

Administrator General vs.state & Ors

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Court : Delhi

Decided On : Nov-21-2016

Appellant : Administrator General

Respondent : State & Ors

Advocate for Def. : Mr. Raman Kapur

Advocate for Pet/Ap. : Mrs. Avnish Ahlawat, Ms. Latika Chaudhary

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

21. t November, 2016 TEST.CAS. 13/1973 ADMINISTRATOR GENERAL

... Petitioner

Through: Mrs. Avnish Ahlawat & Ms. Latika Chaudhary, Advs. STATE & ORS
Versus

... RESPONDENTS

Through: Mr. Raman Kapur, Sr. Adv. with Mr. CORAM:-

"HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW R.P. Singh, Adv. for Objectors.
On 6th October, 1971, one Mohan Singh Sangar filed a petition under % + 1.
Section 276 of the Indian Succession Act, 1925, registered as Probate Case
No.12/1971 of this Court, seeking probate of the document dated 11th May, 1971

stated to be the last Will of Smt. Dropadi Devi widow of Sh. Uma Datt Sharma, resident of 110, Darya Ganj, Delhi who died at Shahpur, District Ambala on 21st July, 1971, in his capacity as the named executor in the said document, the other named executor viz. Uma Datt Sharma having died on 17th July, 1971. TEST. CAS. No.13/1973 Page 1 of 33 2. The aforesaid probate case No.12/1971 was entertained. Objections were filed by i) Ram Sarup Sharma; ii) Dev Datt Sharma; iii) Suresh Chand Sharma; and, iv) Sita Devi pleading: (i) That the document dated 11th May, 1971 set up by Mohan Singh Sangar as the Will of Dropadi Devi was forged and fabricated. (ii) That the said objectors had already filed application in the Court of the Senior Sub-Judge at Ambala for Succession Certificate on the basis of a document dated 19th July, 1971 stated to be the last Will of the said Smt. Dropadi Devi. (iii) That Ajodhya Parshad and Ram Rang were sons of Har Bilas. (iv) Ajodhya Parshad left a son Raghu Nandan and Ram Rang left a son Uma Datt Sharma. (v) Dropadi Devi was the wife of Uma Datt Sharma. (vi) That the objectors Ram Sarup and Dev Datt are the sons of Raghu Nandan. TEST. CAS. No.13/1973 Page 2 of 33 (vii) Uma Datt Sharma had a son named Vidya Sagar who was unmarried and died in 1950. (vii) That both Uma Datt Sharma and Dropadi Devi died in the house at Shahpur district Ambala which belonged to them and the objectors and was the family house. (viii) That the Will dated 19th July, 1971 of Dropadi Devi was in favour of objectors. (ix) Mohan Singh Sangar was one of the large number of tenants in house No.110, Darya Ganj, Delhi owned by Dropadi Devi. (x) Dropadi Devi never wanted to disinherit her heirs i.e. the objectors. (xi) The objectors are the heirs of Dropadi Devi.

3. The Administrator-General, Delhi also filed a reply to the Probate Case No.12/1971 pleading: (a) That the objectors as per their pleadings are heirs of the husband of Dropadi Devi and not of Dropadi Devi. TEST. CAS. No.13/1973 Page 3 of 33 (b) The application for Succession Certificate in the Court at Ambala was without jurisdiction and filed during the pendency of the Probate Case No.12/1971 and against law. (c) The status of Mohan Singh Sangar as a tenant in the property of the deceased did not affect his title as Executor of the Will of the deceased. The Administrator-General Delhi thus supported Mohan Singh Sangar.

4. The Administrator-General, Delhi filed IA No.93/1973 in Probate Case No.12/1971 for an order under Section 10 of the Administrators- General Act, 1963. The said application was allowed vide judgment dated 15th February, 1973 in Probate Case No.12/1971 in which it was recorded / held: (i) That Smt. Dropadi Devi besides property known as Vidaya Sagar Bhawan situated at 110, Darya Gang, Delhi had also left a sum of Rs.1,45,114.41 paise in fixed deposit with the State Bank of India, Chandni Chowk, Delhi and another sum of approximately Rs.10,000/- in a TEST. CAS. No.13/1973 Page 4 of 33 current account with Central Bank of India, Darya Ganj, Delhi. (ii) That Mohan Singh Sangar died on 9th January, 1972. (iii) Thereafter one Lalit Mohan Bangur who claimed to be one of the attesting witnesses of the alleged Will dated 11th May, 1971 and also a tenant in a part of the property at 110, Darya Ganj, Delhi moved IA No.249/1972 in Probate Case No.12/1971 praying that the Administrator- General, Delhi be granted Letters of Administration in respect of the estate of Dropadi Devi; notice of this application was sent to the Administrator-General, Delhi. (iv) This application was opposed by the counsel for the objectors averring that the property of the deceased Dropadi Devi was not in danger of loss, deterioration or waste. (v) No merit was found in the said plea of the objectors as rent from the tenants in the property was to be collected and taxes with respect to the property paid; there had also TEST. CAS. No.13/1973 Page 5 of 33 been disputes with respect to a part of the property which was subject matter of proceedings under Section 145 of the Criminal Procedure Code, 1973 (Cr.P.C.) and vide order in that proceedings a part of the property had been attached. (vi) Another Mr. Har Prashad was also claiming to be more closely related to Uma Datt than the objectors and claiming preference in the event of intestacy of Dropadi Devi. (vii) All these disputes were likely to take a long time to settle and in the meanwhile somebody had to take charge of the property. (viii) Hence the Administrator-General, Delhi was directed to collect and take possession of the assets of the deceased and to hold the same subject to further directions.

5. The Administrator-General, Delhi filed IA No.966/1973 in Probate Case No.12/1971 and finding the same to be a regular petition for issuance of Letters of Administration in favour of the Administrator-General of Delhi, TEST. CAS. No.13/1973 Page 6 of 33 it was ordered to be separated and re-numbered as a

probate case and was numbered as the present petition i.e. Probate Case No.13/1973.

6. Thereafter Probate Case No.12/1971 was adjourned from time to time along with the present petition and was ultimately, vide order dated 29th August, 2002, dismissed for the reason of the petitioner therein Mohan Singh Sangar having died and none having been substituted in his place.

7. Though IA No.966/1973 filed in Probate Case No.12/1971 and ordered to be numbered as Probate Case No.13/1973 i.e. the present petition is in a torn state and the contents thereof cannot be fully deciphered but suffice it is to state that it is to seek Letters of Administration with respect to the estate aforesaid of Dropadi Devi.

8. Objections to this petition also were filed by Ram Sarup Sharma, Suresh Chand Sharma, Sita Devi, Bhuro Devi, Bimla Devi, Krishan Datt, Raj Rani, Ramesh Datt, Birj Bala & Ashok Kumar pleading i) that the Administrator-General, Delhi cannot apply for obtaining Letters of Administration of the alleged Will dated 11th May, 1971 (with respect to which Mohan Singh Sangar had filed Probate Case No.12/1971); ii) denying that the document dated 11th May, 1971 was executed by Dropadi Devi; iii) TEST. CAS. No.13/1973 Page 7 of 33 that Dropadi Devi had left a validly executed last Will dated 19th July, 1971 in favour of the objectors and which had also been registered post her death with the Sub-Registrar, Ambala; iv) reiterating the objections earlier filed to Probate Case No.12/1971 and as set out hereinabove.

9. Though as aforesaid, the petition in Probate Case No.13/1973 is in a torn unreadable state but from a reading of the objections aforesaid filed thereto, it appears that the Administrator-General in this petition was seeking probate of the same document dated 11th May, 1971 of which Mohan Singh Sangar was seeking probate as the last Will of Dropadi Devi in Probate Case No.12/1971.

10. The reply (called rejoinder) filed by Administrator-General to the aforesaid objections also confirms that the Administrator-General, Delhi in the present petition was averring Dropadi Devi to have left a Will dated 11th May, 1971 and

seeking Letters of Administration on the basis thereof.

11. The Administrator-General, Delhi in the reply also disputed the document dated 19th July, 1971 relied on by the objectors as the last Will of Smt. Dropadi Devi. From a reading of the said reply it also transpires that vide document dated 11th May, 1971 claimed to be the last Will of Dropadi TEST. CAS. No.13/1973 Page 8 of 33 Devi, she had bequeathed her entire property to charity. In the reply it is also recorded that Mohan Singh Sangar, owing to demise, had ceased to be a tenant and / or the occupier of any part of the property.

12. On the pleadings aforesaid, the following issues were framed on 20th September, 1973: 1. Whether Dropadi Devi deceased executed a Will dated the 11th of May 1971 and whether the same is valid?.

2. Whether Dropadi Devi deceased executed a Will dated the 19th of July, 1971 and whether the same is valid?.

3. Whether the objectors are entitled to succeed to the property of the deceased, otherwise than under the Will dated the 19th of July, 1971 as being her heirs?.

4. If the previous issues be decided in favour of the Administrator-General, then is he not entitled to obtain Letters of Administration?.

5. Relief. 13. Vide order dated 18th December, 1975 on the application of the Administrator-General, Delhi, the objectors and one Mr. Ramesh Sharma were restrained from interfering with the estate of Smt. Dropadi Devi ordered to be managed by the Administrator-General, Delhi. TEST. CAS. No.13/1973 Page 9 of 33 14. Vide order dated 6th August, 1976 the document dated 19th July, 1971 claimed by the objectors to be the last Will of Smt. Dropadi Devi and some specimen signatures of Smt. Dropadi Devi were ordered to be sent to the Central Forensic Science Laboratory (CFSL) for examination and opinion.

15. The order dated 28th July, 1978 records that the Sub Divisional Magistrate (SDM) who was in possession of the property in the proceedings under Section 145 of the Cr.P.C. had released the said possession in favour of the Administrator-General, Delhi. Vide the same order, the Administrator-General, Delhi was

restrained from leasing out or parting with possession of the property and to maintain status quo with respect thereto.

16. The order dated 3rd October, 1978 on IA No.2555/1978 of the objectors to restrain the Administrator-General, Delhi from renting out and parting with possession of the property records i) that one single flat belonging to the deceased Dropadi Devi out of number of flats in the property was lying vacant; ii) it was the stand of the Administrator-General, Delhi that the said flat could not be let out as it was full of the assets of the deceased Dropadi Devi; iii) that the effect of the grant of Letters of Administration to the Administrator-General, Delhi would be that he could TEST. CAS. No.13/1973 Page 10 of 33 administer the estate according to the Will; iv) that however till the Letters of Administration was so granted, the Administrator-General, Delhi was merely an administrator pendente lite; v) though the Administrator-General, Delhi subsequent to grant of Letters of Administration would be subject to the powers of the High Court under Section 25 of the Administrators- General Act but till then could be restrained from letting out the property; vi) accordingly the Administrator-General, Delhi was restrained from letting out the property.

17. Vide order dated 8th January, 1979, the Administrator-General, Delhi was directed to deposit the arrears of rent etc. of Ratnakar Press in Kolkata and to contest the eviction petition with respect thereto.

18. Vide order dated 19th March, 1979, the objectors were directed to lead evidence first as the Will propounded by them was a latter one and if proved, the need for the Administrator-General, Delhi to prove the Will dated 11th May, 1971 would not arise.

19. Vide order dated 15th April, 1981 one Mr. A.C. Kakkar was restrained from making any addition, alteration in any part of the ground floor of the TEST. CAS. No.13/1973 Page 11 of 33 property aforesaid or from enclosing any part of the common area of the properties.

20. Applications moved from time to time for substitution of legal representatives of the objectors were allowed.

21. Vide order dated 27th July, 1989, the Administrator-General was permitted to deal with the property / tenants and unauthorized occupants in the property in accordance with the provisions of law.

22. The order dated 22nd August, 2005 records i) that the proceedings filed by the objectors in the Court at Ambala were transferred to this Court; ii) that though the Administrator-General, Delhi had examined two witnesses to prove the document dated 11th May, 1971 stated to be the last Will of Dropadi Devi but their evidence was not trustworthy; (iii) the Forensic Science Laboratory (FSL) had clearly stated that the document dated 11th May, 1971 does not bear the signatures of the deceased; and, (iv) Mohan Singh Sangar who had propounded the document dated 11th May, 1971 as the last Will of the deceased Dropadi Devi had also died and none else had pursued the said Will. TEST. CAS. No.13/1973 Page 12 of 33

23. Sh. Kazim Ali Khan functioning as the Deputy Administrator- General, Delhi and thereafter Administrator-General, Delhi inducted his son Suhael Saad Ali Khan into a portion of the property. On application of the objectors, vide order dated 25th November, 2004, the portion of the property in possession of Suhael Saad Ali Khan was ordered to be recovered, if necessary by breaking open locks.

24. Suhael Saad Ali Khan preferred FAO(OS) No.268/2004 which was dismissed vide order dated 19th April, 2007.

25. The objectors examined seven witnesses.

26. On 9th November, 2016 one lady who disclosed her name as Ms. Madhu Sharma daughter of Suresh Chand mentioned this matter listed in the category of Finals and finding the matter to be of the year 1973, I directed the same to be shown in the cause list of 10th November, 2016.

27. On 10th November, 2016, the counsel for the petitioner Administrator-General, Delhi and the senior counsel for the objectors were heard and upon being asked as the officers of the Court to fairly state whether either of the documents dated 11th May, 1971 or the 19th July, 1971, in the evidence led, TEST. CAS. No.13/1973 Page 13 of 33 stood proved as the Will of deceased Dropadi Devi, both fairly stated that neither had been proved.

28. However while the counsel for the petitioner / Administrator-General, Delhi claimed that the case has now to be decided on the basis of the estate of the deceased Dropadi Devi having vested in the Administrator-General by way of escheat, the senior counsel for the objectors stated that letters of administration ought to be granted to the objectors as heirs of the deceased as agnates under Section 15(1)(b) read with Sections 3 and 8(c) of the Hindu Succession Act, 1956.

29. On 10th November, 2016, I enquired from the senior counsel for the objectors as to how the objectors have proved their relationship with the deceased as agnates.

30. The senior counsel for the objectors stated that the witnesses examined by the objectors had deposed so.

31. It was however further enquired from the senior counsel for the objectors, whether the objectors had proved any documents to show the lineage of the objectors and tracing back the same to the deceased, to qualify as agnates of the deceased. TEST. CAS. No.13/1973 Page 14 of 33 32. The senior counsel for the objectors stated that one of the witnesses of the objectors viz. OW7 had deposed to the said effect and had not been cross-examined by the counsel for the petitioner / Administrator-General and thus that evidence has to be treated as admitted by the petitioner Administrator-General.

33. However I observed in the order dated 10th November, 2016 that in my prima facie view, for the objectors to get the property of the deceased as agnates of the deceased, they have to establish their relationship by documents and the oral evidence may not suffice.

34. Though Section 50 of the Evidence Act, 1872 lays down that when the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact but the Supreme Court in State of Bihar Vs. Radha Krishna Singh (1983) 3 SCC 118 held that in cases where the genealogy is the very basis of the plaintiffs case and since there is a tendency on the part of an

interested person or a party in order to grab, establish or prove an alleged claim, to concoct, TEST. CAS. No.13/1973 Page 15 of 33 fabricate or procure false genealogy to suit their ends, the courts should endeavour to do justice on the materials and records, uninfluenced and undaunted by any extraneous circumstances. It was further held that the Courts, before accepting or relying on the genealogies must keep in mind (a) source of the genealogy and its dependability; (b) admissibility of the genealogy under the Evidence Act; (c) a proper use of the said genealogies in decisions or judgments on which reliance is placed; (d) age of genealogies; and (e) litigations where such genealogies have been accepted or rejected. It was yet further held that for genealogy to be admissible in evidence (i) it must fall within the four-corners of Section 32(5) or Section 13 of the Evidence Act; (ii) it must not be hit by the doctrine of post litem motam; (iii) if proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved. It was explained that there is great risk and a serious danger involved in relying solely on the evidence of witnesses given from pure memory because the witnesses who are interested normally have a tendency to draw more from their imagination or turn and twist the facts which they may have heard from their ancestors in order to help the TEST. CAS. No.13/1973 Page 16 of 33 party for whom they are deposing. Supreme Court further explained that though the oral testimony of the witnesses on this matter is bound to be hearsay and has been made admissible as an exception to the general rule where hearsay evidence is not admissible but the nature and character of the special means of knowledge through which the witness has come to know of the pedigree; interested nature of the witness concerned, should be taken into account and the evidence of the witness must be substantially corroborated as far as time and memory admit. Onus was held to lie on the claimant to show that he was the next reversioner of the original owner of the estate and that every link in the genealogical tree which he had set out in the plaint had been proved; only after the said onus has been discharged by proving the said facts, can the defendants be called upon to rebut.

35. Further time was given to the counsels to study and an opportunity was also given to the objectors on 10th November, 2016 to, if in possession of any

documents as passports, Aadhar Cards, Ration Cards or other government records to show the lineage of the objectors tracing it back to the deceased, produce the same. TEST. CAS. No.13/1973 Page 17 of 33 36. The matter was adjourned to 17th November, 2016 when the senior counsel for the objectors stated that some documents had been received and advance copy of the same will be furnished to the counsel for the Administrator-General, Delhi and filed in the Court. Requesting the counsel for the petitioner Administrator-General, Delhi to on receipt of the said documents inform whether the same disclose the objectors to be the agnates of the deceased, the matter was adjourned to today.

37. The counsel for the objectors has today in Court handed over some documents under list of documents dated 17th November, 2016 and which are taken on record.

38. The senior counsel for the objectors states that the said documents show that some other properties of the deceased, not subject matter of these proceedings, have already been mutated in the name of the objectors.

39. The counsel for the Administrator-General, Delhi also refutes the said documents and states that in any case the objectors cannot produce these documents now.

40. The senior counsel for the objectors then states that an opportunity be granted to the objectors to lead evidence. TEST. CAS. No.13/1973 Page 18 of 33 41. I am not inclined to commence trial de-novo in this proceeding which is already 43 years old and order sheets whereof are replete with adjournments sought by either of the parties. In fact, the order sheet discloses that one of the Honble Judges of this Court had heard the counsels fully as far back as in the year 2005 and had even started dictating judgment in the Court when on the request of the counsel for the objectors, the matter was adjourned and adjournments were taken from time to time till the said Honble Judge was elevated as Chief Justice of another High Court.

42. The objectors having not proved themselves to be the heirs of the deceased entitled in law to the estate of the deceased Dropadi Devi, cannot now be granted

any further opportunity.

43. I have of my own also perused the evidence and satisfied myself that neither of the two documents i.e. 11th May, 1971 and 19th July, 1971 have been proved as the last Will of the deceased Dropadi Devi. Thus issues no.1&2 are decided accordingly.

44. On perusal of the evidence, I am also of the view that the objectors have failed to prove the Issue no.3 aforesaid i.e. whether they are entitled to TEST. CAS. No.13/1973 Page 19 of 33 succeed to the property otherwise than under the Will dated 19th July, 1971, as being the heirs of the deceased Dropadi Devi.

45. Of the witnesses examined by the objectors OW1 to OW3 are witnesses only to the Will and have deposed nothing about the relationship if any of the objectors to the deceased Dropadi Devi. Similarly though the witnesses of the petitioner Administrator-General, Delhi also in their examination-in-chief did not depose on the aspect of relationship if any of the objectors with the deceased Dropadi Devi, the objectors in their cross- examination also did not put their such case to the said witnesses, as in my opinion they ought to have. Rather, the objectors in the cross examination of PW2 suggested that Dropadi Devis brothers daughter Sheela used to live with Dropadi Devi and Dropadi Devi used to bear the expenses of the said Sheela as well as younger sister of Sheela. Similarly, to PW3 a suggestion was given by the objectors in cross-examination, of the brother of Dropadi Devi being in existence. Suggestions were also given to PW3, of Dropadi Devis brothers daughter living with Dropadi Devi. Suggestions were also given to PW3 about the existence of one Inderjit, son of the brother of deceased Dropadi Devi. TEST. CAS. No.13/1973 Page 20 of 33 46. OW4 to OW6 examined by the objectors are also not found to have deposed on the issue of the objectors being the heirs of the deceased Dropadi Devi.

47. Only OW7 Suresh Chand has deposed i) that Dropadi Devi was related to him through his great grandfather Mr. Ajudhia Prasad; (ii) Mr. Harbilas had two sons viz. Ram Rang and Ajudhia Prasad; iii) Dropadi Devi was daughter-in-law of Ram Rang being wife of his son Uma Datt; iv) Ajudhia Prasad had only one son viz. Raghunandan Lal; v) Raghunandan Lal further had three sons and one daughter

viz. Dev Dutt, Kamal Nayan, Ram Swaroop and Sita Devi; vi) that he was the only child of Kamal Nayan; vii) Dev Dutt had three sons and three daughters; viii) Ram Swaroop had only one son viz. Arun Kumar and Sita Devi had only one son viz. Anil Kumar; ix) Dropadi Devi left agricultural land in village Shahpur which on the basis of the Will dated 19th July, 1971 had already been mutated in the name of the beneficiaries named therein. The said witness as aforesaid, was not cross-examined by the Administrator-General, Delhi.

48. I may however notice that the said witness was examined on commission and the Local Commissioner has recorded that none appeared TEST. CAS. No.13/1973 Page 21 of 33 for the petitioner Administrator-General, Delhi inspite of waiting for some time. There is no order of the Court closing the right of the petitioner Administrator-General, Delhi to cross-examine the said witness though I must record that no demand also therefor is found to have been made.

49. Per Section 15 of the Hindu Succession Act, 1956, property of a female Hindu dying intestate devolves in the absence of sons / daughters or their children or husband, upon the heirs of the husband and in the absence of heirs of the husband on the mother and father and in the absence of mother and father of the female Hindu upon the heirs of the father. Section 15(2) further provides that any property inherited by a female Hindu from her father and mother shall devolve, in the absence of sons / daughters or their children or husband, not upon the heirs of the husband but upon the heirs of the father.

50. It has come on record that Dropadi Devis brothers children were / are in existence and they would qualify as the heirs of her father. There is nothing on record whether the property at 110, Darya Ganj, Delhi was owned by Dropadi Devi or inherited by Dropadi Devi from her father. If it was inherited by Dropadi Devi from her father then the same would devolve TEST. CAS. No.13/1973 Page 22 of 33 not firstly upon the heirs of the husband of Dropadi Devi but upon the heirs of the father of Dropadi Devi.

51. As far as the reliance placed by the senior counsel for the petitioner on mutation of other properties left by Dropadi Devi in favour of the objectors is concerned, OW7 has clearly admitted that the same is on the basis of the Will

dated 19th July, 1971 and not on the basis of the objectors being the heirs. It is thus not as if the mutating authority has satisfied itself of the relationship of the deceased Dropadi Devi with the objectors.

52. The testimony of OW7, though remains unchallenged, fails to pass muster of the test laid down in Radha Krishna Singh supra. Recently also, in Om Prakash Sharma Vs. Rajendra Prasad Shewda (2015) 15 SCC556 it was held that in order to be admissible under Section 32(5) of the Evidence Act, the statement relied on must be made ante litem motam - by persons who are dead i.e. before the commencement of any controversy actual or legal upon the same point. No such evidence has been led. I am therefore satisfied that it has but to be held that the objectors have failed to prove by cogent evidence that they are the heirs of Dropadi Devi.

53. The position which has emerged can be summarized as under: TEST. CAS. No.13/1973 Page 23 of 33 (i) This petition was filed by the Administrator-General seeking Letters of Administration on the basis of Will dated 11th May, 1971 of the deceased Dropadi Devi and was contested by the objectors on the basis of Will dated 19th July, 1971 of Dropadi Devi. (ii) Neither of the documents claimed to be Will of deceased Dropadi Devi have been proved. (iii) The Administrator-General, Delhi is in custody of the property vide order dated 15th February, 1973 in Probate Petition No.12/1971. (iv) However vide order dated 3rd October, 1978 supra in this petition it was clarified that the Administrator-General was merely as Administrator pendente lite. (v) Though at one point of time during the hearing, it was observed by me that the Administrator-General, Delhi being in possession of the property by an order in an earlier proceedings, the objectors even if succeeding in issue No.3 aforesaid and being held to be the heirs of the deceased Dropadi Devi, will TEST. CAS. No.13/1973 Page 24 of 33 have to institute a suit for recovery of possession from the Administrator-General, Delhi but in view of above, that is not the correct position. (vi) There was no issue and no enquiry in this proceeding, whether the property is vested in the State by way of escheat. (vii) Though an issue was framed on the aspect of the objectors being the heirs of the deceased Dropadi Devi and which I have hereinabove decided against the objectors but the fact remains that since there was no issue of vesting of the property by escheat in the

State and since the emphasis of the objectors also was on the basis of alleged Will dated 19th July, 1971, no proper evidence has been led by the objectors on this aspect. (viii) It has come in evidence that there are heirs of father of Dropadi Devi. (ix) If anyone can throw a light on the claim of the objectors as heirs, it would be the said heirs of father of deceased Dropadi Devi and who were neither impleaded nor summoned as witnesses. TEST. CAS. No.13/1973 Page 25 of 33 54. Thus, though the proceedings have remained pending for 43 years, but the position is no different from what it was on the moment of demise of Dropadi Devi.

55. There is still no clarity on, in whom the estate of the deceased Smt. Dropadi Devi is to be vested.

56. Section 7 of the Administrators-General Act provides that any letters of administration granted by the High Court shall be granted to the Administrator-General of the State unless they are granted to the next-of-kin of the deceased. Save for the objectors, no next kin of the deceased Smt. Dropadi Devi have come forward to administer her estate. The objectors also having failed to prove the Will set up by them of the deceased Smt. Dropadi Devi and having failed to prove being the heirs of Smt. Dropadi Devi, cannot be granted letters of administration of her estate. Section 9 of the Administrators-General Act provides that where (1) any person has died leaving within any State assets exceeding rupees ten lakhs in value; (2) no person has taken other proceedings for protection of the estate, the Administrator-General of the State in which such assets are, shall be granted letters of administration of the estate of such person. The position today, as aforesaid, is no different from that it was on 15th February, 1973 when, as TEST. CAS. No.13/1973 Page 26 of 33 aforesaid, the Administrator-General, Delhi was directed to take possession of assets of the deceased and to hold the same subject to further directions. There is thus no option but to, though not on the basis of the purported Will dated 11th May, 1971 of the deceased Smt. Dropadi Devi, but under the provisions of the Administrators-General Act, to grant letters of administration of the estate of the deceased Smt. Dropadi Devi to the Administrator-General, Delhi.

57. I have however wondered whether to allow the findings on Issue No.3 supra to attain finality thereby leaving the objectors with the remedy only of challenging this judgment and depriving the objectors of an opportunity to, if so desire and are able to prove the relationship claimed with the deceased Smt. Dropadi Devi. I am not inclined to do so for the reasons hereinafter appearing. (A) The Office of the Administrator-General, Delhi is found to have abused the order dated 15th February, 1973 asking it to take possession of the estate of the deceased Smt. Dropadi Devi and to hold the same. It is recorded in order dated 25th February, 2004 in these proceedings and in order dated 19th April, 2007 in FAO(OS) No.268/2004 supra that the then Administrator-General allowed the property to be used TEST. CAS. No.13/1973 Page 27 of 33 by his son. Though a direction was issued for recovery of the possession of the portion of the property from the son of the then Administrator-General but I have been unable to find any report that the said orders have been complied with. (B) Though in these proceedings Issue No.3 aforesaid was framed but it is the settled position in law that the Court of probate is only concerned with the question, whether the document put forward as the last Will and testimony of the deceased person was duly executed and attested in accordance with law and whether at the time of such execution, the testator had sound disposing mind (see *Ishwardeo Narain Singh Vs. Srimati Kamta Devi* AIR 1954 SC280. The same is the position in a proceeding seeking letters of administration. The Court in such proceedings also is concerned only with, whether the person seeking letters of administration is a fit person to be granted the letters of administration of the estate of the deceased (see *Bai Parvatibai Vs. Rahunath Lakshman* AIR1941 Bom 60, *Mahadeo Shankar Shinde Vs. Maruti Shankar Shinde* AIR2003 Bom 312 and *Delhi Development Authority Vs. Vijaya C. Gurshaney* (2003) 7 SCC301. Neither of the said proceedings is concerned with, what TEST. CAS. No.13/1973 Page 28 of 33 was the estate of the deceased Smt. Dropadi Devi, whether the bequest is bad or not or amongst whom is the estate to be distributed. The Court in such proceedings does not enter into the question of title to the property. Reference in this regard can be made to *Leelawati Singh Vs. State* (1998) 75 DLT694 *Anjan Kumar Singhi Vs. Ranjan Kumar Singhi* (2011) 126 DRJ56(DB), *Ramchandra Ganpatrao Hande alias Handege Vs. Vithalrao Hande* AIR2011 Bom 136 and *Ganesh Mohapatra Vs. Udaynath Mohapatra*

MANU/OR/0173/1973. Such proceedings are summary in nature and complicated questions of title cannot be properly conducted in summary proceedings. The question whether the objectors are related to the deceased Smt. Dropadi Devi as agnate is a complicated question of relationship which could not have been properly adjudicated in these proceedings. (C) Supreme Court in Radha Krishna Singh supra also held that when a claim for escheat is put forward by the Government, the onus lies heavily on the Government to prove the absence of any heir anywhere in the world and that normally the Court frowns on the estate being taken by escheat unless the essential conditions for TEST. CAS. No.13/1973 Page 29 of 33 escheat are fully and completely satisfied. It was held that before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country, or for that matter in the world, he may come forward to contest the claim of the State. In the facts of that case also, it was observed that merely because the State had appeared to oppose the claim of the plaintiffs in that case, inspite of the State succeeding in showing that the plaintiffs were not the nearest reversioners of the original owner, it does not follow as a logical corollary that the failure of the plaintiffs claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties.

58. I am therefore of the opinion that an opportunity needs to be given to the objectors to, in a properly constituted proceeding, prove their relationship with the deceased Smt. Dropadi Devi.

59. I may in this context also notice that under Section 14 of the Administrators General Act, the letters of administration granted to the Administrator-General is revocable. It is thus not as if, grant of letters of administration to the Administrator-General, Delhi in the present case would TEST. CAS. No.13/1973 Page 30 of 33 defeat the claims of the objectors or of any other heir of the deceased Smt. Dropadi Devi forever. Even otherwise, the effect of Letters of Administration granted to the Administrator-General is no more than Letters of Administration granted to any other person - it does not give to the holder of the letters, title to the property but rather obliges the holder to administer the estate in accordance with law and the rights of succession [See Ratan Chandra Das Vs. Goutam Das 2003

60. I however feel that in the proceeding, if any, for filing whereof opportunity is being given to the objectors, the objectors must necessarily implead the heirs of the father of the deceased Smt. Dropadi Devi and/or any other person who may have been related to Smt. Dropadi Devi and who may be in a position to throw light on the heirs of Smt. Dropadi Devi.

61. I thus dispose of this petition as under: (I) By granting letters of administration of the estate of the deceased Smt. Dropadi Devi to the Administrator-General, Delhi; (II) However, the Administrator-General, Delhi till 31st March, 2017 shall not alienate, encumber or part with any of the assets forming the estate of Smt. Dropadi Devi and shall maintain accounts thereof; TEST. CAS. No.13/1973 Page 31 of 33 (III) The Administrator-General, Delhi is further directed to, if has not already removed the persons unauthorisedly and illegally inducted into the property aforesaid, recover such possession on or before 31st March, 2017; (IV) By holding that the decision on Issue No.3 aforesaid framed in these proceedings against the objectors shall not come in the way of the objectors, on or before 31st March, 2017, instituting a properly constituted proceeding to establish their claim as heirs of the deceased Smt. Dropadi Devi; the objectors in the said proceeding, shall however implead the heirs of father of Smt. Dropadi Devi of existence whereof evidence has come in these proceedings and/or any other person having possibility of a claim to the estate of the deceased Smt. Dropadi Devi; (V) By directing that if no proceeding with respect to the estate of the deceased Smt. Dropadi Devi is filed by the objectors or by any other person, the Administrator-General, Delhi shall thereafter deal with the property in accordance with law; however, if such a proceeding is filed, the Administrator-General, Delhi shall thereafter TEST. CAS. No.13/1973 Page 32 of 33 deal with the property and estate of the deceased Smt. Dropadi Devi in accordance with the orders, if any therein; The parties are left to bear their own costs. RAJIV SAHAI ENDLAW, J.

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