

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

% Judgment reserved on: 27<sup>th</sup> September, 2017  
Judgment delivered on: 03<sup>rd</sup> January, 2018

+ CS(OS) 970/2011

JYOTI PURI ..... Plaintiff

versus

PAWAN GANDHI & ORS. .... Defendants

**Advocates who appeared in this case:**

For the Plaintiff : Mr. Kuldip Singh with Mr. Gagan Kumar Singhal, Advocates.

For the Defendants : Mr. G.P. Thareja with Ms. Purnima Maheshwari and Mr. D.K. Singh, Advocates.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGEMENT**

**SANJEEV SACHDEVA, J**

1. This is a Suit, seeking *inter alia*, partition, rendition of accounts and permanent injunction, filed by the Plaintiff Smt. Jyoti Puri, who is the daughter of Sh. Krishan Gopal Gandhi and Mrs. Roop Rani Gandhi. Defendants Nos.1 and 2, i.e. Sh. Pawan Gandhi and Sh. Raman Gandhi are the brothers of the Plaintiff. Defendant Nos.3 and 4, i.e. Smt. Ranjana Thukral and Smt. Rosy Malhotra are the sisters of the Plaintiff.

2. The Plaintiff has sought partition of the constructed freehold property measuring 306 sq. yards bearing No.A-2/11, Rajouri Garden,

New Delhi (hereinafter referred to as 'the Suit property') claiming 1/5<sup>th</sup> share in her favour and 1/5<sup>th</sup> share for each of the four Defendants. The claim of the Plaintiff is that the father of the parties Sh. Krishan Gopal Gandhi died intestate leaving behind the Suit property besides moveable assets worth Rs.40 lakhs in the shape of investments, cash and jewellery. He expired on 11.12.2007 leaving behind his five children as well as his wife, who all inherited the Suit property as well as the other moveable assets in 1/6<sup>th</sup> share each.

3. The Plaintiff contends that Defendant No.1 Sh. Pawan Gandhi had manipulated and maneuvered documents like Relinquishment Deed, Deed of Will from the Defendant Nos.3 and 4 and late Smt. Roop Rani Gandhi and, accordingly, the Defendant Nos.1 and 2, i.e. the brothers converted the estate left behind by Sh. Krishan Gopal Gandhi and appropriated the same to their own use without giving due share to the Plaintiff and other legal heirs.

4. The Defendants, i.e. the two brothers and the two sisters filed the common written statement contending that after demise of their parents, on 11.12.2007 and 04.02.2011 respectively, they divided the assets by Deed of Settlements dated 10.02.2011 and 20.05.2011 between themselves and the share of the Plaintiff was given to the Plaintiff. It is contended that Sh. Krishan Gopal Gandhi duly executed his registered Will dated 29.12.1997 and bequeathed his share in the Suit property in favour of his wife (Smt. Roop Rani Gandhi) and the Defendant No.2 (Sh. Raman Gandhi). The mother of

the parties executed a registered Will dated 02.01.2009 bequeathing her share in the property equally to her sons Sh. Pawan Gandhi and Sh. Raman Gandhi. It is contended that the Plaintiff, in the plaint, has acknowledged the execution of the Will by Smt. Roop Rani Gandhi. It is contended that the two brothers had not taken any share in the moveable assets left behind by their parents.

5. On the pleadings of the parties, on 22.03.2013, the following issues were framed:-

- “1) Whether the Suit has not been properly valued for the purpose of court fee and requisite court fees has not been paid? (OPD)*
- 2) Whether Sh. Krishan Gopal Gandhi, father of the parties had executed a legal and valid Will dated 29.12.1997 in respect of the Suit premises and if so, the effect thereof? (OPD)*
- 3) Whether Smt. Roop Rani Gandhi, mother of the parties was not the absolute owner of the Suit premises? (OPP)*
- 4) If issue No.3 is decided in the affirmative, then what would be the effect of the Will dated 02.01.2009 allegedly executed by Smt. Roop Rani Gandhi?(OPP)*
- 5) What is the effect of Relinquishment Deed dated 10.02.2002, executed by Defendants No. 3 and 4 in favour of their mother, Smt. Roop Rani Gandhi?(OPD)*
- 7) Whether the Plaintiff is entitled to a decree of partition of the Suit premises and if so, what are the share of the parties? OPP*

8) *Relief.”*

6. Since issues Nos.2 to 7 are inter-related and premised on the execution of the legality and validity of the Will dated 29.12.1997 (of Sh. Krishan Gopal Gandhi) and Will dated 02.01.2009 (of Smt. Roop Rani Gandhi), the said issues are being disposed of together. Onus of issue Nos.2, 4, 5 and 6 was cast on the Defendants, accordingly, the Defendants led their evidence first.

7. Prior to dealing with the evidence led by the parties, it may be expedient to examine the contents of the Wills left behind by Sh. Krishan Gopal Gandhi and Smt. Roop Rani Gandhi. Sh. Krishan Gopal Gandhi in his Will dated 29.12.1997 (exhibited as Ex.DW2/1) has deposed as under:-

*“WHEREAS I am the sole and absolute owner of Freehold Double Storeyed built-up Property bearing No.-A-2/11, land measuring 306 sq.yds. situated in the approved residential colony known as RAJOURI GARDEN, New Delhi, which is bounded as under:-*

*EAST : Property No. A-2/10.*

*WEST : Property No. A-2/12.*

*NORTH : ROAD.*

*SOUTH : Property No. A-2/28.*

*That I have got my wife Mrs. Roop Rani Gandhi, two sons and three daughters namely (1) Dr. Pawan Gandhi, (2) Mr. Raman Gandhi, (3) Mrs. Ranjana Thukral, (4) Mrs. Jyoti Puri and (5) Mrs. Rozy Malhotra.*

*That My above named three daughters are married and well settled and they are enjoying their married lives*

*happily. And they shall have no rights to interfere in this Will.*

*That now I from my free WILL and consent hereby bequeath that after my demise the Entire Ground Floor and the Terrace of Entire Second Floor out of the aforesaid Property alongwith half undivided share in the land beneath the said building shall go and devolve upon my wife MRS. ROOP RANI GANDHI and the Entire First Floor and the Entire Second Floor out of aforesaid Property alongwith half undivided share in the land beneath the said building shall go and devolve upon my son Mr. Raman Gandhi, and the passage leading from main gate to staircase shall remain common and the area under stars will be common to both.*

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*That my other legal heirs shall have no right to claim and interfere in this Will and my other son Dr. Pawan Gandhi and his legal heirs shall not have any rights or claim against the said Portion of Property.”.*

8. The Will is attested by Sh. Gobind Singh and Sh. H.K. Babbar as the two attesting witnesses.

9. The Will dated 02.01.2009, executed by Smt. Roop Rani Gandhi, *inter alia*, reads as under:-

*“Whereas the Testator is the owner and in possession of one half undivided share of 3/6<sup>th</sup> undivided share of Built up property bearing No.11, in Block A-2, land measuring 306 sq.yds., situated at Rajouri Garden, New Delhi, with the free hold rights of the land under the said property.*

*Whereas I hereby bequeath that after my death the above mentioned property shall go and devolve to my sons Shri Pawan Gandhi & Shri Raman Gandhi both sons of late Shri Krishan Gopal Gandhi resident of A-2/11, Rajouri Garden, New Delhi, he/she/they will be sole absolute owner of the above mentioned property and my other legal heirs, successors, executors and assigns etc. shall have no rights or interest whatsoever to the said property. In case any other person/persons raises any objection it will be considered as null and void.”*

10. The Will is stated to be attested by Sh. Sanjiv Gandhi and Sh. Ramesh Kumar.

11. The Defendant No.1 examined himself as DW1 and also produced Sh. Gobind Singh and Sh. H.K. Babbar, the two attesting witnesses to the Will of Sh. Krishan Gopal Gandhi, as DW2 and DW3 respectively and produced Sh. Sanjiv Gandhi and Sh. Ramesh Kumar, the two attesting witnesses to the Will of Smt. Roop Rani Gandhi, as DW4 and DW5.

12. Sh. Pawan Gandhi DW1, in his examination-in-chief, with regard to the distribution of the moveable assets deposed that all the assets, gold and cash were divided by virtue of a Family Settlement Deed dated 10.02.2011 (Ex.DW4/2) and receipts dated 18.02.2011 (Ex.D1 & 2) and 20.05.2011 (Ex.D3). As per receipt dated 10.02.2011 (Ex.DW4/2), on division of the jewellery and moveable assets, the Plaintiff was to receive one big *kada*, one pair of tops, two rings and cash of Rs.4,39,500/-. Receipt dated 18.02.2011 (Ex.D1) is

the receipt of one *kada*, one pair of tops and two rings signed by the Plaintiff Smt. Jyoti Puri. Receipt dated 18.02.2011 (Ex.D2) is the receipt of two passbooks of Post Office Monthly Scheme. It may be noticed that there is no cross-examination of Sh. Pawan Gandhi on the said part of the deposition.

13. Sh. Gobind Singh (DW2), in his examination-in-chief, filed by way of an affidavit, deposed as under:-

*“1. That I knew late Sh. Krishan Gopal Gandhi, he had visited me on 29-12-1997 and told me that he has got his Will typed from H.K.Babbar the other attesting witness. He told me to accompanying him to Sub-Registrar II Janakpuri Office. After reaching he read and checked the contents of the Will are, as per his wish and desire. After being satisfied as to the contents of the same Sh. Krishan Gopal Gandhi signed the said Will, in my presence as well as in the presence of other attesting witness H.K.Babbar. I signed the Will as the attesting witness and H.K.Babbar also signed the Will as attesting witness, in presence of Late Shri Krishan Gopal Gandhi and in the presence of each other. I identify the signatures of Late Shri Krishan Gopal Gandhi and H.K.Babbar. Thereafter, the Will was presented for Registration before the Registrar II, Janak Puri and all three of us appeared before the Sub- Registrar II, Janak Puri, New Delhi and signed on the register. Thumb impression of Late Shri Krishan Gopal Gandhi alongwith signature was taken on the Will and later after stamping and other formalities, the Will was returned to Late Sh. Krishan Gopal Gandhi. I identify the signatures of Late Krishan Gopal Gandhi, myself and H.K.Babbar. The Will was registered as Document No. 85719 in Book No. III, Volume No. 4130 at Pages 135 - 136. The said Will is Ex.*

*DW2/1 and bears my signature on point B, that of H.K.Babbar at Point A and that of Late Sh. Krishan Gopal Gandhi at point C on each page.”*

14. Sh. H.K. Babbar (DW-3), in his examination-in-chief with regard to the Will of Sh. Krishan Kumar Gandhi, deposed as under:-

*“1. That I knew late Sh. Krishan Gopal Gandhi, he had visited me a day prior to 29-12-1997 and told me that he want to get his Will typed and Registered. He told me the contents I made a note thereof and told him to come the next day i.e. 29-12-1997 with his photograph and attesting witness. He came on 29-12-1997 along with an attesting witness whose was Gobind Singh. After reading and checking the contents of the Will are, as per his wish and desire and being satisfied as to the contents of the same Sh. Krishan Gopal Gandhi signed the said Will, in my presence as well as, in the presence of other attesting witness Gobind Singh. Gobind Singh signed the Will as the attesting witness and myself also signed the Will as attesting witness, in presence of Late Shri Krishan Gopal Gandhi and in the presence of each other. I identify the signatures of Late Shri Krishan Gopal Gandhi and Gobind Singh. Thereafter, the Will was presented for Registration before the Registrar II, Janak Puri and all three of us appeared before the Sub-Registrar II, Janak Puri, New Delhi and signed on the register. Thumb impression of Late Shri Krishan Gopal Gandhi alongwith signature was taken on the Will and later after stamping and other formalities, the Will was returned to Late Sh. Krishan Gopal Gandhi. I identify the signatures of Late Krishan Gopal Gandhi, Gobind Singh and myself. The Will was registered as Document No. 85719 in Book No. III, Volume No. 4130 at Pages 135 - 136. The said Will is Ex. DW2/1 and bears my signature on point A, that of Gobind Singh at Point B and that of*



*Late Sh. Krishan Gopal Gandhi at point C on each page.”*

15. In his cross-examination DW-3 further deposed that Sh. Krishan Gopal Gandhi could understand English and the Will was read over to him by the deponent in vernacular.

16. One of the objections raised by the Plaintiff to the Will of Sh. Krishan Gopal Gandhi is that the same is not attested by the two attesting witnesses. With regard to Sh. H.K. Babbar, it is contended that he had signed the same only as a scribe and not as an attesting witness. Another objection raised is that Sh. Gobind Singh, the attesting witness of the Will did not read the Will and was not aware of the contents of the Will and, accordingly, it is no attestation in the eyes of the law. It is contended that the *animus attestandi* is missing. Reliance is placed on the decision of the Supreme Court in *N. Kamalam & Anr. vs. Ayyasamy & Anr.*: (2001) 7 SCC 503.

17. Sh. Gobind Singh, in his deposition, has stated that Sh. Krishan Gopal Gandhi visited him and told him that he had got his Will typed from Sh. H.K. Babbar, the other attesting witness and told him to accompany him to Sub-Registrar Office. It is also stated that Sh. Krishan Gopal Gandhi read and checked contents of the Will and that the contents were as per his wish and desire and after being satisfied as to the contents of the same, signed the Will in the presence of the deponent as well as in the presence of the other attesting witnesses.

He states that he signed the Will as an attesting witness and Sh. H.K. Babbar also signed the Will as an attesting witness in the presence of Sh. Krishan Gopal Gandhi and each other.

18. Further, Sh. H.K. Babbar, in his examination-in-chief by way of an affidavit, has also stated that Sh. Krishan Gopal Gandhi visited him a day prior to 29.12.1997 and got his Will prepared. He came alongwith the other attesting witness Sh. Gopal Singh and after reading and checking the contents of the Will and being satisfied, signed the Will in the presence of Sh. H.K. Babbar as well as in the presence of the other attesting witness. Sh. H.K. Babbar has stated that Sh. Gopal Singh has signed the Will as an attesting witness and he also signed the Will as an attesting witness in the presence of Sh. Krishan Gopal Gandhi and each other.

19. Perusal of the Will Ex.DW2/1 shows that Sh. H.K. Babbar has signed at the place earmarked for witnesses. Nowhere does the Will state that Sh. H.K. Babbar has signed the same as a scribe. Even the endorsement on the reverse of the Will, at the place where the stamp of the Sub-Registrar has been affixed, the name of Sh. H.K. Babbar has been mentioned as the second attesting witness. The reverse page is also signed by Sh. Krishan Gopal Gandhi as well as the two attesting witnesses alongwith the thumb impressions. Further, it may be noticed that there is not even a suggestion given to Sh. H.K. Babbar during his cross-examination that he had signed only as a scribe and not as an attesting witness. Even Sh. Gobind Singh has not

been given as much as a suggestion that he had not signed the Will as an attesting witness and was not aware that the Will was being executed. The objection with regard to Sh. Gobind Singh that there was no *animus attestandi* is not sustainable.

20. From the deposition of the attesting witnesses, it is clear that the Defendants have proved the due execution of the Will of Sh. Krishan Gopal Gandhi and there is satisfaction of the requirements of Section 63 of the Indian Succession Act, 1925. The witnesses have duly deposed that Sh. Krishan Gopal Gandhi was aware that a Will was being executed and the deponents had signed the Will as attesting witnesses on the request of Sh. Krishan Gopal Gandhi. There is no requirement in law that the attesting witness must be aware of the contents of the Will. In my view, the Defendants have duly discharged the onus of proving the Will of Sh. Krishan Gopal Gandhi and the compliance of Section 63 of the Indian Succession Act, 1925.

21. The Judgment in *N. Kamalam* (Supra) is not applicable to the facts of the present case. In the said case the Propounder of the Will had failed to produce the attesting witnesses to prove the Will but had only produced the scribe, who had written the Will. The Court held that signatures of a scribe cannot be equated to the signatures of an attesting witness. In the present case both DW 2 and DW 3 have deposed that they have signed the Will as attesting witnesses and even their signatures appear as attesting witnesses to the Will.

22. With regard to the Will of Smt. Roop Rani Gandhi, the Defendants had produced Sh. Sanjiv Gandhi (DW4), who, in his examination-in-chief, deposed as under:-

*“1. That I knew late Smt. Roop Rani Gandhi W/o. Sh. Krishan Gopal Gandhi, she told me on 2-01-2009 that she has got her Will typed from her family Lawyer. She told me to check that the contents of the Will are as per her wish and desire and I explained the contents of the same to her in vernacular language - Hindi. She also told me to accompany her to Sub-Registrar II Janakpuri Office as attesting witness alongwith Ramesh Kumar, whom she had also called for the said purpose and who was present there. He had come after me but all the said talks took in his presence. After being satisfied as to the contents of the same Smt. Roop Rani Gandhi signed the said Will, in my presence as well as in the presence of other attesting witness Ramesh Kumar. I signed the Will as the attesting witness and Ramesh Kumar also signed the Will as attesting witness, in presence of Late Smt. Roop Rani Gandhi and in the presence of each other. I identify the signatures of Late Smt. Roop Rani Gandhi and Ramesh Kumar. Thereafter, the Will was presented for Registration before the Registrar 11, Janak Puri and all three of us appeared before the Sub- Registrar 11, Janak Puri, New Delhi and signed on the register. Thumb impression of Late Smt. Roop Rani Gandhi alongwith signature was taken on the Will and later after stamping and other formalities, the Will was returned to Late Smt. Roop Rani Gandhi. I identify the signatures of Late Smt. Roop Rani Gandhi, myself and Ramesh Kumar. The Will was registered as Document No. 55 in Book No. III, Volume No. 7683 at Pages 114 - 115. The said Will is Ex. DW4/1 and bears my signature on point A, that of Ramesh Kumar at Point B and that of Late Smt. Roop Rani Gandhi at point C on each page.*

2. *That after death of Mrs. Roop Rani Gandhi I was called to be an attesting witness to the division of the movable assets of her on 10-2- 2011. The same bears the signature of the daughters of Roop Rani Gandhi who signed in my presence and whom I identify. The said settlement is Ex.DW4/2.”*

23. The other attesting witness Sh. Ramesh Kumar (DW5) deposed as under:-

*“1. That I knew late Smt. Roop Rani Gandhi W/o. Sh. Krishan Gopal Gandhi, she told me on 2-01-2009 that she has got her Will typed from her family Lawyer. When I reached her house Sh. Sanjiv Gandhi was also present and she told him to check that the contents of the Will are, as per her wish and desire and he explained the contents of the same to her in vernacular language - Hindi in my presence. She also told us to accompany her to Sub-Registrar II Janakpuri Office as attesting Witnesses. After being satisfied as to the contents of the same Smt. Roop Rani Gandhi signed the said Will, in my presence as well as in the presence of other attesting witness Sanjiv Gandhi. I signed the Will as the attesting witness and Sanjiv Gandhi also signed the Will as attesting witness, in presence of Late Smt. Roop Rani Gandhi and in the presence of each other. I identify the signatures of Late Smt. Roop Rani Gandhi, myself and Sanjiv Gandhi. Thereafter, the Will was presented for Registration before the Registrar II, Janak Puri and all three of us appeared before the Sub- Registrar II, Janak Puri, New Delhi and signed on the register. Thumb Impression of Late Smt. Roop Rani Gandhi alongwith signature was taken on the Will and later after stamping and other formalities, the Will was returned to Late Smt. Roop Rani Gandhi. I identify the signatures of Late Smt. Roop Rani Gandhi, myself and Ramesh Kumar. The Will was registered as*

*Document No. 55 In Book No. III, Volume No. 7683 at Pages 114 - 115. The said Will is Ex. DW4/1 and bears my signature on point B, that of Sanjiv Gandhi at Point A and that of Late Smt. Roop Ram Gandhi at point C on each page.*

*2. That after death of Mrs. Roop Rani Gandhi I was called to be an attesting witness to the division of the movable assets of her on 10-2-2011. The same bears the signature of the daughters of Roop Rani Gandhi who signed in my presence and whom I identify. The said settlement is Ex.DW4/2."*

24. Both the attesting witnesses in their cross-examination have stood by their deposition and have confirmed that they signed the said Will as attesting witnesses. Further, it may be seen that the Plaintiff in the plaint herself has admitted that the Will was executed by Smt. Roop Rani Gandhi though it is contended that it was under pressure and coercion.

25. It may be noticed that in the plaint it is contended that the Defendant Nos.1 and 2 had manipulated and maneuvered the documents from not only Smt. Roop Rani Gandhi but also from the Defendant Nos.3 and 4, the other sisters. Defendant Nos.3 and 4, the other two sisters have not supported the Plaintiff and have not taken a stand that they were forced to execute any relinquishment deed or that the mother was forced to execute any deed or Will. They have, in fact, through the written statement, which is also supported by their

affidavits, reconfirmed the same and also confirmed the distribution of the moveable assets.

26. Further, in the examination-in-chief by way of affidavit filed by the Plaintiff herself, she has deposed that “*the Will executed by late Smt. Roop Rani Gandhi had been executed in ignorance of the alleged Will left behind by late Sh. K.G. Gandhi.*”

27. In the examination-in-chief, filed by the Plaintiff, she has stated that the Will executed by Smt. Roop Rani Gandhi had not been executed out of her own free will and consent and the Will was not read over to the witnesses and the testator. It may be noticed that apart from a mere bald averment, there is nothing to substantiate that the Will was not executed out of free will and consent. The averment that the Will had not been read over to the testator is not substantiated, on the other hand, the attesting witnesses have very categorically deposed that the Will had been executed by Smt. Roop Rani Gandhi out of her own free will and after confirming that the contents of the same were as per her wish and desire.

28. From the evidence led, it is evident that the Defendants have duly proved the due execution of the Will left behind by Sh. Krishan Gopal Gandhi and Smt. Roop Rani Gandhi and that the Wills dated 29.12.1997 and 02.01.2009 satisfy the requirements of Section 63 of the Indian Succession Act, 1925.

29. The other objection raised by the Plaintiff is that Sh. Krishan Gopal Gandhi had bequeathed the entire ground floor and the terrace of the entire second floor alongwith half undivided share in the land to his wife Smt. Roop Rani Gandhi and the entire first floor and the entire second floor alongwith half undivided share in the land to his son Mr. Raman Gandhi. Whereas, Smt. Roop Rani Gandhi by her Will had stated that she was the owner of one half undivided share of  $3/6^{\text{th}}$  undivided share of the Suit property and that the property shall go and devolve upon the two sons Sh. Pawan Gandhi and Sh. Raman Gandhi. It is contended, by the Plaintiff, that there being a variance in what was bequeathed to Smt. Roop Rani Gandhi and what was being bequeathed by her, accordingly, the said bequest is invalid. Reliance is placed on the judgment in *Dagani Ramadas vs. P. Daveed*: (1998) 8 SCC 465. It is contended that the mother was not the owner of half of the property and, accordingly, could not have bequeathed half of the said Suit property.

30. A Will has to be constructed in a manner so as to give effect to the intention of the testator. The Will has to be read as a whole so as to ascertain the intention of the testator. On construing the Will of Sh. Krishan Gopal Gandhi, it is seen that he has bequeathed his property in two shares, one to his wife and the other to Sh. Raman Gandhi. He has specifically bequeathed one-half undivided share in the land each in favour of Smt. Roop Rani Gandhi and Sh. Raman Gandhi. From the construction of the Will, it is clear that the intention of Sh. Krishan



Kumar Gandhi was to bequeath one-half share in favour of his wife and one-half share in favour of Sh. Raman Gandhi. He has however, sought to divide the superstructure giving the entire ground floor and terrace over the second floor to his wife and the first and the second floor to Sh. Raman Gandhi. On the other hand, Smt. Roop Rani Gandhi has bequeathed her entire property to his sons Sh. Pawan Gandhi and Sh. Raman Gandhi though in the distribution of the property she has stated that she is the owner and in possession of one half undivided share of  $3/6^{\text{th}}$  undivided share of the built up property. The intention as emanating from the said Will is to bequeath the entire share that she owns in the Suit property by virtue of that Will. She has specifically in her Will stated that apart from her sons, other legal heirs, successors, executors and assigns shall have no rights or interest whatsoever to the Suit property. The intention of both the testators is very clear that is to devolve the said property in favour of Sh. Pawan Gandhi and Sh. Raman Gandhi and to exclude all other legal heirs including the Plaintiff and the other Defendants from the Suit property.

31. The judgment in the case of *Dagani Ramadas (Supra)* does not support the case of the Plaintiff. In the said case, the testator prior to execution of the Will in favour of the Appellant, with regard to a constructed property, constructed on land on which she only had a possessory title, executed a settlement deed settling the constructed property in favour of the Respondent. The court negated the bequest

by Will on the ground that as she had already settled the property in favour of the Respondent she could not have willed the same. Here, it is not the case that Smt. Roop Rani Gandhi did not own any portion of the property, which is covered by the Will. She is admittedly owner of half of the land and part of the superstructure. How the superstructure is to be divided, is between Defendants 1 and 2, who apparently have no inter-se dispute. The Plaintiff and Defendants 3 and 4 has no right, title or interest in the Suit property.

32. Since Defendants 3 and 4 have no interest in the Suit property, the relinquishment deed executed by them is inconsequential.

33. In view of the above, issue Nos.2, to 7 are, accordingly, decided in favour of the Defendants and against the Plaintiff.

34. Insofar as the issue No.1 with regard to valuation of the Suit for the purposes of court fee and the requisite court fee not having been paid in the plaint is concerned, the onus of the same was on the Defendants. The Plaintiff has valued the Suit at Rs.13 crores, however, has paid the court fee claiming to be in the possession of the Suit property as one of the joint owners. Sh. Pawan Gandhi in his examination-in-chief by way of affidavit has specifically stated that the Plaintiff has not paid the requisite court fee as she is not in possession of any part of the property. It may be seen that there is not even a suggestion put to Sh. Pawan Gandhi in his cross-examination that the statement that the Plaintiff is not in possession of the property

is incorrect. Further, the Plaintiff in her examination-in-chief has not claimed to be in possession of the subject property and has not by way of any cogent evidence established that she was in physical or legal possession of any portion of the Suit property. Rather in her cross-examination she has stated that after marriage she started living with her in-laws at Kirti Nagar and had not stayed overnight at her parents' house after marriage except for 5-6 days during the birth of her children. Her children were born in 1984 and 1989. Since the Plaintiff had not established that she was in possession of any portion of the Suit property, the Plaintiff was liable to pay ad valorem court fee on the plaint as the Plaintiff is seeking partition of the Suit property by metes and bounds and separate possession of her share. Issue No. 1 is also, accordingly, decided in favour of the Defendants and against the Plaintiff.

35. In view of the above findings, the Suit of the Plaintiff is dismissed with cost. Decree sheet be drawn up accordingly.

**SANJEEV SACHDEVA, J**

**JANUARY 03, 2018**  
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