba Dasgupta, who are entitled to the subject property. Amongst them, four (4) of the legal heirs i.e., the Petitioners as well as the Respondent Nos. 2 and

7 are appearing before this Court and are seeking permission for the sale of the subject property ('consenting legal heirs'). The remaining four (4) legal heirs are untraceable and have elected to not participate in these proceedings ('absent legal heirs').

5.1. The Petitioners have filed an affidavit on 04.08.2023 undertaking to deposit 50% of the sale proceeds towards the share of the absent four (4) legal heirs with this Court so as to enable the consenting four (4) legal heirs i.e., the Petitioners as well as Respondent Nos. 2 and 7 to receive the remaining 50% of the sale proceeds.

5.2. Late Kumari Reba Dasgupta expired on 23.10.2015. The Letters of Administration were granted to the Petitioners to administer the estate, in the year 2017. There has been no objection raised by the absent legal heirs to the grant of said Letters of Administration. The absent legal heirs have been duly served by way of publication before the District Judge and in these proceedings.

5.3. In these facts and circumstances, this Court finds no impediment in granting permission to the Petitioners to sell the subject property under Section 307 of the Act of 1925. The Petitioners shall however, deposit 50% of the sale proceeds, to which the absent legal heirs are entitled, with this Court on the terms and conditions set out hereinunder.

5.4. The District Judge declined permission to the Petitioners essentially on account of the non-representation of the absent legal heirs i.e., Respondent Nos. 3 to 6. The rights of the said absent legal heir can be secured by seeking a deposit of the 50% the net sale proceeds with the Court. However, the Petitioners and Respondent Nos. 2 and 7 i.e., the consenting legal heirs should not be denied the right to sell the subject property and realise their shares in the sale proceeds.

6. Accordingly, impugned order dated 09.12.2021 is set aside and the application filed by the Petitioner under Section 307 of the Act of 1925 is allowed and Petitioners herein are granted permission to sell the subject property, subject to the following terms:

i. The certified copy of the sale deed will be placed on record within two (2) weeks from the sale;

ii. a duly self-certified statement of account with respect to the receipt of the sale proceeds and expenses incurred for facilitating the sale will be placed on record;

iii. all expenses incurred for the sale should be made only through cheques and expenses incurred in cash, if any, should not exceed 2.5 % of the total sale consideration; and

iv. after deducting the permissible expenses from the total sale consideration, 50% of the balance sale consideration (i.e., the net sale proceeds) be deposited with the Registrar General of this Court within two (2) weeks of the execution of the sale deed.

7. The Registrar General is directed to keep the said amount deposited in an interest-bearing account i.e., Fixed Deposit Receipt (FDR'), for a minimum period of one (1) year with automatic renewal.

8. It is further directed that in case Respondent Nos. 3 to 6 or their legal heirs apply for release of the said amount, on an appropriate application the said amount will be released by Registrar General in accordance with the rules.

9. It is further clarified that if for period of five (5) years from the date of deposit, Respondent Nos. 3 to 6 or the legal heirs do not approach the Court

for release of the deposit, the Petitioners herein will be at liberty to file an appropriate application for release of the said deposit, which will be decided in accordance with law.

10. The Petitioners and Respondent Nos. 2 and 7 will be liable for the income tax liability payable on their respective shares of the sale proceeds. With respect to the income tax liability payable on the shares of Respondent Nos. 3 to 6, the same will be borne by them as and when they withdraw the said amount from the registry.

10.1. However, in case, the purchaser of the subject property deducts withholding tax (TDS) on the total sale consideration the apportionment of the credit for the said TDS shall be determined by the Petitioners as per advice received by them. The deduction of TDS and apportionment of credit will be duly disclosed in the statement of account filed with the registry.

11. With the aforesaid direction, the present petition is disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 9, 2023/hp/aa