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

+ **FAO 229/2023 & CM APPL. 46220/2023**

JANKI DEVI

.....Appellant

Through: Mr. F.K. Jha and Mr. Gaurav
Jha, Adv.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

26.05.2025

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1. None appeared for the respondents despite due service. In fact only respondent no. 4 happens to be the main contesting party which had raised objections to the validity of the impugned Will before the learned Trial Court and this Court *vide* order dated 10.11.2023 found that although the respondent no. 4 had been served, he has not appeared in the matter.

2. Having heard the learned counsel for the appellant and on perusal of the records, this Court has no hesitation in holding that the impugned judgment dated 24.07.2023 cannot be sustained in law.

3. Suffice to say that the appellant/petitioner had instituted a petition under Section 276 of the Indian Succession Act, 1925 (the Act) seeking to obtain probate of the purported last and final Will dated 20.12.2018 left behind by her deceased husband Late Shri Roop Chand, who died on 26.02.2019. The testator was survived by the present appellant/petitioner, his wife and two daughters, namely Ms.



Bimla Joshi and Ms. Bhagwati Mishra, besides son Sh. Suresh Joshi, who happens to be the respondent no. 4.

4. It would be suffice to say that although the learned Trial Court decided the issue as regards the genuineness and validity of the impugned Will dated 20.12.2018 in favour of the appellant/petitioner and also held that the respondent no. 4/son had failed to prove that the Will was in any manner forged and fabricated, however, the petition was dismissed on the ground that the main executor of the Will viz., daughter of the deceased testator Smt. Bhagwati Mishra, had not instituted the petition for probate, and additionally for the fact that no alternative relief had been claimed by the appellant/petitioner including seeking letters of administration.

5. Learned counsel for the appellant has drawn my attention to the orders dated 20.04.2023, 19.05.2023, 27.05.2023, and lastly dated 09.06.2023 on which date final arguments were heard by the learned Trial Court and *vide* the last order i.e. 09.06.2023, the learned Trial Court exercised *suo moto* power under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 read with Section 165 of the Indian Evidence Act, 1872 and directed the petitioner to appear in person for examination by the Court, who appeared and was examined on 06.07.2023 and thereafter, the impugned judgment came to be passed.

6. It would be apposite to reproduce the operative portion of the impugned judgment, which reads as under:

“52. In the present case, as mentioned hereinabove, the Ld. Counsel for the petitioner was specifically asked to show as to how/the petitioner could be granted a probate in the present case. The petitioner, despite coming to know the defect in the petition, did not take any steps to cure the defect. No doubt, the defect is curable. However, it is for the petitioner to cure the defect after coming to know such a defect. The petitioner did not take any steps to amend the prayer clause of the petition to seek letters of



administration with will annexed. Even an oral prayer has not been made that the petition may be treated a petition seeking letters of administration with will annexed. Rather, it has been argued that a probate can be granted to the petitioner. In support of the said argument, Ld. Counsel has also relied upon a judgment titled **Bharti Sharma vs State and Ors. 2019 SCC OnLine Del 11791**. I have studied the judgment. The judgment does not support the argument of Ld. Counsel for the petitioner. Rather, it supports the contentions that in case named executor fails to apply for probate, a beneficiary in the will can present a petition for grant of letters of administration with will annexed.

53. In the present case, the petitioner has not sought any letters of administration with will annexed despite bringing it to the notice of the party that a probate could not be granted to the petitioner. Even an oral prayer to that effect has not been made. A Court, cannot grant a relief which is not prayed for. I get strength from the judgments titled '**Om Prakash and Others vs Ram Kumar and Others**': AIR 1991 SC409, '**Bharat Amratlal Kothari vs Dosukhan Samadkhan Sindhi & Ors.**' Criminal Appeal no. 2020/2009, decided on 04.11.2009.

54. In the light of the discussion hereinabove, I hold that the petitioner is not entitled to the probate of the Will Ex.P-1/1. The issue is accordingly decided against the petitioner."

7. At the outset, this Court has no hesitation in holding that the aforesaid reasons recorded by the learned Trial Court are clearly not sustainable in law. It is borne out from the record that the daughter of the deceased testator, namely, Smt. Bhagwati Mishra had rather executed a 'no objection' in the favour of her mother and she refused to act as an executor and thereby renounced her rights as being a legatee in terms of Sections 230 and 232(b) of the Act that precludes her for even applying for the probate of the Will or a beneficiary legatee under the Will. In the aforesaid background, there was no legal obstacle for granting the letters of administration to the petitioner.

8. Accordingly, the present appeal is allowed. The impugned judgment dated 24.07.2023 is hereby set aside. The appellant/petitioner is hereby granted letters of administration subject



to fulfilment of all the relevant conditions in terms of the Act. The learned Trial Court is hereby directed to return all the original documents including the original Will in question to the appellant forthwith in accordance with law.

DHARMESH SHARMA, J

MAY 26, 2025

acm/sa