



2024:DHC:5348-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 98/2024 & C.M.Nos.39714-39716/2024****MRS. NALINI LAL**

.....Appellant

Through: **Mr.Aditya Malhotra with Ms.Tripti Kapoor and Ms.Eshita Gujpta, Advocates.**

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: **Ms.Avni Singh, Advocate for the State.**

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Date of Decision: 18th July, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present appeal has been filed challenging the order dated 28th February, 2024 passed by the learned Single Judge in I.A. No.19152/2022 in Test Case No.22/2009 whereby the learned Single Judge allowed the application under Order VII Rule 14 CPC, 1908 filed by Respondent Nos. 2 & 4 to place certain documents on record.

2. Learned counsel for the Appellant states that on 25th May, 2009, the Appellant filed the subject petition bearing Test. Case No. 22/2009 under Section 276 of the Indian Succession Act, 1925 seeking probate of the last and final Will and Testament of Late Smt. Raj Sodhi dated 7th June, 1991 with respect to the property bearing No. B – 3/4, Vasant Vihar, New Delhi 110057.

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3. He states that Respondent Nos. 2 to 4 filed their written statement on 11th May, 2010. Thereafter, the Appellant herein filed her Evidence Affidavit on 3rd August, 2010 and Respondent No. 2 filed her Evidence Affidavit on 27th November, 2019, the contents of which are beyond the Respondent's pleaded defence in her written statement. He states that Respondent No.2 in her Evidence Affidavit further enclosed additional documents after the conclusion of Petitioner/Appellant's Evidence.

4. He states that on 31st October, 2022, Respondent No. 2 filed an I.A. No. 19152/2022 under Order VII Rule 14 read with Section 151 CPC, 1908, seeking leave to place on record additional documents. He states that the Appellant filed her reply to the application objecting to the afore-mentioned documents since the same were adduced for the first time in the Evidence Affidavit of Respondent No.2 clearly stating that the said documents cannot be permitted to be taken on record at a belated stage when the Appellant's Evidence has been closed and were available with the Respondent No. 2 before filing of the Probate Case bearing Test. Case No. 22/2009.

5. He states that the filing of Evidence Affidavit by Respondent No.2 is a belated attempt to introduce new pleadings, averments, documents and evidence and the contentions raised by Respondent No.2 in Evidence Affidavit are beyond the written statement.

6. He further states that most of the documents sought to be placed by Respondent No.2 are even prior to the institution of the Probate Case bearing Test. Case No. 22/2009. Therefore, the Respondent No. 2 could have adduced the said documents in the written statement which was filed by her in May, 2010. He states that Respondent No.2 has further failed to provide any reason as to why the said documents could not have been filed

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earlier, but at a belated stage when the Appellant's Evidence has concluded.

7. Having heard learned counsel for the Appellant and having perused the paper book, this Court finds that out of the four documents sought to be placed on record by Respondent No.2, one is the certified copy of the order dated 09th December, 2003 passed in CS No. 20/2016 (earlier CS No.3216/1988); and the other document is the certified copy of the cross-examination dated 24th February, 2018 of Appellant in CS No.3216/1988. The other two documents are the application being I.A. 9629/2002 and the amended written statement dated 8th October, 2002 filed by Shri V.K. Sodhi (husband of Respondent No.2) in CS No. 3216/1988.

8. As rightly observed by the learned Single Judge these are public documents and, therefore, they are *per se* admissible.

9. Further, this Court is of the view that the aforesaid four documents should have been placed on record by the Appellant herself to avoid any conflict of orders in the two proceedings. Also, once the Appellant herself had referred to CS No.3216/1988, she cannot now claim that the earlier proceedings were not in her knowledge or that she is taken by surprise. In any event, the learned Single Judge has given the Appellant a chance to lead rebuttal evidence.

10. Consequently, the present appeal being bereft of merit is dismissed along with the applications.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 18, 2024/KA

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