

30-06-2020

ORDER

1. Vide this order, the undersigned shall decide an application moved on behalf of the petitioner/applicant, whereby the petitioner/applicant has sought service upon other LRs i.e. his brother and his nephew by way of publication, as their addresses are not traceable despite best efforts.
2. Before disposing of the application, it would be appropriate to state the brief facts of the present case. By way of the present succession petition, the petitioner/applicant is seeking succession certificate in respect of FDR having receipt No. 2012/NDRM No. 393210-421300012 dated 19.07.2013 of an amount of Rs.4,00,000/- maintained with Indian Overseas Bank, Roop Nagar branch, Delhi which was in the name of his deceased father namely Sh. Dharam Prakash Gupta, on the basis of Will dated 16.10.2002 executed by his deceased father.
3. As per the admitted case of the petitioner, deceased had three sons including him. His one brother and one nephew (son of deceased brother) are residing in USA. Since the petitioner did not implead them despite being class-I legal heir of the deceased as a party in this case, the Ld. Predecessor of the Court vide order dated 15.03.2019, directed the petitioner to implead all the class-I legal heirs. Thereafter, petitioner filed an application for impleading his brother and legal heir of his deceased's brother, however the petitioner did not disclose the address of the said legal heirs of the deceased in the application, therefore for want of their addresses of the said LRs/ respondents, the order on the said application was deferred and present application was filed.
4. Now, coming to the application in question for service through publication. In view of the Court directions dated 15.03.19, the petitioner has filed the present application thereby seeking to serve the class-I legal heirs of the deceased by way of publication, as their addresses are not known to him. On perusal of the application, it is revealed

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30/6/20

that the petitioner/applicant has not mentioned even the last known address either of his brother or the son of his deceased's brother, and they are only stated to be residing in USA. He has also not filed the disownment notice or High Court order, from where the last known address could be traced, it is the case of the petitioner that after his brother filed a case against his deceased father, he was disowned by a public notice.

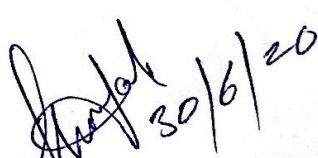
5. It seems to be a futile exercise for service upon the class-I legal heirs of the deceased by way of publication, as the city or State where they are residing in USA is not known. The service of class-I legal heirs is mandatory in a petition U/s. 372 of Indian Succession Act and publication should be in a logically manner and could not be made in a technical manner just to push up the case. The publication can be done only when the petitioner/applicant files the last known address of his real brother and his nephew, without which it would be only a formal exercise and nothing else.

6. Further, as already stated that neither petitioner has filed the copy of disowned notice, through which deceased disowned his other son(s) nor the certified copy of order of the case, filed by his brother against the deceased in the Hon'ble High Court, as pleaded in the application in question and the will has not been probated. Hence, the service of notice becomes mores necessary and cannot be treated as mere formality in the present matter.

7. Accordingly, the application for service through publication on other LRs, without furnishing the details, is hereby dismissed being devoid of merits.

Put up for filing present/last known addresses of the legal heirs, copy of disowned notice as well as certified copy of order of the Hon'ble High Court, on en-bloc date ie. 20.07.20

**Announced through
Video conferencing on 30.06.20**


**(Shefali Barnala Tandon)
ACJ/ARC (Central)
Delhi**