

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : CODE OF CIVIL PROCEDURE**

FAO NO. 209-210/2005

Judgment delivered on: January 11,2008

Shri Rajnish Kataria and Anr. .... Appellant.  
Through: Mr. Sanjay Jain, Sr. Advocate  
with Ms. Nitika Mangal,  
Advocate.

versus

Sh. Mohinder Singh and Anr. . .... Respondents  
Through: Mr. Prem Mishra, Advocate.

KAILASH GAMBHIR, J. Oral:

Aggrieved with the order dated 21.5.2005 passed by the then learned District Judge, Delhi, the present appeal has been preferred by the appellants. By the impugned order the then learned District Judge has restrained the ADM (West) not to disburse the compensation amount in respect of the property bearing no.42/2, West Patel Nagar, New Delhi till the disposal of the probate petition. To examine the contentions raised by the appellants in the appeal, it would be necessary to set out the brief facts of the present case as under: Mr. Mohinder Singh who is respondent herein has filed the Probate Petition before the learned District Judge so as to get the probate of unregistered Will dated 21.7.1977. In the said Probate Petition the respondent had also moved an application under Order 39 Rule 1 and 2 read with Section 151 CPC for grant of interim injunction. In the Probate Petition the respondent has alleged that he was the beneficiary of the Will and when he visited the property in question he found that some construction activities were going on in the property on behalf of the legal heirs of late Sh. J.N. Kataria. Later on the respondent came to know that the said construction was being done by Delhi Metro Rail Corporation. Thereafter, he sent a letter to the DMRC claiming compensation of the said property in question on the basis of the said Will alleged to have been executed by Shri J.N. Kataria. The said Probate Petition was contested by the present appellants on the ground that the alleged Will on which

reliance was placed by the respondent Mohinder Singh is apparently forged and fabricated document. It was also contended in the Probate Petition that Shri J.N. Kataia, owner of the property had ceased to be the owner of the same as per the decree of the High Court in Suit No. 162/76 dated 14.4.76. As per the said decree both the sons of Shri J.N. Kataria became joint owners of the property in question having 50% share each and Shri J.N. Kataria was only entitled to rental income, if any, from the property. It was also contended by the appellants in the Probate Petition that Shri J.N. Kataria was not entitled to execute any Will in respect of the property in question. It was also contended that Shri J.N. Kataria was not in a position to execute and sign the Will as he was not able to put his signature because his right hand was paralyzed. In the said Probate Petition it was also contended that Shri J.N. Kataria remained in Sir Ganga Ram hospital from 30.5.77 till 11.7.77. It was also contended that Shri J.N. Kataria was never in possession of the property in question until its acquisition by the DMRC. I have heard learned counsel for the parties and have perused the record. It is an admitted case between the parties that the Will as relied upon by the respondent is dated 21.7.77. It is not in dispute that the said Will is an unregistered Will. It is also not in dispute that the respondent who is alleged to be the beneficiary of the said Will had never taken steps to get the probate of the said Will till 2004, although the testator Shri J.N. Kataria had died long back i.e. on 17.2.1978. It is also not in dispute that the respondent Mohinder Singh has no relation with Shri J.N. Kataria or any of his family members. It is also not in dispute that even at the time of the execution of the alleged Will the respondent Mohinder Singh was residing at Mukherjee Nagar and as per the said Will Shri J.N. Kataria was residing in the property in question i.e., 42/2, West Patel Nagar, Delhi. Perusal of the said Will also shows that no connection of Shri Mohinder Singh respondent with Shri J.N.Kataria, testator of the Will has been mentioned. Ritualistically, it is only mentioned that the said Will in favour of Mohinder Singh was executed since he had been taking great care of Shri J.N.Kataria in his young to old age and has been providing him medicines, food etc. Without giving any finding on the merits of the case or even on the authenticity or genuineness of the Will, to balance the equities between the parties and also in view of the settled legal principles for the grant of interim injunction, I feel inclined to modify the said Order dated 21.5.2005 by protecting the right of the respondent for the said compensation amount to be paid by the ADM (West). Mr. Sanjay Jain, learned Senior Advocate on instructions from his clients states that they have no objection to adequately secure the right of the respondent, if any, for the said compensation amount to be paid by the ADM (West). Mr. Jain also states that an amount of Rs.1.29 crores is to be disbursed in favour of the appellants by the ADM (West) who is seized with the matter in its capacity as Collector Land Acquisition. Since the matter is still pending in the probate court, therefore the restraint order passed by the District Judge dated 21.5.2005 restraining the ADM (West) not to disburse the compensation amount is hereby vacated. However to protect the right of the respondent, if any, the appellants shall

furnish security to the satisfaction of the Registrar General of this Court. With these directions, impugned order dated 21.5.2005 to that extent is set aside. The parties are directed to appear before the Registrar General on 6.2.2008. Appeal stands disposed of accordingly. The file be consigned to the probate court forthwith.

DASTI.

Sd/-  
KAILASH GAMBHIR, J