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

Date of decision: 10.11.2023

+ CM(M) 1849/2023, CM APPL. 58684/2023 & CM APPL. 58685/2023

OM PRAKASH KASHYAP

..... Petitioner

Through: Mr. Ajay Laroia, Ms. Madhu Laroia &
Mr. Rajinder Kumar, Advocates.

versus

STATE OF GNCT OF DELHI AND OTHERS 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 the Constitution of India impugns the order dated 16.10.2023 passed by ADJ-02, West, Tis Hazari Court, Delhi ('Trial Court') in Probate Petition No. 15971/2016, titled as **Om Prakash Kashyap v. State**, whereby the affidavit dated 11.12.2018 filed by Petitioner witness-2 ('PW-2') for correction of his address in his evidence has been dismissed by the Trial Court.

1.1. The Petitioner herein filed the probate petition no. 58/2013, seeking probate of the Will dated 18.03.2013 in favour of the Petitioner bequeathing the property bearing flat no. 162, Block No. C4F, Janakpuri, New Delhi ('Suit Property').

1.2. The attesting witness of the said Will dated 18.03.2013 i.e., Sh. Jatinder Singh was examined by the Petitioner herein as PW-2. The said witness was



examined and cross-examined on 21.03.2017 and discharged. The said witness tendered an evidence affidavit also dated 21.03.2017.

1.3. The Respondent thereafter placed on record documents which evidenced that the details of the address disclosed by PW-2 in his evidence was incorrect.

1.4. Therefore, the said witness thereafter on 11.12.2018 filed an affidavit before the Trial Court seeking correction of his address, which was recorded in his evidence affidavit as well as in the statement recorded on 21.03.2017 at the time of tendering of the said application/affidavit.

1.5. The issue of correction of the address has been pursued by the Petitioner through his counsel on behalf of PW-2.

1.6. The Trial Court after perusing the record has rejected the request of the witness and passed the impugned order, operative portion of which reads as under:-

“15. From the facts of the case, it is clear that the witness/PW-2 has mentioned his address firstly in his affidavit which is tendered in evidence on 21.03.2017 and thereafter while tendering his affidavit, he has again mentioned the same address before the court and thereafter during cross-examination conducted by Id. Counsel for respondent no. 2 to 5, two specific questions were put to the witness about his address and he replied the same and did not state that inadvertently wrong address has been mentioned in his affidavit and in his deposition. The statement of the witness Sh. Jitender Singh/PW-2 was recorded on 21.03.2017 and the affidavit for making correction in his address has been filed on 11.12.2018 and the said affidavit is attested by the Id. Counsel for the petitioner. It is prima facie appearing from the record of the case that the address of the witness is a contentious issue between the parties and witness PW-2 himself has disclosed his address in his affidavit as well as to the court while tendering the said affidavit in evidence. Hence, there is no typographical error in recording the address of witness/PW-2 at the time of his examination in the court. Therefore, in view of the above observations, without expressing anything on



merit, the submissions of Id. Counsel for the petitioner to correct the address of PW-2 in his evidence is declined.”

(Emphasis supplied)

1.7. The Trial Court has in the above-said order after considering the record and averments made by the PW-2 in his affidavit dated 11.12.2018 seeking correction of his address held that the address of witness as recorded in the evidence recorded on 21.03.2017 does not amount to a clerical error, especially since the witness was specifically cross-examined on the aspect of the address. However, the Trial Court has further clarified that the request for correction has been dismissed without making any observation on the merits of the case of the Petitioner.

2. The learned counsel for the Petitioner states that as is evident from the record, in the address recorded in evidence of PW-2, the name of the colony has been wrongly recorded as ‘New Krishna Nagar’ whereas it should have been ‘New Mahavir Nagar’.

2.1. He states that the said witness has with his affidavit dated 11.12.2018 relied upon rent agreement executed with the landlord, wherein the colony name is mentioned as ‘New Mahavir Colony’. He states that the error in the evidence recorded on 21.03.2017 should be ignored as it has crept in due to inadvertent communication between the lawyer and the witness.

3. This Court has perused the impugned order and the record.

3.1. In the opinion of this Court, the Trial Court has correctly observed that the said witness i.e., PW-2 was put specific questions in the cross-examination by counsel for the Respondent with respect to the address mentioned in the evidence affidavit and also in the statement recorded before the Trial Court on 21.03.2017. The said witness answered two (2) separate questions on his address and confirmed the correctness of the address recorded in the evidence



statement on 21.03.2017. The witness's attention having been drawn to the address stated by him and he having confirmed the same, the recording of the same cannot be considered to be a typographical error.

3.2. In the facts of this case, the witness i.e., PW-2 is the attesting witness to the Will dated 18.03.2013. In these circumstances, the evidence recorded of the attesting witness is crucial and lacuna, if any, pointed out by the Respondent in the evidence of PW-2 cannot be permitted to be rectified in the manner sought to be done.

3.3. This Court, therefore, finds no error in the order of the Trial Court, declining the prayer of the Petitioner and the witness i.e., PW-2 for correcting the address as recorded in the evidence as it would affect the integrity of the cross examination.

4. This Court further notes that in any event, the Trial Court has safeguarded the interest of the Petitioner herein, by making an observation that the issue on merits of the probate petition continues to remain open and Petitioner will be at liberty to satisfy the Court with respect to the veracity of the evidence led by PW-2 with respect to the attestation of the said Will.

5. This Court, therefore, finds no merit in this petition and the same is accordingly dismissed. Pending application if any stands disposed of.

6. Thus, as already noted by the Trial Court, it is needless to state that the probate petition will be decided on its own merits and the Trial Court will duly consider the submissions of the Petitioner herein with respect to the proof of the execution of the said Will from the record.

MANMEET PRITAM SINGH ARORA, J

10 NOVEMBER, 2023/MR/sk