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

+ CS(OS) 276/2016 & IA No.6887/2016 (u/O 39 R-1&2 CPC)

SHAHAZ ASHRAF ALI Plaintiff

Through: Mr. Tarique Siddiqui, Mr. Rakhshan
Ahmed, Mr. Harsh Priye & Mr.
TAnveer Ahmad, Adv.

Versus

MANAL ASHRAF ALI & ORS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.09.2016**

IA No.11000/2016 (of the parties under Order XXIII Rule 3 of the CPC)

1. This order is in continuation of yesterday's order.
2. The counsel for the plaintiff has drawn attention to *Shehammal Vs. Hassan Khani Rawther* (2011) 9 SCC 223 as well as to *Sulaika Bivi Vs. Rameeza Bivi* 2000 LawSuit (Mad) 688 (DB).
3. Supreme Court in *Shehammal* supra has held that testamentary disposition by a Mohammedan is binding upon the heirs if the heirs consent to the disposition of the entire property and such consent could be either express or implied. It was further held that a Mohammedan may make a disposition of his entire property if all the heirs signify their consent to the same and that the general principle that a Mohammedan cannot by Will dispose of more than a third of his estate is capable of being avoided by the consent of all the heirs. It was yet further held that in effect such consent amounts to a right of relinquishment to future inheritance and it would be

against public policy if a person who has so relinquished his share in the estate is allowed the benefit of the doctrine of *spes successionis* and the principle of estoppel would be attracted.

3. The document stated to be the Will of the deceased husband of the plaintiff and who was the father of the defendants no.1 to 3 also purports to bear the signatures of the plaintiff and defendants no.1 to 3 and though none appears for the defendants today but the counsel for the plaintiff states that the defendants are present and admit their signatures on the said document.

4. In accordance with the aforesaid law, the settlement agreement is found to be in accordance with law and the suit is disposed of / decreed in terms of the Settlement Agreement dated 1st September, 2016 with the clarification that the decree will not affect the liability if any towards stamp duty with respect to any of the properties and leaving the parties to bear their own costs.

5. Decree sheet be prepared.

6. The counsel for the plaintiff requests for refund of the court fees.

7. Allowed.

8. A certificate entitling the plaintiff to obtain refund of the court fees paid on the suit be issued and handed over to the counsel for the plaintiff within one month from today.

9. The date of 29th November, 2016 before the Joint Registrar is cancelled.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 07, 2016

‘gsr’..

CS(OS) 276/2016

Page 2 of 2