$~5 & 13 (connected)

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

\+ TEST.CAS. 44/2021 & I.A. 16718/2021 (u/S 276 r/w S-250 & 273(b) of the Indian Succession Act)

MAJOR RAVINDER NATH AGGARWAL ..... Petitioner

Through: Mr. Manish Kumar with Ms. Akansha Kaul, Mr. Siddhant Nath, Mr. Rahul Chaprana and Ms. Hyyat Ahluwalia, Advocates.

versus

STATE OF UTTARAKHAND AND ORS. ..... Respondents

Through: Mr. Gaurav Duggal with Mr. Shantanu Singh, Advocates for R-2.
Mr. H.S. Sharma with Mr. Bharat Sharma, Advocates for LRs of D-3.
Mr. Ashwath Sitaraman, Advocate for R-5.

\+ CS(OS) 2745/2012 & CCP(O) 75/2015, I.A. 22675/2015 (for modification of order dated 24.03.2015), I.A. 22676/2015 (for condonation of delay of 160 days in filing the instant review application), I.A. 16465/2021 (u/S 151 CPC)

YOGENDER NATH AGARWAL ..... Plaintiff

Through: None.

versus

RAVINDER NATH AGARWAL & ORS ..... Defendants

Through: Mr. Manish Kumar with Ms. Akansha Kaul, Mr. Siddhant Nath, Mr. Rahul Chaprana and Ms. Hyyat Ahluwalia, Advocates for D-1.
Mr. H.S. Sharma with Mr. Bharat Sharma, Advocates for LRs of D-3.

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CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% 27.05.2022

TEST.CAS.44/2021 & I.A. 11646/2021 (O-XXVI r/w 75 & S.151 of CPC)

1. It is pointed out by the counsels for the parties that the additional issue has been wrongly noted in the order dated 9th May, 2022.

2. The additional issue framed in the present petition would read as follows:

> "*Whether the present petition under Sections 276 read with Sections 250 and 273(b) of the Indian Succession Act, 1925 is beyond its period of limitation and thus barred? OPR*"

3. Affidavits of examination in chief of the two attesting witnesses, Mr. Gyan Prakash and Mr. Rajendra Bhahadur Chaudhary are on record. Copy of the same be supplied to the counsels for the respondents.

4. Counsel for the respondent no.5 on instructions states that the respondent no.5 shall have no objection for the examination of two attesting witnesses to the Will dated 6th April, 2011, to be conducted by the Court appointed Local Commissioner.

5. Counsel for the petitioner submits that the aforesaid two attesting witnesses are based in Bareilly, U.P.

6. The applicant/petitioner is ready to bear the cost of the Advocates of the respondent no.5 and LRs of the respondent no.3 to travel to Bareilly for recording of evidence along with the cost of the Local Commissioner to be appointed by this Court.

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7. Counsel for the respondent no.5 and LRs of the respondent no.3 are agreeable to travel to Bareilly for conducting cross-examination of the attesting witnesses in Bareilly.

8. Accordingly, Mr. B.B. Chaudhary, (Mobile No. 9910384611), retired District and Sessions Judge, Delhi is appointed as the Local Commissioner. The following directions are passed in this regard:

i. Fees of the Local Commissioner is fixed at Rs.1,00,000/- per day plus out-of-pocket expenses, which shall be borne by the petitioner.

ii. Counsels for the Parties shall approach the Local Commissioner for fixing the dates for recording of evidence.

iii. The counsel for the petitioner shall ensure the availability of the two witnesses on the said dates.

iv. Counsel for the petitioner shall also arrange for the venue for recording of the evidence in Bareilly.

v. The Local Commissioner and the counsels for the parties shall travel to Bareilly for recording of evidence.

vi. The petitioner shall make all travel and accommodation arrangements for the Local Commissioner as well as the counsels for the respondents.

vii. The Local Commissioner shall endeavour to complete the cross-examination in no later than three days.

viii. Parties shall render all assistance to the Local Commissioner for recording of evidence.

9. The application stands disposed of in above terms.

10. List the TEST.CAS. 44/2021 on 10th October, 2022.

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I.A. 8566/2022 (u/S 151 CPC r/w O-VII R-14 & O-VIII R-1A of CPC) in CS(OS) 2745/2012

11. The present application has been filed under Order VII Rule 14 and Order VII Rule 1A of the Civil Procedure Code, 1908 (CPC) to place on record the documents filed by the applicant Ms. Lily Nath Agarwal along with her written statement in 2013 vide Diary No.2892.

12. Counsels for the parties do not oppose the present application.

13. The issues are yet to be framed in the suit.

14. Therefore, in my view, no prejudice would be caused to the respondents if the aforesaid documents are taken on record.

15. Accordingly, the application is allowed and the documents sought to be filed are taken on record.

CS(OS) 2745/2012

16. Parties are given liberty to file affidavits of admission/denial of documents which have now been allowed to be taken on record.

17. Admission/denial of the documents in CS(OS) 2745/2012 would be completed on 14th July, 2022, i.e., the date already fixed before the Joint Registrar.

18. List on 10th October, 2022 for framing of issues in CS(OS) 2745/2012.

Dasti.

AMIT BANSAL, J.

MAY 27, 2022
at

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