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

+ **TEST.CAS. 37/2012**

RAJEEV KSHETRAPAL

..... Petitioner

Through: Mr. Rajender Agarwal, Adv.

versus

STATE & ANR

..... Respondents

Through: Mr. B.S. Mor, Adv. for R-2.

Mr. Vishwa Bhushan Arya, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.02.2018

IA No.12169/2017 (of the respondent no.2 u/S 151 CPC).

1. In this Test. Cas. seeking Letters of Administration with copy of the Will annexed of the deceased Smt. Kanta Kshetrapal, being the mother of the petitioner namely Rajeev Kshetrapal, respondent no.2/applicant namely Dr. Vinay Kshetrapal and respondent no.3 namely Renu Goswami and to which Test. Cas. both respondents no.2&3 have filed separate objections, the following issues were framed on 16th March, 2016:-

“(i) Whether the deceased Smt. Kanta Kshetrapal died leaving behind her last valid Will and testament dated 14.03.2009? OPP

(ii) Relief?”

2. The respondent no.2/applicant has now filed this application for framing the following additional issue:-

“Whether the property i.e. 8-A, Poorvi Marg, Vasant Vihar, New Delhi – 110 057 devolved upon the deceased Smt. Kant Kshetrapal on the basis of the Will dated 09.06.1988 allegedly executed by late Sh. A.N. Kshetrapal? OPP”

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3. Needless to state the counsel for the petitioner opposes.
4. The counsel for the respondent no.3 supports the application.
5. In a Test. Cas., title to the property is not to be decided. Reference if any required can be made to ***Sarla Gupta Vs. State*** 2017 SCC OnLine Del 12689, ***Atula Basi Dasi Vs. Narupama Devi*** AIR 1951 Cal 561 (DB) and ***Mukti Dutta Vs. Vijay Bhushan*** 2018 SCC OnLine Del 6924.
6. Thus, even if the petition were to succeed, the same would not establish the deceased Smt. Kanta Kshetrapal to be the owner of the property subject matter of the document claimed to be her validly executed last Will dated 14th March, 2009.
7. The counsel for the petitioner confirms.
8. Making it so clear, the application is disposed of.

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9. List before the Joint Registrar on 21st February, 2018 for fixing the dates for recording of evidence.

RAJIV SAHAI ENDLAW, J

FEBRUARY 06, 2018

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