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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO 182/2018 & CM Nos. 17641-44/2018

MANJIT SINGH ANAND

..... Appellant

Through: Ms. Zubeda Begum, Ms. Sana Ansari
and Ms. Vaishali Tanwar, Advocates.

Versus

STATE AND ORS.

..... Respondents

Through: Mr. Sameer Vashisht, Additional
Standing Counsel for Respondent
No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **01.05.2018**

C.M.No.17643/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed off.

C.M.No.17641/2018 (for delay)

For the reasons mentioned in the application, the delay of two days' in filing the appeal is condoned.

The application stands disposed off.

FAO 182/2018 & C.M.Nos.17642 & 17644 of 2018

The appellant has impugned an order dated 28.12.2017 granting Probate to the Will propounded by his sister-respondent No.2, who had claimed that by a Will dated 24.06.1992, her mother had exclusively bequeathed all her properties moveable and immoveable to the respondent



No.2, who has three brothers, one of whom, Mr. Surinderjeet Singh-respondent No.4 is a bachelor and had no source to sustain himself. He was entirely dependent upon his mother for his accommodation/a roof over his head and is otherwise dependent upon his brothers. It is argued that the mother, who passed away on 13.04.2003, knew fully well about the condition of R-4, she would not have willed the entire property exclusively to only one child, to the specific exclusion of her dependent son, as a mere destitute, at the mercy of society. Furthermore, another brother Mr. Jagjit Singh-respondent No.3, who passed away on 30.01.2012 during the course of the Probate proceedings, was not properly represented because his 'No Objection' to the respondents' petition, purportedly by way of an affidavit which was never sworn; therefore, it could not have been accepted as an admissible document in evidence. Furthermore, the veracity of the 'No Objection' was never tested because evidence was recorded in 2017 much after the demise of respondent No.3 in 2012. As a result, his legal heirs too could not have been granted an opportunity to examine the veracity of the 'No Objection' purportedly given by respondent No.3.

The learned counsel for the appellant submits that in the absence of 'No Objections' of both the brothers being duly examined as documents of evidence, the impugned order has erred in treating them as 'No Objection'. She contends that interestingly, the 'No Objection' by Mr. Jagjit Singh-respondent No.3 is with respect to a Will dated 24.06.1996 whereas the Will propounded by respondent No.1, was dated 24.06.1992. Therefore, the said 'No Objection' would be of no value as it was not for the Will which was granted probate. Furthermore, the Will itself was never proven by summoning the records from the Office of the Sub-Registrar. She further



submits that the Probate Petition could not have been admitted since it was in violation of the Original Side Practice Directions of this Court i.e. it was not accompanied by a sworn affidavit of the attesting witness, as well as verification by them.

The learned counsel for the appellant submits that the appellant had claimed partition of the suit property which was clubbed alongwith the Probate Petition to be disposed off together; that after the grant of Probate, respondent No.4 suffered a brain stroke resulting in paralysis of a part of his body and returned to his mother's home for a night or so, but immediately thereafter he was taken to the Beggars' Home by respondent No.2-his sister; it is another matter though, the appellant is taking care of respondent No.4 out of filial affection and responsibility; the Will had purportedly bequeathed the property bearing Flat No.23-A, K-Block, Saket, New Delhi, alongwith a scooter garage 62-K, Saket, whereas the property in question is Flat No. 23-D, K-Blo00ck, Saket, New Delhi; therefore, in the absence of specific mention of property in the Will in question, it cannot be construed that the suit property was bequeathed to the propounder.

Issue notice.

Mr. Sameer Vashishth, the learned Additional Standing Counsel accepts notice on behalf of respondent No.1-State.

Issue notice to the remaining respondents by ordinary process, Speed Post and through approved courier including *dasti*, through counsel as well, returnable on 04.10.2018.

Till the next date of hearing, the *status quo* apropos the suit property shall be maintained.

The Trial Court Record be requisitioned, digitized and made available



before the next date. After digitization, the TCR shall be returned in three days.

MAY 01, 2018/sb

NAJMI WAZIRI, J.