

**IN THE COURT OF MS. SHEFALI BARNALA TANDON : LD. ADMINISTRATIVE CIVIL
JUDGE-cum-ADDL. RENT CONTROLLER: TIS HAZARI COURTS: DELHI.**

SC/60/18

Jyoti Devi Vs. The State & Ors.

20.07.2020


ORDER

1. Vide this order, the undersigned shall decide an application Under order 11 Rule 12 CPC moved on behalf of the petitioner/applicant, whereby seeking directions to the objector Sh. Deepak Kumar to file on record the Original Will dated 09.12.2016 of the deceased Smt. Dhanno Rani.
2. Reply to the said application filed on behalf of the objector is already on record.
3. Before taking up the instant application, it would be appropriate to mention that the petitioner has filed the present petition U/s. 372 of the Indian Succession Act qua the debts and securities of her deceased sister namely Smt. Dhanno Devi. Petitioner Ms. Jyoti has stated in the present petition that deceased executed a Will dated 09.12.2016 in her and also in favour of her mother Smt. Bhagwati.
4. Now, coming to the application in question. The undersigned has heard the submission of Ld. Counsels for the parties and perused the record carefully.
5. It is averred by the Ld. Counsel for the petitioner that since the deceased Smt. Dhanno Rani used to reside with the objector Sh. Deepak Kumar at the time of execution of the aforesaid Will, therefore the objector is in exclusive possession of the said Will and for the effective adjudication of the case, objector may be directed to produce on record the original of the said Will.

6. On the other hand, Ld. Counsel for the objector has categorically denied having original of any such Will in possession of the objector. It has been contended on behalf of the objector that the objector has filed a succession petition U/s. 372 of Indian Succession Act in respect of the debts and securities of the same deceased Smt. Dhanno Rani in Rohini District Courts, on the basis of Law of succession and has questioned the genuineness of the said Will. It has been stated by the objector in the reply that he was never in his possession of the original of the said Will and has filed the copy of it in his succession petition, whereby challenging it.

At this stage, it is noted that on the directions of the Court, objector had filed the certified copy of the said petition and Will, which is copy to copy, in the present petition.

7. The case of the petitioner is that she is the sister of the deceased Smt. Dhanno Rani and the deceased had executed a Will dated 09.12.2016 in her favour, hence, the burden to prove the same is on the petitioner, as per Indian Evidence Act. However, the application in hand has been filed to direct the objector to file the Original Will, which he has denied to be in his possession. The possession of Original Will in his possession seems impractical as he is not the beneficiary the same, rather it is against him. Even for the sake of arguments, it is believed that objector is having the original of the said Will and does not file on record pursuant to the said application, then objector shall bear the consequences of the same during the trial.


20/7/20

8. In these facts and circumstances, the Court doesn't have any mechanism to procure/force the production of the document. With the aforesaid observations, the application is dismissed and accordingly disposed off.

9. Further, it is noted that the mother of the deceased is still alive but has not been made a party despite being legal heir/beneficiary of the deceased as per the Will as averred, hence, petitioner is directed to implead her in the present case by moving an appropriate application.

Put up the matter for further proceedings, on **22.09.2020**.

Announced through

Video conferencing on **20.07.2020**


(Shefali Barnala Tandon)

ACJ/ARC (Central)

Delhi/20.07.2020