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

Date of decision: 18th May, 2018

+ **RFA 321/2016**

SUMAN DEVI & ORS

..... Appellants

Through: Arun Kumar Panwar, Advocate (M-7827545811) along with Appellant No.1, 2 & 3 in person.

versus

MAHABIR SINGH & ORS

..... Respondents

Through: Mr. Mayank Sharma and Mr. Pradeep K. Sharma, Advocates for R-1 along with R-1 in person. (M-9810606069)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present appeal has been preferred against the judgment and decree dated 13th January, 2016 in a suit for permanent injunction and recovery of rent/rendition of accounts filed by the Appellants/Plaintiffs (*hereinafter, 'Plaintiffs'*) by which the suit filed by them was dismissed.
2. The background of the case is that the Appellant No.1/Plaintiff No.1 (*hereinafter, 'Smt. Suman Devi'*), Mrs. Suman Devi is the wife of Late Shri Rambir Singh. She has two children i.e., Kumari Nisha and Master Digvijay Singh, Appellant/Plaintiff No.2 (*hereinafter, 'Kumari Nisha'*) & Appellant/Plaintiff No.3 (*hereinafter, 'Master Digvijay'*) respectively, both of whom were minors at the time when the subject suit was instituted. Currently Kumari Nisha is 18 years old and Master Digvijay is 12 years old.

The 10th standard mark sheet of Kumari Nisha, produced today showing her date of birth as 12th October, 1998 is taken on record. Late Shri Rambir Singh had executed a Will dated 8th May, 2013 by which he had bequeathed his property in the following terms:-

“That the Testator declare that after my death my entire property (which is transfer through Family G.P.A in the name of my elder brother Sh. Mahabir Singh on dated) shall lookafter by my elder brother Sh. Mahabir Singh till the date of getting maturity age 21 yrs. by my son name Digvijay Singh @Deepu and after getting maturity age of my son, Sh. Mahabir Singh shall not get any right in my property in any way and in any manner. My wife shall not claim in my above said property in any manner.

My wife shall not claim in my above said property in any manner or by using any way or means.

That after my death rental income of my BUILTUP PROPERTY LAND AREA MEASURING 150 SQ. YDS., i.e. 125.41 SQ. MTRS., OUT OF KHASRA NO. 587/478/96, BEARING PROPERTY NO.C-43/4, CONSISTING WHATSOEVER THEREON AND WITH THE RIGHT TO CONSTRUCT UPTO LAST STOREY, SITUATED AT VILLAGE MAUJPUR, IN THE ABADI OF MOHAN PURI, MAUJPUR, ILLAQA SHAHDARA, DELHI- 110053 shall be collected by my elder brother Sh. Mahabir Singh & my wife shall not claim/receive my rental income of my property detailed given above.

That my other legal heirs, successors, and other legal representatives shall have no right or interest in the concerning of the above said PROPERTY and no one shall raise any objection in respect of this regard then the same shall be considered as null and void and ineffective before the court of law and Biradari

Panchayat.”

3. As per the said Will, the testator had appointed his brother Shri Mahabir Singh – Respondent No. 1/Defendant No.1 (*hereinafter*, ‘*Shri Mahabir Singh*’), to take care of all his properties and to collect rent from House No.C-43/3, Ground Floor, Mohanpuri Village Maujpur, Delhi-110053 (*hereinafter*, ‘*suit property*’). It was categorically mentioned in the said Will that Mrs. Suman Devi would have no claims in the suit property. After the dismissal of the suit, the present appeal was preferred by all the three Plaintiffs.

4. This Court had restrained the tenants from paying rent to Shri Mahabir Singh, vide order dated 16th May, 2016. Thereafter, affidavits were called for from the tenants and on 27th February, 2018, the following order was passed:-

“CM APPLs. 45788/2016, 17285/2017

*Respondent Nos. 2 to 5 are directed to deposit the rent w.e.f. 16th May, 2016 till date within 8 weeks, with the Registrar General of this Court. The amount on being deposited shall be kept in a fixed deposit.
Applications are disposed of.*

CM APPL. 20414/2017

By this application, the Appellant seeks impleadment Mr. Ajaz and Mr. Santosh Pathak who are the tenants in the property. Advance copy of the application was served long back and notice was also issued in this application on 29th May, 2017. The application is accompanied with photographs of the two shops. They are impleaded as Respondent Nos.6 and 7 in the appeal. The Respondent shall file an affidavit stating as to when they were inducted in the suit premises and how much rent they are paying.

Application stands disposed of.

CM APPL. 45041/2016

This is an application for placing on record the additional documents including the Plaint and written statement in the suit filed by the Appellant challenging the Will. The said documents are taken on record. However effect of the same in the final decision of the appeal will be considered at the final stage.

Application is disposed of.

CM APPL. 20791/2017

Respondent No.1 has been appointed as the Guardian of the properties of the Late Sh. Rambir Singh. The rent being earned from the said property has now been directed to be deposited in this court. The Respondent No.1 shall also deposit the rent which is now being collected from Respondent Nos.6 and 7. All the deposits shall be made within 8 weeks. The Respondent No.1 submits that he has no intention of selling the suit property. The said statement is taken on record. However, the same does not bar the Respondent No.1 from renting out the property and depositing the rent in this court.

Application stands disposed of.

RFA 321/2016

In this case, the Appellant No.1, is the Bhabhi of Respondent No.1, Appellant Nos. 2 and 3, the Nephews of Respondent No.1. Appellant No.1's husband was the real brother of Respondent No.1. As per the Will dated 8th May, 2013 which was registered, the Appellant No.1's husband, had bequeathed his property in the following terms:

“That the Testator declare that after my death my entire property (which is transfer through Family G.P.A in the name of my elder brother Sh. Mahabir Singh on dated) shall lookafter by my elder brother Sh. Mahabir Singh till the date of getting maturity age 21 yrs. by my son name Digvijay Singh @ Deepu and after getting maturity age of my son, Sh. Mahabir Singh shall not get any right in my property in any way and in

any manner.

My wife shall not claim in my above said property in any manner or by using any way or means.”

Thus it appears that the Appellant No.1 i.e. wife was not entitled to the property of her husband as per the bequest. The Appellant No.3, Mr. Digvijay Singh, the son of the testator is stated to be still minor. Considering the fact that the rent amounts have been directed to be deposited in the court, it is deemed appropriate that parties are directed to be present in court on the next date. The Appellant’s counsel submits that no money is being paid from the rental income to the Appellant Nos.2 and 3.

It is submitted on behalf of Respondent No.1 submits that he is ready and willing to pay the amounts which are required for the Appellant Nos. 2 and 3’s education and maintenance. He further admits that he is merely a guardian of the property till Appellant no.3 attains the age of 18 years. The Respondent No.1 further submits that the Appellant no.1 has now filed a suit challenging the Will post the impugned judgment of the Trial Court. The Appellant No.1 is directed to file the order sheet of the said suit before the next date of hearing.

Relist on 15th March, 2018.

Appellant and Respondent No.1 to appear on the next date.”

5. Since the said date, the matter has been listed from time to time before this Court. On 21st March, 2018, a direction was passed that since Kumari Nisha and Master Digvijay, who are both children, needed money for their maintenance and their education, Rs.25,000/- each, be deposited in their bank accounts by Shri Mahabir Singh. The said deposits were made. Thereafter, Shri Mahabir Singh has also deposited the various amounts being collected from the tenants. A total sum of Rs.5,17,000/- has been deposited by Shri Mahabir Singh with the Registrar General of this Court.

6. In the interest of Kumari Nisha and Master Digvijay i.e. the children, and to ensure that they are adequately provided for, till Master Digvijay attains majority, the parties i.e. Kumari Nisha and Master Digvijay through their mother, Smt. Suman Devi, and Smt. Suman Devi in her own capacity on one hand, and Shri Mahabir Singh, the brother of late Shri Rambir Singh, have agreed to settle all their disputes in the following terms: -

- a) All the parties agree to abide by the Will dated 8th May, 2013 of Late Sh. Rambir Singh and agree not to challenge the same.
- b) Shri Mahabir Singh shall continue to take care of the property as a custodian and shall continue to collect all the rents from the suit property till the time Master Digvijay Singh attains the age of 21 years. Upon Master Digvijay Singh attaining the age of 21 years, the property shall be handed over to him as per the wishes of his father.
- c) The property consists of two and a half floors and consists of six rooms i.e. three rooms on the ground floor and three rooms on the first floor and one tin shed on the roof of the property. Presently four rooms are on rent and the rental income generated from the four rooms is stated to be Rs.23,500/- per month. Out of the said amount, Sh. Mahabir Singh shall deposit a sum of Rs.5,000/- per month in each of the bank accounts of Kumari Nisha, and Master Digvijay Singh. The Bank account details of the said two children have been already given to Sh. Mahabir Singh.
- d) Shri Mahabir Singh would be entitled to deduct a sum of Rs.2,000/- per month for the continued maintenance and upkeep

of the property. The balance amount of Rs.11,500/- shall be deposited on a half yearly basis with the Delhi High Court Legal Services Committee (*hereinafter*, 'DHCLSC') on a six monthly basis.

- e) Shri Mahabir Singh is permitted to rent out the remaining rooms of the property. If a new tenant is inducted, the rental amount shall be divided equally between Kumari Nisha and Master Digvijay and shall be deposited in their respective accounts. The remaining half amount shall be deposited with the DHCLSC on a six monthly basis, on or before 10th July and 10th January, every year.
- f) It is also agreed by Master Digvijay through his legal guardian i.e. his mother, Smt. Suman Devi, that from the outstanding amount collected through rents by Sh. Mahabir Singh, for the period of June, 2013 to April, 2016, a lumpsum amount of Rs. 5,00,000/- will be deposited by Shri Mahabir Singh within a period of one year with the DHCLSC. No further amounts would be payable by Shri Mahabir Singh in respect of the said period.
- g) The amount of Rs. 5,00,000/- shall be released to Kum. Nisha at the time of her marriage. The release of the said amount shall be done by the Secretary, DHCLSC after satisfying himself of the fixing of the marriage of Kumari Nisha and after giving notice to Shri Mahabir Singh. The said amount would be liable to be released three months before the marriage along with proportionate interest, accrued thereon on the Rs.5,00,000/-

amount.

- h) The Suit No.1765/2016 titled "*Suman Devi & Ors. v. Mahabir Singh & Anr.*" filed by the Plaintiffs against Shri Mahabir Singh in the Karkardooma Court shall be withdrawn.
- i) The Secretary, DHCLSC shall be permitted to inspect the suit property at least once every year till Master Digvijay attains majority in order to ensure that the entire rental income is being deposited regularly by Shri Mahabir Singh with DHCLSC.
- j) Upon Master Digvijay attaining 21 years of age, he would be entitled to appear before the Secretary, DHCLSC and seek release of the entire amount lying deposited, along with interest, accrued thereon. The Secretary, DHCLSC shall, at that stage, make appropriate enquiry as may be needed, and after issuing notice to Shri Mahabir Singh and Smt. Suman Devi, release the entire amount in favour of Master Digvijay. The amount already stated to have been deposited in the name of the Registrar General, Delhi High Court of Rs.5,17,000/- shall be transferred to the account of Secretary, DHCLSC. The entire amount will now be kept in the account of DHCLSC in a Fixed deposit on automatic renewal mode.
- k) The Secretary, DHCLSC will also at the time of making enquiries on a yearly basis also make enquiries in respect of the annual progress report of Master Digvijay from his school etc. Smt. Suman Devi shall present the progress report of Master Digvijay to the Secretary, DHCLSC on an annual basis.

The suit is decreed as settled in the above terms.

7. The parties who are present in Court agree to the terms of settlement

set out above and have appended their signatures below. They have been duly identified by their respective counsels.

8. The Secretary, DHCLSC, Mr. Dig Vinay Singh is present and has been apprised of the order passed today. The parties are directed to appear before Secretary, DHCLSC on 25th May, 2018.

9. The Appeal and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 18, 2018/Rekha

