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

Date of decision: 06.09.2023

+ **CM(M) 1442/2023 & CM APPL. 46126/2023**

RUCHI

..... Petitioner

Through: Petitioner in person

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 15.09.2022 passed by the ADJ-02, South West District, Dwarka Courts, Delhi ('Trial Court') in probate case no. 5/2019, dismissing the application filed by the Petitioner herein under Order I Rule 10 of Code of Civil Procedure, 1908 ('CPC'), seeking impleadment as party to the probate petition.

1.1. The probate petition has been filed by the Respondent No.2 herein with respect to the Will dated 12.12.2014 executed by the testator late Shri Om Prakash bequeathing property no. A-46-B, Mansa Ram Park, Uttam Nagar, New Delhi ('subject property').

1.2. The Petitioner herein is the applicant seeking impleadment in the probate petition.

1.3. The Respondent No. 2 i.e., the petitioner in the probate petition and is



the mother-in-law of the Petitioner herein.

1.4. The Respondent No. 3 herein is arrayed as respondent no.2 in the probate petition and is the estranged husband of the Petitioner.

2. The Trial Court *vide* order dated 15.09.2022 after considering the submissions of the parties concluded that the Petitioner herein is not entitled to be impleaded as a party in the said proceedings as she is neither the beneficiary in the Will dated 12.12.2014 nor she is the Class-I legal heir of late Shri Om Prakash as per the schedule attached to Section 8 of the Hindu Succession Act, 1956.

3. The Petitioner sought impleadment in the probate petition in view of the interim orders dated 27.02.2015 and 19.12.2015 passed in her favour by the concerned Court under the Protection of Women from Domestic Violence Act, 2005 ('DV Act'). The competent Court *vide* order dated 27.02.2015 restrained the Respondent No. 2 and Respondent No. 3 herein from creating any third-party interest in the subject property till the final disposal of the said petition; and further *vide* order dated 19.12.2015 granted right of residence in subject property to the Petitioner.

4. The Trial Court being mindful of the interim order dated 19.12.2015, specifically observed in the impugned order dated 15.09.2022 that the decision on the validity of the Will dated 12.12.2014 shall have no effect on the right of the Petitioner herein i.e., the applicant, to reside in the subject property; and further, the same order will not override any of the orders passed by the concerned Court in the domestic violence or the maintenance case. The operative part of the impugned order reads as under: -

*“8. In the present case, the applicant is neither the beneficiary and being daughter in law of deceased testator nor the class I or class II legal heirs as per Schedule attached to Section 8 of the Hindu Succession Act, 1956. Moreover, the decision on the validity of the WILL has **no effect** on the right*



of the applicant to reside in the subject property and further the same will not override any of the orders passed by the Court in domestic violence case or the maintenance case.”

(Emphasis Supplied)

5. The Petitioner despite dismissal of her application under Order 1 Rule 10 of CPC vide impugned order dated 15.09.2022, continued to press her objections before the Trial Court and therefore, the Trial Court *vide* order dated 06.07.2023 after referring to the order dated 15.09.2022 has reiterated that in view of the order dated 15.09.2022, the Petitioner herein cannot be permitted to be heard in the probate petition.
6. The Petitioner, who appears in person before this Court has reiterated that she apprehends that the interim order dated 19.12.2015 granting in her favour by the concerned Court under the DV Act shall be violated by Respondent Nos. 2 and 3 if they are permitted to pursue the probate case in her absence.
7. This Court finds no merit in the submissions of the Petitioner.
8. In the opinion of this Court, the Trial Court vide impugned order dated 15.09.2022 and more specifically paragraph ‘8’ therein, which is referred to hereinabove, has safeguarded the rights of the Petitioner herein by clarifying that the decision on the validity of the Will dated 12.12.2014 will not override the orders passed by the competent Court under the DV Act.
9. The Petitioner has not placed before this Court any provision of law, which can be made the basis of challenge to the decision returned by the Trial Court dismissing her application under Order 1 Rule 10 of CPC. There is no provision of law which entitles the Petitioner herein to file objections in the probate petition.
10. In the opinion of this Court, the impugned orders dated 15.09.2022 and



16.07.2023 do not suffer from any infirmity. Accordingly, the present petition is dismissed. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 6, 2023/rhc/aa

Click here to check corrigendum, if any

