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

Date of Decision: September 07, 2016

+ **FAO 348/2010 & C.M.No.16740/2010**

HARBANS LAL

..... Appellant

Through: Mr. Rajesh Kumar, Advocate

Versus

STATE & ORS.

.....Respondents

Through: Mr. Rajeev Kumar, Advocate for
LRs No. (i) & (ii) of respondent
No.4

Mr. J.K. Bhola, Advocate for LR
No. (iii) of respondent No.4

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Appellant had sought probate in respect of Will of 9th January, 2006. As per the aforesaid Will, appellant becomes the owner of entire immovable property i.e. *House No.8/136, Ramesh Nagar, New Delhi*. Trial court while relying upon the aforesaid Will has proceeded to take into consideration the Compromise of 23rd March, 1997 arrived at between the parties in the suit bearing No.75/76 titled *Sukh Devi and Another v. Krishan Lal*. It is noted in the impugned order that as per the abovesaid Compromise Krishan Lal, predecessor in interest of appellant, his mother and his step-brother were to be the joint owners of the

property in question in equal shares. It is not disputed that after the aforesaid Compromise of 23rd March, 1997, mother of aforesaid Krishan Lal had died and so, while relying up the aforesaid Compromise of 23rd March, 1997, trial court vide impugned order has granted probate of the Will in question to the extent of 50% of the property in question in favour of appellant.

At the hearing, learned counsel for appellant assails the impugned order on the ground that as per the aforesaid Compromise, the share of appellant was 50% and after the death of his mother his share would come to 62.5 % and trial court has misread the aforesaid Compromise to deny the share of 62.5 % to appellant in the property in question. Nothing else is urged on behalf of appellant.

During the course of hearing, attention of this Court is drawn by learned counsel for appellant to undisputed Compromise (Mark-A), which is based upon the statement of deceased-Testator herein, which is reproduced as under for ready reference: -

*“23.3.77 Present: Shri M.K. Bagga, Adv. for the pltff.
Defendant in person.*

Let the statement of Krishan Lal, deft. be recorded on S.A.

We have compromised both the parties i.e. Sukh Devi along with Sh. Jagdish Kumar, pltfs and myself the deft. will be the joint owners of property No.8/136, Ramesh Nagar, Single Storey, N.Delhi-15 in equal shares. I will sell the house after obtaining the necessary permission from the competent authority under the law for the sale of the house and pay half the amount of sale price which may be received by me to the pltffs. I will apply for the permission and will sell the house

within one month of the grant of permission. The decree in the above terms may be passed accordingly. Parties be left to bear their own costs.

*Sd/-
R.O. & A.C.*

*Sd/-
S.J.I.C. ”*

After having heard learned counsel for the parties and on perusal of the impugned order, the evidence on record and the aforesaid Compromise, as extracted hereinabove, I find that the right of the parties stood determined i.e. *Krishan Lal*, his mother and his step-brother were to have equal share in the property in question. However, upon selling of the property in question, half of the sale price was to go to his mother and step-brother. Since this did not happen, therefore, share of the parties remained equal in the property in question and upon death of the mother, the property in question devolve in equal share upon *Krishan Lal* and his step-brother-*Jagdish Kumar*. While correctly interpreting the aforesaid Compromise, trial court has rightly probated the Will in question between appellant herein and the contesting respondents. Thus, finding no illegality or infirmity in the impugned order, this appeal and the application are dismissed while leaving the parties to bear their own costs.

**(SUNIL GAUR)
JUDGE**

SEPTEMBER 07, 2016

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