

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 1st OF MARCH, 2023

MISCELLANEOUS PETITION NO. 2933 OF 2018

BETWEEN:-

**RAMVEER SHARMA S/O SHRI JANVED
PRASAD SHARMA, AGED 43 YEARS, R/O
552, MEERA COLONY, DISTRICT- BHIND
(MADHYA PRADESH)**

.....PETITIONER

(PETITIONER IS PRESENT IN PERSON)

AND

- 1. BABULAL S/O LAXMANDAS R/O 1733
PANCHSHEEL NAGAR, WARD NO.21
GWALIOR (MADHYA PRADESH)**
- 2. COMMISSIONER, NAGAR NIGAM
GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI VIJAY SUNDARAM- ADVOCATE FOR RESPONDENT NO.1)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition has been filed under Article 227 of the Constitution of India against order dated 07/05/2018 (Annexure P/1) passed by 5th Additional Civil Judge, Class-I, Gwalior (M.P.) to the Court of 1st Civil Judge, Class-I, Gwalior (M.P.) in Succession Case No.75/2017.

Various objections were raised by the counsel for respondent No.1 with regard to non-impleadment of necessary parties. However, this Court thinks appropriate to consider the matter on merits.

It appears that Dr. Kailash Chandra Dubey was the owner of the property in dispute. Undisputedly, Dr. Kailash Chandra Dubey did not die issue less and according to the petitioner himself he is survived by two sons and one daughter.

Petitioner filed an application under Section 141, 192, 269 and 369 of Indian Succession Act on the ground that Late Dr. Kailash Chandra Dubey and the father of the petitioner were good friends. After the death of the father of the petitioner, Late Dr. Kailash Chandra Dubey visited the house of the petitioner on 13th ceremony. On 12/07/2009, when Dr. Kailash Chandra Dubey was going back to Bhopal, he requested the petitioner to accompany him since Dr. Kailash Chandra Dubey was old. Because of his special love and affection towards the petitioner, he accompanied Dr. Kailash Chandra Dubey and stayed at Bhopal alongwith Late Dr. Kailash Chandra Dubey. On 14/01/2013, Late Dr. Kailash Chandra Dubey after getting pleased with services rendered by the petitioner executed a Will in favour of petitioner. Since the petitioner had some personal work, therefore, he came to Bhopal on 10/03/2015. At that time, deceased -Dr. Kailash Chandra Dubey was not keeping well. On 16/03/2013, deceased-Dr. Kailash Chandra Dubey on his own came to Bhopal and because of traveling, his condition further deteriorated. Petitioner wanted to get him admitted in the hospital but he refused to do so and ultimately, on 17/03/2013, deceased -Dr. Kailash Chandra Dubey died. After the death of Late Dr. Kailash Chandra Dubey, Will was

disclosed to the petitioner which was signed by the brother and brother-in-law of the petitioner as attesting witnesses. It is submitted that respondent No.2 in connivance with respondents No.3 and 4 have illegally encroached upon the property belonging to the deceased and therefore, an application was been filed. Respondent No.2 objected to the application.

Learned trial Court by impugned order dated 07/05/2018 dismissed the application by holding that petitioner has failed to prove the execution of Will.

Challenging the impugned order passed by the trial Court, it is submitted by the petitioner that although an application under Section 192 of Indian Succession Act was filed, but the same was decided as it is an application under Section 372 of Indian Succession Act. It is further submitted that petitioner has duly proved the will by examining attesting witnesses.

Per contra, petition is vehemently opposed by the counsel for respondent No.1. It is submitted by the counsel for respondent No.1 that Babulal has expired but no application has been filed for taking his legal representatives on record.

Refuting the submission made by the counsel for respondent No.1, it is submitted by the petitioner that IA No.12553/2021 has been filed for substitution of legal representative of respondent No.1.

It is submitted by the counsel for respondent No.1 that all the legal representatives of respondent No.1 have not been impleaded.

Be that whatever it may.

IA No.12553/2021 is allowed and Smt. Bhagwati and Shri

Narendra Parsediya- widow and son of respondent No.1-Babulal are permitted to be impleaded as legal representatives.

Let necessary amendment be carried out within seven working days.

Heard learned counsel for the parties on merits.

Section 192 of Indian Succession Act reads as under:-

“192. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.-

(1) If any person dies leaving property, moveable or immovable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(2) Any agent, relative or near friend, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.”

From the plain reading of Section 192 of Indian Succession Act, it is clear that only a natural successor of the person dies leaving property is entitled to seek relief against a wrongful possession. Petitioner is not the successor of Late Dr. Kailash Chandra Dubey. He claims himself to be son of one of the friend of Late Dr. Kailash Chandra Dubey. Thus, the petitioner cannot be held to be eligible for filing the application under Section 192 of Indian Succession Act. It is submitted by the petitioner that property can be succeeded by a Will also and Will was executed in his favour, therefore, he is the successor of Dr. Kailash Chandra Dubey.

This submission made by the petitioner cannot be accepted in light of Section 192 of Indian Succession Act. If the petitioner wants to establish his title by virtue of a will then he has to seek declaration by approaching the Civil Court of competent jurisdiction under Section 9 of CPC. Section 192 of Indian Succession Act would apply where status of party under Section 8 of Indian Succession Act is not in dispute. In the present case, successors of Late Dr. Kailash Chandra Dubey are his two sons and one daughter. None of the children of Late Dr. Kailash Chandra Dubey were impleaded in the application under Section 192 of Indian Succession Act nor they have been impleaded in the present case. Thus, it is clear that by keeping the successor of Late Dr. Kailash Chandra Dubey in dark, the petitioner wants to grab the property of Late Dr. Kailash Chandra Dubey on the basis of Will which was purportedly executed on 14/01/2013. It is really surprisingly that petitioner has claimed that the will was executed by keeping him in dark but at the same time, the real brother and real brother-in-law of the petitioner have signed the so called Will as attesting witnesses.

Be that whatever it may.

It is well established principle of law that the suspicious circumstances which are attached to a Will are to be clarified by the prepounder of Will. Since this Court came to the conclusion that petitioner cannot be termed as a successor for the purpose of moving an application under Section 192 of Indian Succession Act, therefore, trial Court did not commit any mistake by rejecting the application of the petitioner as petitioner has also failed to prove the execution of Will.

Under these circumstances, order dated 07/05/2018 is affirmed but

on additional grounds also. Accordingly, this petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

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