

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)
No(s).26252/2008

(From the judgement and order dated 16/10/2008 in CMM No.
1100/2008 of the HIGH COURT OF DELHI AT N. DELHI)

ASHISH DHIMAN & ANR. Petitioner(s)

VERSUS

STATE & ORS. Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned
Judgment & prayer for interim relief and office report)

Date: 09/08/2010 This Petition was called on for hearing
today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. Kailash Vasudev, Sr. Adv.
Mr. Rajiv K. Garg, Adv.
Mr. Ashish Garg, Adv.
Mr. Annam D.N. Rao, Adv.

For Respondent(s): Mrs. Geeta Luthra, Sr. Adv.
R-2-5 Mr. Pankaj Kapoor, Adv.
Mr. Rajesh Bhardwaj, Adv.
Mr. Vikram Kapoor, Adv.
Mr. Sumit Sinha, Adv.
Mr. Rakesh K. Singh, Adv.
Mr. Arun K. Sinha, Adv.

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UPON hearing counsel the Court made the following
O R D E R

This petition is directed against the judgment and
order dated 16th October, 2008 passed by the learned Single
Judge of the Delhi High Court rejecting the application as also
the petition filed by the petitioner herein on the ground that
the petitioner has failed to file the original will along with
the petition in terms of the requirement of Section 276 of the
Indian Succession Act.

The petitioner herein filed a petition for grant of
probate whereas the respondent had filed a petition for
testamentary succession. Both the matters were tagged together
and were taken up for consideration by the trial Court.

It transpires from the record that the petitioner

when he filed a petition for probate did not, however, file the original will along with the probate petition. Even thereafter, reminders were issued to the petitioner by the respondent herein to place the original will on record.

Despite receipt of the aforesaid notices, the petitioner did not file the original will. At the stage when the evidence was

being recorded and when the evidence of the respondent in the connected matter was complete, the petitioner filed an application praying for taking the said original will on record. The said application upon consideration was rejected and the petition was also dismissed as the petitioner did not file the original will.

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Having regard to the facts and circumstances of the present case and upon hearing the counsel appearing for the parties, we are of the considered opinion that the language of Section 276 of the Indian Succession Act is clear and has no ambiguity in it. It provides that an application for probate has to be presented along with the original annexed therewith. Not only the said provision was not complied with, the said original will was not produced even thereafter despite repeated notices for such production.

In that view of the matter, we do not find any infirmity in the impugned order. There is no merit in the Special Leave Petition and the same is dismissed.

(V.K. Tiwari)
P.A.

(Renu Diwan)
Court Master