

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

+ **RFA No.70/2018**

% **Reserved on: 29th January, 2018**
Pronounced on: 2nd February, 2018

KAMAL JINDAL Appellant
Through: Mr. Shravan Dev, Advocate
with appellant in person.

versus

SUSHIL KUMAR AGGARWAL & ANR. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No.2712/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.70/2018 and C.M. Nos.2713/2018(stay) & 3529/2018
(under Order XLI Rule 27 CPC)

2. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugning the judgment of the trial court dated 12.12.2017 by which the trial court has dismissed the suit filed by the appellant/plaintiff seeking declaration of appellant/plaintiff's ownership to the first floor of the property bearing

no.1/4847 Gali No.11, Balbir Nagar Extension, Shahdara, Delhi-32 on the basis of the Will dated 16.7.1997 of Smt. Tara Devi, the owner. The appellant/plaintiff also seeks declaration that the Will dated 12.7.2002 executed by Smt. Tara Devi in favour of the respondent no.1/defendant no.1/Sh. Sushil Kumar Aggarwal is null and void.

3.(i) The facts of the case are that the appellant/plaintiff pleaded that he was the grandson of Smt. Tara Devi and who had executed her registered Will dated 16.7.1997 bequeathing the suit property in favour of the appellant/plaintiff. Smt. Tara Devi expired on 21.9.2002. The appellant/plaintiff pleaded to be in possession of the suit property till 21.5.2004 when he pleads that he was dispossessed by the respondent no.1/defendant no.1.

(ii) There were two defendants in the suit with the defendant no.1 being Sh. Sushil Kumar Aggarwal and defendant no.2 being the wife of the defendant no.1. They filed their joint written statement pleading that the appellant/plaintiff is not the grandson of Smt. Tara Devi but is the grandson of the sister of Smt. Tara Devi, namely Smt. Shanti Devi. As per the written statement, the respondents/defendants pleaded that the real father of the appellant/plaintiff Sh. Radhey Shyam was living

in the ground floor of the property in question and when Smt. Tara Devi called him to prepare the Will in favour of her son the respondent no.1/defendant no.1, then Sh. Radhey Shyam in fact got the Will dated 16.7.1997 executed in favour of the appellant/plaintiff. When Smt. Tara Devi came to know of this fact she revoked the Will dated 16.7.1997 by destroying the same and she executed her Will dated 12.7.2002 in favour of the respondent no.1/defendant no.1/son. It is further pleaded in the written statement that Sh. Radhey Shyam, the father of the appellant/plaintiff was in illegal possession of the ground floor of the property in question, and therefore Smt. Tara Devi entered into a written compromise agreement dated 3.6.2002 with Sh. Radhey Shyam whereunder Sh. Radhey Shyam vacated the possession of the ground floor of the property in question after receiving a sum of Rs.1,10,000/- in full and final settlement from Smt. Tara Devi. Sh. Radhey Shyam in terms of the compromise deed dated 3.6.2002 stated that he had no claims in the properties of Smt. Tara Devi. The suit was therefore prayed to be dismissed.

4. After pleadings were complete, the trial court framed the following issues:-

- “(i) Whether the plaintiff is entitled to relief of declaration, possession, mandatory injunction and permanent injunction in relation to first floor of property bearing No.1/4847, Gali No.11, Balbir Nagar Extn., Shahdara, Delhi-32? OPP
- (ii) Whether Late Smt. Tara Devi executed any valid Will dt. 16.07.97 (registered on 17.07.97) in favour of plaintiff in respect of first floor of property bearing No.1/4847, Gali No.11, Balbir Nagar Extn., Shahdara, Delhi-32? OPP
- (iii) Whether the plaintiff is entitled to mesne profits alongwith interest at the rate of 18% PA as prayed for? OPP
- (iv) Whether the plaintiff is entitled to recovery of mesne profits between January 2007 to December 2009 at the rate of Rs.3,000/- per month alongwith interest at the rate of 18% PA from the date of filing of the suit till realization? OPP
- (v) Whether Late Smt. Tara Devi executed any valid will dt. 12.07.02 in favour of defendant No.1? OPD-1
- (vi) Relief.”

5. On the aforesaid issues, parties led evidence and these aspects are recorded in paras 6 and 7 of the impugned judgment and which paras read as under:-

“6. The plaintiff filed his affidavit by way of evidence Ex. PW 1/A and examined himself as PW-1 in support of the case. The witness deposed nothing but as per averments made in the plaint. The witness has also deposed regarding the documents i.e. Ex. PW 1/ 1 site plan, Ex. PW 1/ 2 certified copy of will, Ex. PW 1/3 death certificate of Tara Devi, Ex. PW 1/ 4 photographs, Ex. PW 1/ 5 certified copies of statement dt. 27.09.04 and order dt. 27.09.2004, Ex. PW 1/6 election ID Card, Ex. PW 1/7 photographs and mark A photocopy of ration card.

Plaintiff examined other witness i.e. Bhagwat Saran as PW-2 by way of affidavit Ex. PW 2/A. Witness has relied upon the documents already exhibited as Ex. PW 1/ 2.

Petitioner also summoned and examined the witness i.e. Sh. Prakash chand Tiwari, LDC from Sub Registrar, IV Nand Nagari, Delhi as PW-3 deposed that today he has sent by Ld. Sub Registrar-IV to produce the records of the will dt. 16.07.97 of Smt Tara Devi W/o Sh. Rehatu Lal. Witness has brought the record of the above will and the said will as per record is registered at registration No. 33271, Book No. 3, Volume No.

1913 dt. 17.07.1997. The certified copy of the above will already Ex. PW 1/ 2.

Petitioner also summoned and examined the witness i.e. Sh. Rahul Jain, office Superintendent, Department of Law Justice and Legislative affairs as PW-4 appeared with the summoned record i.e. the record of Sh. Dasa Ram Advocate, Notary Public, GNCTD. Witness further stated that as per record, Sh. Dasa Ram, Advocate, BA, LLB was appointed by Govt. of NCT of Delhi(department of law) as notary public on 22.04.1985. Copy of the appointment of Sh. Dasa Ram as notary public Ex. PW 4/A which bears signature of Dasa Ram at pt. A. His appointment was renewed for three years with effect from 22.04.1988 to 17.05.1991. It was further renewed for three years from 22.04.1991 to 21.04.94. Thereafter the appointment was not renewed. His certificate was cancelled by notification No. F.3/06/Lit/02/437 dt. 17.04.2003 Ex. PW 4/ B.

Petitioner also examined other witness i.e. Sh. V. K. Bhardwaj as PW-5 by way of affidavit Ex. PW 5/ A. PE was thereafter closed.

7. Defendant No. 1 filed his affidavit by way of evidence Ex. DW 1/ 1 and was cross examined till 20.08.2015 at length by the Id. Counsel for plaintiff. Thereafter the defendant No. 1 failed to appear and the reports on the court notice received that he has expired. The application U/o 22 Rule 4 CPC filed by plaintiff to bring on record the LRs of defendant No. 1 which was dismissed as withdrawn vide order dt. 23.08.2017. The defendant No. 2 was also proceeded ex parte vide order dt. 29.03.2017.

Another witness Sh. Shiv Shankar Gupta was examined as DW-2 vide affidavit Ex. DW 2/ A who also deposed regarding the compromise deed dt. 03.06.2002 signed by father of plaintiff Radhey Shyam and Smt. Tara Devi already Ex. DW 1/A and will Ex. DW 1/B executed by Tara Devi in favour of defendant No. 1. Other attesting witness of the will Sh. Jasbir Singh was examined as DW-3 by way of affidavit Ex. DW 3/ A who also deposed regarding the execution of will dt. 12.07.02 Ex. DW 1/ B executed by Smt. Tara Devi in favour of defendant No. 1. DE was thereafter closed.”

6. At the outset, a very important and curious fact needs to be noticed. Respondent no.1/defendant no.1 expired during the pendency of the suit and the appellant/plaintiff did file an application under Order XXII Rule 4(3) CPC to bring on record the legal heirs of the deceased respondent no.1/defendant no.1 however the

appellant/plaintiff withdrew that application. In my opinion therefore the consequence is that the suit in any case had to be dismissed as abated on account of the appellant/plaintiff not bringing on record the legal heirs of the deceased respondent no.1/defendant no.1. Of course, by the time the respondent no.1/defendant no.1 expired, he had led his evidence and was partly cross-examined, and he had also led the evidence of the two attesting witnesses of the Will dated 12.7.2002 namely Sh. Shiv Shankar Gupta and Sh. Jasbir Singh. These two attesting witnesses were cross-examined in detail on behalf of the appellant/plaintiff and thereafter the cross-examination of these witnesses was closed. The orders of the trial court noting the filing of the application by the appellant/plaintiff under Order XXII Rule 4(3) CPC and thereafter withdrawing the same are orders dated 18.7.2017 and 23.8.2017 and these orders read as under:-

“Order dated 18.07.2017

Present: Sh. Sharvan Dev, Advocate for the plaintiff with plaintiff in person.

Sh. Anuj Jain, Advocate, for Central Bank of India/non-applicant.

None for the defendants since morning, despite repeated calls.

Ld. Counsel for Central Bank of India/non-applicant has filed the inspection report dated 04.02.2016, wherein, it has been reported that Sushil Kumar Aggarwal, Proprietor of M/s Srikrishna Traders, who has mortgaged the suit property, had expired some time ago. His neighbours could not disclose the name and address of the family members of deceased Sushil Kumar Aggarwal.

Perusal of this inspection report clearly indicate that the said report is not based on any authentic verification/information. Copy of the death certificate is also not attached with the report. Only on the basis of this report, it cannot be said that Sushil Kumar Aggarwal, defendant No.1 in the present suit, had already expired.

Perusal of the record further shows that on the submissions of the Ld. Counsel for the non-applicant/Central Bank of India, the Ld. Counsel for the plaintiff has moved an application under Order 22 Rule 4 r/w Sec. 151 CPC, on 25.05.2016. But, the said application is also not accompanied with any death certificate. Ld. Counsel for the plaintiff is directed to file the death certificate of defendant No.1 on record, on or before the next date of hearing.

In the meantime, notice of the said application be also issued to the LR's of defendant No.1, on filing of PF, for the next date of hearing.

Submissions of the Ld. Counsels for the parties on the application under Order 1 Rule 10 r/w Sec. 151 CPC dated 14.03.2016, are also heard.

Adjourned for orders on the said application and for further proceedings on **05.08.2017**.

BRIJESH KUMAR GARG
Addl. Distt Judge (NE)-01
18.07.2017

Order dated 23.8.2017

Present: Plaintiff in person.

None for the non-applicant or the defendants.

It has been submitted by the plaintiff that he is not aware about the death of the defendant Sushil Kumar Aggarwal, proprietor of M/s. Srikrishna Traders. He has further reported that he moved the application under Order 22 Rule 4 r/w Sec. 151 CPC on 25.05.2017, only on the basis of the inspection record of Central Bank of India/non-applicant. The report of the Central Bank of India, dated 04.02.2016 is also inconclusive.

The plaintiff has further stated that the death certificate of defendant Sushil Kumar Aggarwal could not be traced by him, despite best efforts. He has prayed for withdrawal of his application under Order 22 Rule 4 r/w Sec. 151 CPC.

On his request, the said application is dismissed as withdrawn.

Adjourned for orders on the application under Order 1 Rule 10 r/w Sec. 151 CPC dated 14.03.2016, on 05.09.2017.

BRIJESH KUMAR GARG
Addl. Distt Judge (NE)-01
18.07.2017"

In my opinion therefore the suit had abated and had to be dismissed as abated on account of not bringing on record the legal heirs of the deceased respondent no.1/defendant no.1 by the appellant/plaintiff.

7. Now taking that the suit would not stand abated, let us examine the facts as also the evidence on record as to whether the appellant/plaintiff had proved the Will dated 16.7.1997 of late Smt. Tara Devi and that whether the respondent no.1/defendant no.1 had proved the subsequent Will dated 12.7.2002 of Smt. Tara Devi. As discussed below, not only the appellant/plaintiff failed to prove the Will dated 16.7.1997 of Smt. Tara Devi because the original of the Will dated 16.7.1997 of Smt. Tara Devi never saw the light of the day, but in any case assuming that the appellant/plaintiff had proved the Will dated 16.7.1997, however since the respondent no.1/defendant no.1 has proved the subsequent Will dated 12.7.2002 of Smt. Tara Devi, therefore, it is the subsequent Will of Smt. Tara Devi dated 12.7.2002 which will hold the field and under which the respondent no.1/defendant no.1 is the owner of the suit property as also the entire property bearing no.1/4847, Gali No.11, Balbir Nagar Extn, Shahdara, Delhi-32.

8. Section 70 of the Indian Succession Act, 1925 provides that a Will is revoked by destroying the same. Destroying of the Will is one of the ways of revocation of the Will. Section 70 of the Indian Succession Act reads as under:-

“Section 70. Revocation of unprivileged Will or codicil. No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.”

9.(i) Admittedly the original of the Will dated 16.7.1997 has till date not seen the light of the day. The appellant/plaintiff pleaded that this Will was stolen by the respondent no.1/defendant no.1, however when in cross-examination the appellant/plaintiff was put a question on 24.4.2012 that whether he had lodged any complaint for theft of the original Will dated 16.7.1997 of which Will the certified copy was proved as Ex.PW1/2, it was conceded by the appellant/plaintiff that no such complaint with respect to an alleged theft of the Will dated 16.7.1997 has been filed on record.

(ii) Counsel for the appellant/plaintiff argued that appellant/plaintiff had served a legal notice Ex.DW1/X1 dated 2.4.2014 under Order XII

Rule 8 CPC for the respondent no.1/defendant no.1 to file the original Will, and that since the original Will dated 16.7.1997 was not filed by the respondent no.1/defendant no.1 pursuant to the notice Ex.DW1/X1, consequently, it is argued that the appellant/plaintiff should succeed on the basis of the certified copy of the Will dated 16.7.1997 proved by the appellant/plaintiff as Ex.PW1/2. However in my opinion, this argument urged on behalf of the appellant/plaintiff is misconceived because a notice under Order XII Rule 8 CPC goes on the basis that the original of the document exists and possession of which is with the party to whom notice is given under Order XII Rule 8 CPC. In the facts of the present case as per the case of the respondent no.1/defendant no.1 the Will dated 16.7.1997 was revoked by Smt. Tara Devi by tearing the same and thus in my opinion the mere fact that a notice under Order XII Rule 8 CPC is given by the appellant/plaintiff to the respondent no.1/defendant no.1 would not mean that original of the Will dated 16.7.1997 continued to exist and was not destroyed by Smt. Tara Devi. This argument of the appellant/plaintiff is therefore rejected.

(iii) Counsel for the appellant/plaintiff sought to place reliance upon para 12 of the plaint and the response in written statement of the respondents/defendants to para 12 of the plaint, and it is argued accordingly that the respondent no.1/defendant no.1 in para 12 of the written statement admitted to the theft of the Will, however, in my opinion I do not see any admission whatsoever in para 12 of the written statement that the respondent no.1/defendant no.1 admitted that he had stolen the Will. A reference to para 12 of the written statement only shows that the respondent no.1/defendant no.1 admitted to the execution of the Will dated 16.7.1997 by Smt. Tara Devi, and which is in continuation of the *factum* that such Will was executed. It is also stated that the Will dated 16.7.1997 was thereafter revoked. In the other portion of para 12 of the written statement the respondent no.1/defendant no.1 has denied rest of the contents of para 12 of the plaint in response to para 12 of the plaint and which referred to stealing of the Will allegedly by the respondent no.1/defendant no.1.

10. Also in my opinion the story put forth by the appellant/plaintiff of the respondent no.1/defendant no.1 stealing the

Will is in fact wholly false to the knowledge of the appellant/plaintiff because the fact of the matter is that Smt. Tara Devi herself had destroyed her Will dated 16.7.1997. This destroying of the Will dated 16.7.1997 is deposed to by both the attesting witnesses of the second Will dated 12.7.2002 namely Sh. Jasbir Singh and Sh. Shiv Shankar Gupta who have clearly deposed in their affidavits by way of evidence that Smt. Tara Devi had destroyed the Will dated 16.7.1997 relied upon by the appellant/plaintiff.

11.(i) The stand of the appellant/plaintiff that allegedly the Will dated 16.7.1997 was stolen by the respondent no.1/defendant no.1 is a completely false stand and which also becomes clear from the contents of the compromise deed dated 3.6.2002 entered into between Sh. Radhey Shyam (son of Sh. Shobha Ram and who is the father of the appellant/plaintiff) and Smt. Tara Devi. This compromise deed has been proved and exhibited by the respondent no.1/defendant no.1 as Ex.DW1/A. This compromise deed reads as under:-

“

COMPROMISE AGREEMENT/DEED

This Compromise Deed is hereby executed on this 03rd June 2002 at Delhi between **Sh. Radhey Shyam, S/o Late Sh. Shoba Ram**, R/o 1/4847, Street No.11, Balbir Nagar Extn., Delhi hereinafter called the first party and **Smt. Tara Devi, W/o Late Sh. Rahtu Lal**, R/o 1/4847, Street No.11, Balbir Nagar Extn. Delhi hereinafter called the second party, the

terms first and second party shall mean and includes the respective legal heirs, representatives and assign etc. wheresoever the context so required.

WHEREAS the parties to the agreement developed some disputes amongst them because of some misunderstandings and the same led to arisen of certain litigations amongst them. The respectable of the society intervened and settled the disputes/litigation amongst the parties to this deed.

NOW this deed witnesseth as under:-

1. The first party has agreed to handover the peaceful and vacant possession of ground floor portion of property No.1/4847, Street No.11, Balbir Nagar Extn. Delhi to the second party henceforth.
2. That the first party shall not make or claim any right title or interest in the properties of the second parties in any manner whatsoever at any time.
3. That the first party shall have no right to interfere in the Estates and affairs of the second party and/or of the deceased husband of second party and shall not refer him to be son of deceased husband of the second party in future.
4. That the second party has paid a sum of Rs.1,10,000/- to the first party vide separately, towards handing over peaceful and vacant, the possession of ground floor of property No.1/4847, Street No.11, Balbir Nagar Extn., Delhi to the second party.
5. That in case the first party has already created/made any agreement with any other person or have created any third party interest in respect of aforesaid property of the second party and/or in respect of states pertaining to the deceased husband of the second party, the same shall be created as null and void. The first party in such event shall be liable to bear the consequences of the same.
6. That the parties to the deed shall initiate steps including their respective legal heirs to withdraw/compromise the dispute/litigation pending before the court of law/authorities etc at the earliest without any delay.
7. That the contents of this agreement/compromise shall be binding in terms of the letters and separates on the parties to the deed including their respective legal heirs, representative and assigns etc wheresoever the context so require.

IN WITNESS whereof this deed of compromise is executed between the parties of their free will and consent at Delhi on the Day, Month and year mentioned above in the presence of witnesses.

WITNESSES

1. FIRST PARTY

2. SECOND PARTY"

(emphasis added)

(ii) A reading of the aforesaid compromise deed makes it clear that Sh. Radhey Shyam, father of the appellant/plaintiff, gave up possession of the ground floor of the property in question and received a sum of Rs.1,10,000/- and he agreed that he will make no claim to any of the properties of Smt. Tara Devi. This compromise deed also shows that appellant/plaintiff who claims to be the son of the Sh. Radhey Shyam was not the grandson of the Smt. Tara Devi because the compromise deed dated 3.6.2002 shows Smt. Tara Devi as the wife of Sh. Rehtu Lal and not of Sh. Shobha Ram. Appellant/plaintiff has also filed no documentary evidence on record as to Sh. Shobha Ram being the husband of Smt. Tara Devi and in fact Smt. Tara Devi was the wife of late Sh. Rehtu Lal. Smt. Tara Devi was the sister of the real grandmother of the appellant/plaintiff namely Smt. Shanti Devi and who was the wife of Sh. Shobha Ram. Therefore in view of these facts there was no reason why Smt. Tara Devi would have Willed her property to the appellant/plaintiff who was not her grandson and instead of in favour of the respondent no.1/defendant no.1 who was her son. Clearly, the appellant/plaintiff is acting dishonestly after his father Sh. Radhey Shyam received a sum of

Rs.1,10,000/- under the compromise deed dated 3.6.2002 and agreed that he would not claim any right to any property of Smt. Tara Devi.

12. On behalf of the appellant/plaintiff it is next argued that the Will Ex.DW1/B is shown to be notarized but it has been proved by the appellant/plaintiff by calling Sh. Rahul Jain PW-4 from the office of the Department of Law and Justice that the notary Sh. Dasa Ram, Advocate who attested the Will Ex.DW1/B as a notary public, was not a notary public in the year 2002 as his licence had come to an end on 21.4.1994. However in my opinion this will only show that Sh. Dasa Ram defrauded Smt. Tara Devi by representing himself to be a notary public although he was not a licenced notary public on the date of execution of the Will dated 12.7.2002 by Smt. Tara Devi. Since, in law there is no legal need for notarization of the Will, at best it will be shown that the Will dated 12.7.2002 is not notarized, however, the Will is otherwise proved through the depositions of the two attesting witnesses Sh. Shiv Shankar Gupta and Sh. Jasbir Singh who had deposed as DW-2 and DW-3. The argument of the appellant/plaintiff is therefore rejected that the Will dated 12.7.2002/Ex.DW1/B has to be discarded as Sh. Dasa Ram, Advocate is shown not to be a notary

public as on 12.7.2002 when the Will was executed by Smt. Tara Devi.

13. Learned counsel for the appellant/plaintiff then argued that the trial court has erred in holding that no proof was filed that the appellant/plaintiff did not live with Smt. Tara Devi and reference of this Court is invited to Ex.PW1/6 being an election identity card as on 28.7.2002 showing the residence of the appellant/plaintiff as that of the suit property, however, in my opinion even if the appellant/plaintiff is successful in proving his residence through the election identity card, yet that does not mean that the Will dated 12.7.2002/Ex.DW1/B on this count itself is liable to be rejected although the same is otherwise proved through both the attesting witnesses. This argument of the appellant/plaintiff is also therefore rejected.

14. Learned counsel for the appellant/plaintiff finally argued that the trial court has wrongly observed that appellant/plaintiff did not file any police complaint against the theft of the Will by the respondent no.1/defendant no.1 and reference is invited to additional document filed with this appeal being the complaint dated 30.1.2003, however,

admittedly this complaint was not filed and proved or exhibited before the trial court, and therefore this Court cannot consider the same inasmuch as only the admitted and proved documents before the trial court can be considered by the first appellate court. In any case even if I consider this complaint dated 30.1.2003 I do not find any specific averment in this complaint dated 30.1.2003 to the Police Commissioner wherein it is categorically stated by the appellant/plaintiff that the respondent no.1/defendant no.1 had stolen the Will dated 16.7.1997. This argument of the appellant/plaintiff is also therefore rejected.

15. It is therefore held that appellant/plaintiff was not the grandson of Smt. Tara Devi and that the appellant/plaintiff was in fact the grandson of Smt. Shanti Devi wife of Sh. Shobha Ram and that Smt. Tara Devi was the wife of Sh. Rehtu Lal and who was thus the father of respondent no.1/defendant no.1 (son of Smt. Tara Devi). The Will dated 12.7.2002 has been duly proved by the respondent no.1/defendant no.1 as Ex.DW1/B. Both the attesting witnesses who deposed as DW-2 and DW-3 namely Sh. Shiv Shankar Gupta and Sh. Jasbir Singh have deposed in their affidavits by way of evidence the

due execution and attestation of the Will and they have remained strong in their cross-examination and have disputed and denied the case which was set up by the appellant/plaintiff of the Will dated 12.7.2002/Ex.DW1/B by Smt. Tara Devi not being the duly executed Will of Smt. Tara Devi. Merely putting suggestions in cross-examination of the Will dated 12.7.2002 not being duly executed and attested, and which suggestions are denied by DW-2 and DW-3 who are the attesting witnesses to the Will dated 12.7.2002, cannot mean that the Will dated 12.7.2002 does not stand validly proved as Ex.DW1/B. In terms of the Will dated 12.7.2002 Ex.DW1/B it has to be held that it is the respondent no.1/defendant no.1 who is the owner of the suit property as the same was bequeathed to the respondent no.1/defendant no.1/son by the mother Smt. Tara Devi.

16. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed.

FEBRUARY 02,2018
Ne/ib

VALMIKI J. MEHTA, J