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

+ TEST.CAS. 21/2017 & IA No.4028/2017 (for exemption from filing original documents)

VIJAY KUMAR SARDANA

..... Petitioner

Through: Mr. Rajiv Dawar and Mr. Sameer Dawar, Advs.

Versus

STATE & ANR

..... Respondents

Through: Mr. Mukesh Kumar Singh, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.03.2017**

1. The petitioner seeks probate of a document dated 5th September, 2016 stated to be the validly executed last Will of Smt. Raj Kumari Mehta wife of late Sh. Gangadhar Mehta, bequeathing her entire estate to the daughter of the petitioner impleaded as respondent No.2 herein.
2. The petitioner has filed IA No.4028/2017 for exemption from filing original documents including the document claimed to be the Will.
3. In a petition seeking probate, such exemption cannot be granted.
4. IA No.4028/2017 is dismissed.
5. The petitioner is directed to file the originals within one week.
6. The petitioner claims to be the brother of the deceased. The petitioner however has not filed any document to show that the deceased was his sister.

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Though the Death Certificate of the deceased shows the name of the mother of the deceased but the plaintiff has not even pleaded that the name of his own mother was the same. Moreover, from a perusal of the document claimed to be the Will, it appears that there would be plenty of records to show the parentage of the deceased, as the deceased was employed as a teacher.

7. The counsel for the petitioner, on enquiry as to the vocation of the petitioner, though states that he is retired but states that he does not know from where the petitioner retired and what documents would be available to show the parentage of the petitioner.

8. The petitioner to also file Birth Certificates of himself and the deceased.

9. Though in the petition it is stated that the deceased has no other sibling except the petitioner but the counsel for the petitioner states that the deceased left another brother Mr. Ramesh Sardana who mistakenly remained to be mentioned in the petition as the deceased in her Will did not mention the said brother.

10. As per the averments of the petitioner, the said Mr. Ramesh Sardana must be the brother of the petitioner and there is no reason for the petitioner to forget about his brother, even if the deceased did not mention him.

11. The deceased was admittedly residing, till the demise of her husband on 20th January, 2016, outside Delhi, in Haryana. It is the case in the petition that thereafter the deceased shifted her residence to Delhi and died at Delhi on 19th September, 2016.

12. There is no document filed to show that the deceased in fact was

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residing at Delhi. Mere statement of the said fact in the document claimed to be the Will, which is still to be proved or the Death Certificate of the deceased at Delhi, are of no relevance.

13. On enquiry, it is stated that the deceased died in a hospital but the counsel does not know the name of the hospital also.

14. The deceased is stated to have left several immovable properties, all in Haryana and several bank accounts / bank deposits. Though in the petition it is not stated that the said accounts and deposits are with which branch of the bank but on enquiry, the counsel states that they are all with the branches of the banks in Haryana.

15. The same is also indicative of the deceased having not shifted to Delhi, inasmuch as if she had any intent to shift to Delhi, she would have got her bank accounts at least shifted to Delhi.

16. The counsel for the petitioner to file a detailed affidavit of the petitioner in this regard before the next date of hearing.

17. The counsel for State through Govt. of NCT of Delhi appearing on advance notice is also directed to, through the Sub Divisional Magistrate (SDM) of the area concerned, have an enquiry conducted on the aforesaid facts and file a report before the next date of hearing.

18. List on 21st April, 2017.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

MARCH 30, 2017

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