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

+ CM(M) 382/2014

SUMER CHAND

..... Petitioner

Through: Mr. Suresh Sharma, Advocate with  
Mr. Ramesh Chandra, Advocate  
versus

SMT RAMWATI

..... Respondent

Through: Mr. Atul Varma, Advocate with  
respondent in person.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER**

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**22.01.2018**

The dispute revolves around right, title and interest in property bearing No.162, Village Okhla, New Delhi-110025, concededly originally owned by Mr. Sukhi Ram, who is stated to have acquired it from his own resources. The petitioner and the respondent are siblings, they being children of the said Sukhi Ram. Sukhi Ram died on 24<sup>th</sup> June, 2005. The respondent had instituted a probate case on the basis of will dated 07.06.2005, which she claimed was the last and final will left behind by Late Shri Sukhi Ram. The proceedings arising out of the said probate case, initially dismissed by the probate Court, are pending in first appeal before this Court, it having been entertained in January, 2010.

The petitioner, on the other hand, instituted civil suit (Suit No. 359/2010) on 31.08.2010 praying for a decree of possession and damages/

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*mesne* profits against the respondent, claiming that the property had now devolved on them in terms of a will dated 28.12.2004, which is described by them as last and final will of Late Shri Sukhi Ram.

The learned civil Judge on the application under Section 10 of the Code of the Civil Procedure, 1908 (CPC) by order dated 02.08.2013 directed the proceedings in the suit to be stayed till the decision is rendered on the appeal in the probate case, giving liberty for application to be moved for revival of the proceedings after adjudication on the appeal by this Court. It is the said order which is under challenge by the petition at hand.

There can be no denial of the fact that the parties in both the matters are common, the subject matter being same, and the issues arising in the suit being directly and substantially the issues in the probate case as well. If the probate case succeeds, it would have the effect of nullifying the effect of will dated 28.12.2004. In these circumstances, this Court finds no error or impropriety in the impugned order.

Dismissed.

**R.K.GAUBA, J.**

**JANUARY 22, 2018**

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