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

+ **RFA No. 591/2010 and C.M. No.14416/2010 (stay)**

DEEPAK KHURANA AND ORS.

..... Appellants

Through: Mr. J.C. Mahindro, Mr. Lovish Seth,
Mr. Shubham Agarwal and Ms.
Cherry Singh, Advocates (Mobile
No. 9810138091).

versus

CHANDER WATI SHARMA AND ORS.

..... Respondents

Through: Mr. V.K. Srivastava, Advocate for
R-1 (Mobile No. 9810056905).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **15.11.2018**

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos. 1, 3 and 4 in the suit impugning the Judgment of the Trial Court dated 01.04.2010 by which the trial court has decreed the suit for partition filed by the respondent no. 1/plaintiff and has granted the respondent no. 1/plaintiff 1/4th share out of the 1/4th share of the father late Sh. Dharam Bir Khurana in two properties bearing nos. K-4/12, Model Town-II, Delhi-110009 and 1/602, Hamilton Road, Kashmere Gate, Delhi-110006. Sh. Dharam Bir Khurana was one

out of the four brothers, the other three being Sh. Jagan Nath Khurana, Sh. Har Bhagwan Khurana and Sh. Nand Kishore Khurana. All the four brothers owned the aforesaid two properties at Model Town and Hamilton Road.

2. Admittedly, the share of Sh. Dharam Bir Khurana was $\frac{1}{4}^{\text{th}}$ in the aforesaid two properties and the issue before the trial court was as to in whose favour the $\frac{1}{4}^{\text{th}}$ share of the Sh. Dharam Bir Khurana would vest. The case of the appellants/defendant nos. 1, 3 and 4 was that the defendant nos. 3 and 4/appellant nos. 1 and 2 were the sole owners of the $\frac{1}{4}^{\text{th}}$ share of Sh. Dharam Bir Khurana in two properties inasmuch as it was the case of the appellants that Sh. Dharam Bir Khurana had died leaving behind his Will dated 03.11.1974 whereby he bequeathed his $\frac{1}{4}^{\text{th}}$ share in the aforesaid two properties to his son Sh. Ranbir Khurana, the predecessor-in-interest of defendant nos. 3 and 4/appellant nos. 1 and 2.

3. The case set up by the appellants before the trial court by relying upon the Will dated 03.11.1974 has been rejected by the trial court inasmuch as it has been held that the appellants have failed to prove the Will dated 03.11.1974 said to have been executed by Sh. Dharam Bir Khurana in favour of his son Sh. Ranbir Khurana.

4. Learned counsel for the appellant states that the issue with respect to 1/4th share of Sh. Dharam Bir Khurana falling equally to his four legal heirs is now no longer disputed, with the four legal heirs being respondent no.1/plaintiff/daughter, appellant no. 3/defendant no. 1/widow, respondent no. 2/defendant no. 2/daughter and appellant nos. 1 and 2/defendant nos. 3 and 4, jointly.

5. Learned counsel for the appellants however states that appellant no. 3/defendant no. 1/Smt. Vidyawanti Khurana has in the meanwhile expired and now the issue before the trial Court would be as to in whose favor would devolve the share of Smt. Vidyawanti Khurana i.e. 1/16th share of Smt. Vidyawanti Khurana is still subject matter of passing of the fresh preliminary decree by the trial court in accordance with the ratio of the judgment of the Supreme Court in ***Phool Chand and Another v. Gopal Lal***, 1967 AIR 1470.

6. Therefore, while disposing of this appeal as not pressed it is observed that a fresh preliminary decree will be passed by the trial court as to on whom will devolve the share of appellant no. 3/defendant no. 1/Smt. Vidyawanti Khurana. Both the contesting parties being the respondent

no.1/plaintiff on the one hand and appellant nos. 1 and 2 on the other hand are claiming the share of Smt. Vidyawanti Khurana as per respective Wills of Smt. Vidyawanti Khurana propounded by appellant nos.1 and 2 on the one hand and plaintiffs on the other hand.

7. In view of the aforesaid discussion, this appeal is accordingly disposed of and the trial court will now pass a fresh preliminary decree with respect to the share of appellant no. 3/defendant no. 1/Smt. Vidyawanti Khurana.

VALMIKI J. MEHTA, J

NOVEMBER 15, 2018

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