

06.07.2019

Present : None for the petitioner.

Case file is perused.

An application under Order VI Rule 17 r/w Sec. 151 CPC has been filed, on behalf of the petitioner, on 20.03.2019, wherein, it has been stated that the petitioner had filed the present petition for grant of letter of administration, in respect of the immovable property bearing No. C-10/78, Yamuna Vihar, Shahdara, Delhi-53, in the name of her husband Sh. Jag Mohan Rajoria, who had died intestate. But, in the petition, wrong provision of law, i.e., Section 372 of the Indian Succession Act, has been mentioned instead of Section 276 of the Indian Succession Act.

2. It is further stated in the application that in the present petition the petitioner has prayed for grant of succession certificate / letter of administration and therefore, the present petition may be treated as a petition under Section 276 of the Indian Succession Act for grant of letter of administration in respect of the aforesaid immovable property and the present application for amendment may be allowed, in the interest of justice.

3. Submissions of the Ld. counsel for the petitioner Sh. Vinod K. Singh, Advocate, were heard on the present application under Order VI Rule 17 r/w Sec. 151 CPC, on 28.03.2019, wherein, the Ld. counsel for the petitioner has reiterated the contents of the present application. The Ld. counsel for the petitioner has also relied upon the judgment of the Hon'ble High Court of Delhi, in case titled as, "Sunrise Enterprises vs. Union of India", reported as, "2001 (59) DRJ 332, in support of his contentions. He has further argued that by mentioning of wrong provisions of law, the petitioner should not be made to suffer and the present application for amendment may be allowed.

4. I have carefully perused the case file and I have also given my considered thoughts to the arguments addressed by the Ld. counsel for the petitioner.

5. Perusal of the record shows that the petitioner has filed the present petition under Section 372 of the Indian Succession Act for grant of succession certificate, in respect of immovable property bearing No.C-10/78, Yamuna Vihar, Shahdara, Delhi-53, in the name of her husband Sh. Jag Mohan Rajoria, who is reported to have expired intestate on 20.10.2006. In the petition, it has been prayed that a succession certificate / letter of administration may be issued in the name of the petitioner, in respect of the above-mentioned immovable property.

6. It is a settled position of law that mentioning of wrong provisions of law does not invalidate a petition and for the said error, the petitioner/ plaintiff should not be non-suited.

7. It has been held by the Hon'ble High Court of Delhi, in case titled as, "Sunrise Enterprises vs. Union of India," (Supra), as relied upon by the Ld. counsel for the petitioner, as under :

"2. An objection raised by the respondents is that the petition under Section 8 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as the Act) is not maintainable. No doubt, reference of Section 8 of the Act in the main petition is not correct but perusal of the petition makes it abundantly clear that the petitioner seeks the appointment of an arbitrator as the respondents failed to appoint one as contemplated by the Arbitration clause which clearly falls within the purview of Section 11 of the Act. The law is well settled that mentioning of a wrong provision of law in the title does not invalidate the petition. The present petition, is therefore, treated as a petition under Section 11 of the Act."

(emphasis supplied by me)

8. In view of the settled legal position, as aforesaid and facts and circumstances of the present case, the present application under Order VI Rule 17 r/w Sec. 151 CPC for amendment of the petition is hereby allowed, in the interest of justice. The amended petition be taken on record.

It is ordered accordingly.

Adjourned for further proceedings on **28.09.2019**.

BRIJESH KUMAR GARG
Addl.Distt Judge(NE)-01
KKD Courts/Delhi
06.07.2019

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