

IN THE COURT OF MS. TANIA SINGH, LD. CIVIL JUDGE-01,
CENTRAL, TIS HAZARI COURTS, DELHI

Suit No.96594/2016

Gulshan Kaur

Vs

Bagel Singh

08.06.2020

ORDER

1. Vide this order, I shall dispose of the application filed by the defendant dated 27.07.2017 u/s 151 CPC praying for dismissal of suit.
2. The defendant has raised issue of maintainability of suit on the premise that the suit property was allotted to late Sh.Bagel Singh against whom the plaintiff has filed the present suit. Sh. Bagel Singh had died during the pendency of the suit on 08.09.09 and had left behind his Will dated 27.04.07 in favour of his two sons who are also the defendants in the present case. As per these defendants letter of administration of the said Will have also been granted to them in terms of judgment dated 28.03.2019. It has been contended in the application under consideration that in the said probate present plaintiff was also a party as respondent no. 3 and that since the Will of late Sh. Baghel Singh has been upheld, therefore, the plaintiff has no right to continue the suit.
3. The present application has been contested on the ground that the grant of letter of administration/ probate does not hold that the executor of the Will was owner of the property in question as the Court while dealing with probate does not decide the title.

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4. The plaintiff has challenged the title of the late Sh. Bagel Singh i.e the executor of Will dated 27.04.07 and therefore is entitled to continue the present suit. It is settled law that in probate proceedings the title of the executor of the Will is not gone into. The title can always be challenged even after grant of letters of administration/ probate. The judgment granting probate does not constitute Res Judicata in so far as title of the deceased testator is concerned.

5. The plaintiff who was respondent no. 3 in the probate proceedings did take the objection of the title of the deceased testator and the same has been dealt with in para 13 of the said judgment dated 28.03.2019. for reference the said para is quoted below-

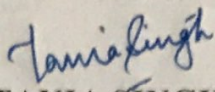
“13. Respondent No.3 had raised the objections that late Sh. Bhagel Singh had no power to execute the Will in respect of the demised property as it was an ancestral property. In this regard the law is settled that the Probate court cannot deal with the question of the title of the testator over the demised property. A Testamentary Court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will. On the other hand, grant of Probate or Letter of Administration does not confer title to property. They merely enable administration of the estate of the deceased. Thus, it is always open to a person to dispute title even though Probate or Letters of Administration have been granted. [Ref: Delhi Development Authority vs. Mrs. Vijaya C. Gurshaney (2003) 7 SCC 301]. Thus, it does not avail respondent no. 3 to raise the objection that late Sh. Bhagel Singh was not exclusive owner of the demised property. Anyhow, the demised property could not have been an ancestral property in the hands of Sh. Bhagel Singh as his father late Sh. Mehar Singh was admittedly exclusive owner of the said property and he had expired in the year 1967.”

6. Thus, even in the aforesaid judgment also challenge of title of Sh. Baghel Singh is left open which is otherwise also settled position of law. Therefore,

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mere granting of probate in favour of defendant no. 2 and 3 is no ground to dismiss the suit. As such, the suit is held maintainable. The application u/s 151 CPC is accordingly dismissed and disposed off. No order as to cost.

**Announced through CISCO Webex
on 08.06.2020**


(TANIA SINGH)
**Civil Judge-1, Central District
Tis Hazari Courts, Delhi**