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

Reserved on: 16th October, 2020

Decided on: 14th July, 2021

CS(OS) 156/2020

I.A. 5074/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A.7818/2020 (under Section 151 CPC-by defendant No.8)

MR. NIRANJAN SWARUP GUPTA & ORS. Plaintiffs

Represented by: Mr.Piyush Singhal, Advocate for the
plaintiffs with Mr.Ankur Gupta, A.R.
of the plaintiffs in person.

versus

BIMLA DEVI & ORS. Defendants

Represented by: Mr.Chandan Rai Chawla, Advocate
for D1 to D3.
Mr.Kaadambari, Advocate with
Ms.Priyanka, Advocate for D4
Mr.Samrat Nigam, Advocate with
Mr.Sudarshan Ranjan, Mr.H.Bajaj,
Advocates for D5 and D6.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present suit has been filed by the brothers of Late Shanti Swaroop Gupta who was the owner of the suit property bearing No.53, Vaishali, Pitampura, New Delhi. Wife and the daughter of Late Shanti Swarup Gupta pre-deceased him. According to the defendants, the deceased left a Will in the name of his son-in-law who has also since passed away. Based on the Will whereby the properties of Late Shanti Swarup Gupta were bequeathed

on his son-in-law who was the brother of the defendant Nos. 1 to 3, defendant Nos. 1 to 3 claimed ownership in the suit property and on the said basis, have conveyed the rights in the suit property to the defendant No. 4, who has, in turn, conveyed it to defendant No. 5 and has further conveyed to the third parties.

2. The plaintiffs are the four brothers of Late Shanti Swarup Gupta and claim rights in the suit property by virtue of being Class-II legal heirs. The present suit has been filed by the four brothers through Ankur Gupta, son of plaintiff No. 4 as the power of attorney holder who claimed to have filed power of attorney on behalf of the plaintiff Nos. 1 to 4. However, the power of attorneys were not filed with the plaint but filed subsequently.

3. A probate petition was filed by the son-in-law of Late Shanti Swarup Gupta i.e. Anand Parkash Verma which was granted in his favour vide order dated 7th August, 2014. The plaintiffs by the present suit seek a declaration of the impugned registered Will dated 7th September, 2010 as null and void, void-ab-initio and illegal, decree of possession of the suit property, decree of permanent injunction against the defendants from creating any third party rights and direction to the office of Sub-Registrar not to register any sale till the disposal of the suit.

4. When the suit came up before this Court on 2nd July, 2020, this Court issued summons in the suit and notice in the application to the defendants, returnable for 26th August, 2020 when learned counsel for the defendants entered appearance and raised number of objections to the maintainability of the suit. In the meantime, the power of attorney holder of the plaintiffs Ankur Gupta wrote to the Sub-Registrar hindering him from registering any sale deed despite the fact that this Court had not passed any order of interim

injunction or stay in his favour and thus, an application was filed by the defendant No. 8 seeking direction to the Sub-Registrar being IA 7818/2020 under Section 151 CPC. Considering the contents of IA 7818/2020, this Court had issued show cause notice to Ankur Gupta as to why the proceedings under Contempt of Courts Act be not initiated against him. In response thereto, Ankur Gupta has filed an affidavit tendering his unconditional apology.

5. The prayers made in the present suit are as under:

- “(a) To declare the registered impugned "Will" dated 07.09.2010 is null and void ab-intio and illegal and is of no effect; and*
- (b) Pass a decree of Possession of the suit property being house bearing No. 53, Vaishali, Pitampura, Delhi may kindly be passed in favor of the plaintiffs and against the defendants with costs thereby directing the defendants or anyone acting on their behalf of handover and deliver the vacant and peaceful possession of the suit property to plaintiffs; and*
- (c) Pass a decree of permanent injunction whereby the defendants, their henchmen and agents and their assignees be restrained permanently from creating third party rights from the suit property, from raising and doing construction activities at Suit Property, being house bearing No. 53, Vaishali, Pitampura, Delhi; and*
- (d) Pass a decree of damages/ menses per order 20 rule 12 CPC against the Defendants thereby directing them to pay the same to the plaintiffs from the date of filing of the suit till the handing over of the possession along with interest@ 12% per annum.*
- (e) Further direct the registrar of office of Sub- Registrar, Sub - District VI A, Delhi to not to register any types sale deed in favour of anyone till disposal of this suit for the said suit property mentioned in Para 2 of this plaint and cancel all sale deeds done by defendants.”*

6. It is thus evident that the basic prayer in the present suit is to declare the Will dated 7th September, 2010 as null, void ab-inito, illegal and of no effect. Though learned counsel for the defendants have taken multiple objections to the maintainability of the present suit however, this Court at the moment is only required to go into the fact as to whether prayer (a) before this Court is maintainable or not for the reason prayers (b) to (e) are consequential to prayer (a).

7. Case of the plaintiffs is that the present suit is a title suit and hence this Court is competent to decide the title in the suit property which the probate Court cannot decide. Reliance in this regard is placed on Section 41 of the Indian Evidence Act by learned counsel for the plaintiffs to contend that the order dated 7th August, 2014 is not an order granting probate of the Will dated 7th September, 2010 for the reason the order dated 7th August, 2014 has not been complied with, no Court fee, no indemnity bond nor the surety bond has been furnished and hence no letter of administration/probate has been granted due to the non-compliance of the order and hence the same cannot be a judgment in rem.

8. Learned counsel for the plaintiffs claims that the defendants cannot be allowed to take advantage of the conditional order when the conditions have not been complied with and thus the defendants could not have executed the sale deeds of the suit property. The proceedings in the probate case are vitiated by fraud for the reason Anand Prakash Verma claimed that the deceased left behind no legal heirs despite the plaintiffs being the Class-II legal heirs of the deceased. Since the order in probate case has been obtained by fraud, the same can be set aside only by the civil court in the present suit and not by the probate court.

9. Learned counsel for the defendants have challenged the maintainability of the present suit and claimed that the present suit is inter alia barred by limitation, barred by Section 34 of the Specific Relief Act and probate having been granted in favour of Anand Prakash Verma in respect of the Will dated 7th September, 2010, this Court cannot go into the validity of the probate granted and hence no consequential reliefs can be granted to the plaintiff.

10. Section 263 of the Indian Succession Act reads as under:

“263. Revocation or annulment for just cause. —The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. —Just cause shall be deemed to exist where—

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

11. A bare perusal of Section 263 of the Indian Succession Act reveals that the grant of probate or letter of administration or the revocation or annulment thereof for just cause can be ordered only by the probate Court. From the cause of action as pleaded by the plaintiffs claiming that Anand Prakash Verma obtained probate of the Will dated 7th September, 2010 by

playing fraud by not disclosing about the other legal heirs of the deceased and hence the Will dated 7th September, 2010 be declared null and void ab-initio and illegal and of no effect. This power vests not in the civil Court but the probate court in terms of Section 263 of the Indian Succession Act as noted above. The plaintiffs have applied for revocation of the probate granted and thus the relief as sought in prayer (a) of the present suit is not maintainable before this Court but before the probate Court under Section 263 of the Indian Successions Act.

12. As regards prayers (b) to (e) are concerned the same are consequential to the relief prayed in prayer (a) by plaintiffs and can be granted by the civil court only in case prayer (a) is allowed in favour of the plaintiffs by the probate court. Considering the facts noted above this court finds no ground to grant interim injunction.

13. Consequently it is held that prayer (a) in the present suit is not maintainable and in respect of prayers (b) to (e) the suit is adjourned sine die for the parties to revive consequent upon the order passed by the probate court. IA 5074/2020 filed by the plaintiffs is dismissed. IA 7818/2020 filed by the defendant No.8 is disposed of directing the plaintiffs who are represented through Ankur Gupta not to interfere in the rights of the defendants based on the Will dated 7th September, 2010, till any relief is granted to them by the probate court.

14. In view of the unconditional apology tendered by Ankur Gupta, the show cause notice issued on 22nd September, 2020 is discharged.

(MUKTA GUPTA)
JUDGE

JULY 14, 2021/akb/v