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

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Date of Decision: 10th August, 2017

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REKHA RANI

..... Appellant

Through: Ms.A. Banerji, Advocate (DHCLSC)

versus

ANIL KUMAR & ANR

..... Respondents

Through: Ms.Babita, Advocate for Mr. Satya
Narayan, Advocate for respondents
Ms. Aparajita Sharan, Advocate for
Mr.Sanjay Ghose, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 2nd February, 2016 passed by the learned Trial Court whereby the learned Trial Court dismissed her application under Order 39 Rules 1 and 2 of the Code of Civil Procedure.
2. The appellant is the real sister of respondent no.1. The appellant instituted a petition for grant of probate of the Will dated 10th March, 2014 of her father, late Bhagwat Swaroop and Will dated 20th January, 2014 of her mother, late Krishna Devi before the District Courts.
3. As per the Will dated 10th March, 2014 of late Bhagwat Swaroop, property No.9/2815/42, Gurudwara Gali No.4A, Dharampura, Gandhi Nagar, Delhi-110031 has been bequeathed to the appellant whereas property No.9/2815/52, Gurudwara Gali No.5, Dharampura, Gandhi Nagar, Delhi-

110031 has been bequeathed to respondent no.1.

4. As per the Will dated 20th January, 2014 of late Krishna Devi, property No.9/2815/48, Gurudwara Gali No.5, Dharampura, Gandhi Nagar, Delhi-110031 has been bequeathed to the appellant and respondent no.2 in equal shares.

5. The appellant filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure before the Trial Court for directing respondents no.1 and 2 to unblock the toilet situated on the ground floor of property No.9/2815/48, Gurudwara Gali No.5, Dharampura, Gandhi Nagar, Delhi-110031 and not to interfere in the use of the electricity connection bearing No.CA 100734767.

6. The appellant present in Court submits that she is in occupation of one room, a shop and a kitchen on the ground floor of property No.9/2815/48, Gurudwara Gali No.5, Dharampura, Gandhi Nagar, Delhi-110031. The appellant submits that she is widow and staying in one room with her five children out of which two children are handicapped.

7. Learned counsel for the respondents submits at the time of the hearing that there is no toilet at the place below the staircase and a motor has been installed there from a longtime. Reliance is placed on the status report of the police according to which there is no toilet below the staircase on the ground floor of property No.9/2815/48, Gurudwara Gali No.5, Dharampura, Gandhi Nagar, Delhi-110031.

8. After hearing the parties for some time, this Court is of the view that the appellant has 50% share in property No.9/2815/48, Gurudwara Gali No.5, Dharampura, Gandhi Nagar, Delhi-110031, as per the Will. Even if the appellant is not able to establish the Will, the appellant shall be entitled

to 50% share in the said property by virtue of the intestate succession. The appellant is in possession of one shop, one room and a kitchen on the ground floor whereas respondent no.1 is in possession of the entire first floor and the remaining portion of the ground floor. Considering that there is no toilet on the ground floor of the suit property, the appellant is permitted to use the space below the staircase of the suit property as a toilet during the pendency of the probate proceedings subject to the condition that the appellant shall shift and operate the motor at a convenient place on the ground floor. The appellant is permitted to install the toilet seat, wash basin and a water tank in the place below the staircase and the respondents shall not obstruct in the peaceful use of the same by the appellant. This interim order shall be subject to the outcome of the probate petition. The appeal is disposed of in the above terms.

9. The Trial Court record be returned back forthwith.

10. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

AUGUST 10, 2017
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J.R. MIDHA, J.