



2025:DHC:4144-DB



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

Date of decision: 21.05.2025

+ **FAO(OS) 138/2023**

SMT SURINDER PAL KAUR

.....Appellant

Through: Dr.I.M.Quddusi, Sr.Adv. with
Mr.Shantanu Garg, Adv.

versus

SHRI RAKESH KUMAR JUNEJA AND ANRRespondents

Through: Mr.Digvijay Rai, Mr.Archit
Mishra, Mr.Mukesh Kumar,
Mr.H.Kashyap, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

CAV 641/2023

1. As the learned counsel for the caveators has entered appearance,
the Caveat stands discharged.

FAO(OS) 138/2023 & CM APPL. 65077/2023

2. This appeal has been filed challenging the Order dated
23.08.2023 passed by the learned Single Judge of this Court in
I.A. Nos. 1388/2019, 1556/2020 and 16519/2022 in CS(OS)
55/2019 titled *Shri Rakesh Kumar Juneja & Anr. v. Smt.
Surinder Pal Kaur*, allowing the application filed by the
respondents herein under Order XXXIX Rules 1 and 2 of the



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Code of Civil Procedure, 1908 and directing the parties to maintain the *status quo* regarding the construction over the subject plot of land, bearing No.E-255, Greater Kailash-II, New Delhi, and not change its nature/character during the pendency of the Suit.

3. The learned counsel for the appellant submits that the learned Single Judge has failed to appreciate that the Probate of the Will dated 07.06.2003 executed by 'Baba' in favour of the appellant has been granted by the Order dated 10.09.2015 of the Division Bench of this Court in FAO(OS) 275/2013. He submits that though the respondents had applied for the cancellation of the Probate by way of Test. Cas. 73/2017, the same was dismissed by this Court *vide* Order dated 18.12.2017. He submits that thereafter, the respondents also filed a Civil Suit, being CS(OS) 102/2018, seeking cancelation of the Probate, which also was dismissed by this Court *vide* its judgment dated 09.03.2018.
4. The learned counsel for the appellant submits that in view of the above facts, the *status quo* order could not have been passed by the learned Single Judge.
5. On the other hand, the learned counsel for the respondents, who appears on advance notice of this appeal, submits that the Division Bench of this Court, in its judgment dated 10.09.2015 passed in FAO(OS) 275/2013, while granting Probate of the Will dated 07.06.2003 had clarified that the Probate is confined only to determining the question of the genuineness and due execution



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of the Will, and the question of whether the Testator at all had the title to the subject plot of land was not determined in the said appeal. He submits that the same observation was made by the learned Single Judge of this Court while dismissing CS(OS) 102/2018. He submits that the plaintiffs have registered sale deeds in their favour and the entire chain of title of the subject plot of land is duly reflected in these documents, which have been filed before the learned Single Judge in the Suit. He submits that during the pendency of the present appeal, the Suit has also proceeded, and the admission and denial of the documents has already been concluded.

6. We have considered the submissions made by the learned counsels for the parties.
7. Admittedly, the entire appeal is based on the grant of Probate of the Will dated 07.06.2003 in the appellant's favour *vide* judgment dated 10.09.2015 of this Court in FAO(OS) 275/2013. In the said judgment, however, this Court had further clarified as under:

"7.We are of the opinion that the learned Single Judge was rather overly influenced by the manner in which the donation was allegedly made of the property to the testator - way back in 1966. Whilst the correctness of such a transfer or alienation may be an issue vis-a-vis a third party (whose claims would also be open to adjudication given that the grant of probate only signifies the court's conclusion that the genuineness and due execution of the



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Will was proved), the fact that such title perhaps did not inhere in the testator or there was a question mark over it in our opinion could not have led the learned Single Judge to conclude that the Will itself was invalid.”

8. In the judgment dated 09.03.2018 passed by the learned Single Judge of this Court in CS(OS) 102/2018, this aspect was again highlighted while dismissing the Suit filed by the respondents herein challenging the grant of the Probate. The Court observed as under:

“6. The plaintiffs, instead of filing a suit restraining the defendant or any other person who may be disturbing or challenging the title claimed by the plaintiffs to the property have to either file a suit for declaration of their title and injunction, if in possession or if have lost possession, for recovery of possession on the basis of the title claimed by the plaintiffs. The plaintiffs, instead of doing so, have filed this suit for cancellation of the order dated 10th September, 2015 holding Surinder Pal Kaur entitled to grant of probate claimed by her and the order dated 27th May, 2017, perhaps issuing the probate, when as reasoned in detail in the order dated 18th December, 2017 reproduced above, the plaintiffs are not concerned with the probate granted by this Court inasmuch as the grant of probate only proves the document of which probate is granted as the validity executed last Will of the deceased and does not adjudicate the title of the deceased to the properties bequeathed. “

(Emphasis supplied)

9. It is only thereafter, that the respondents have filed the present Suit for possession and permanent injunction.



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10. One important fact that has been highlighted by the learned counsel for the respondents is that by a judgment dated 06.10.1998 passed by the learned Single Judge of this Court in Suit No.3416/1992, the Gift Deed dated 23.06.1966, whereby the 'Baba' claimed that the title of the subject plot of land had been transferred to him by the original owner, already stands cancelled. This judgment, as per the submission of the learned counsel for the respondents, has attained finality and has not been challenged till date. Therefore, at least *prima facie*, the Testator had no title in the suit land that he could have bequeathed by way of the alleged Will in favour of the appellant. On the other hand, the respondents have registered Sale Deeds in their favour.
11. The learned Single Judge of this Court in the Impugned Order has taken note of the above facts and, keeping in view the above, has directed the parties to maintain *status quo* regarding the construction over the subject plot of land.
12. We find no infirmity in the Impugned Order.
13. Accordingly, the appeal as well as the pending application is dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 21, 2025
RN/SJ

[Click here to check corrigendum, if any](#)