

(2009) 12 DEL CK 0318

In the Delhi High Court

Case No : IA 15149 of 2009 in Test Cas 97 of 2008

Mrs. Sneh Bahl and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2009) 12 DEL CK 0318

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Jagjit Singh and Manav Bajaj, for the Appellant; Purnima Maheshwari, for R 1, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This application under Order 6 Rule 17 CPC has been made by the petitioner seeking amendment in the probate petition. It is submitted by counsel for petitioner that the petitioner filed this petition for grant of probate of the Will of deceased Shri P.N. Kanwar. However, a perusal of the Will would show that the deceased had not appointed any executor of the Will and under these circumstances instead of probate, a letter of administration is normally granted by the Court. He, therefore, wants to amend the title of the petition from probate petition to petition for grant of letter of administration and wants to make corresponding changes in paragraph 15 and prayer clause.

2. The application is opposed by the objector on the ground that a probate petition cannot be converted into a petition for letter of administration. The objector relied upon Bihari Lal Mahton Tetak Gayawal v. Ganga Dai Tatkain and Ors. AIR 1917 Pat 209. A perusal of above case relied upon by the objector would show that in the above case, the deceased in his Will had nominated six persons as executors and the Court, therefore, observed that in case the appellant wishes to compel them to take out probate or to recues probate, a specific procedure was prescribed by the Probate Act and he may make an

application to the Court below accordingly. However, the Court did not agree to the suggestion that the probate petition be converted to a petition for letter of administration because none of the executor had come forward for execution. In my view this judgment is of no help to the objector. The petitioner per contract relied upon Soundararaja Peter and Others Vs. Florance Chellaih and Others, wherein the Court observed that even in a petition filed for probate where no executor had been named, the Court instead of granting probate should grant letter of administration of the Will annexed with it, to the legatee.

3. I consider that the application filed by the petitioner does not change either the character of the petition or the basis of the petition. The petitioner inadvertently sought probate of the Will whereas he should have sought letter of administration. This is a mere technical amendment being sought by the petitioner and cannot be refused on account of frivolous objections raised by the objector.

4. I, therefore, allow this application. The amended petition if not already filed be filed within 15 days from today.

5. The application stands disposed of. Test Cas 97 of 2008 List this matter before the Joint Registrar for completing evidence on 18th January, 2010.