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

+ **RFA 586/2018**

VEERU PARSHAD GUPTA

..... Appellant

Through : Mr.Rais Farooqui, Advocate.

versus

JOGESHWARI DEVI

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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07.01.2020

CM APPL.No.229/2020

This matter is taken up in view of an order dated 04.12.2019 of the learned Trial Court whereby it has kept the matter for today for passing of final decree.

This appeal challenges the judgment dated 18.04.2018 whereby the suit for partition was decreed in favour of the sister of the appellant herein in respect of property bearing No. 219, Block D, 70 Foota Road, Prem Nagar-II, Opposite Krishna Public School, Kirari, Suleman Nagar, Delhi on the ground such property originally belong to Sh.Rama Shanker, their father. The learned Trial Court decreed the suit on the ground Sh.Rama Shanker died intestate so also his wife and the appellant and respondent being the only class-I legal heir are entitled to 1/2 share in the subject property left by their father. The suit for partition thus was decreed.

Finding no fault in the judgment, this Court vide its order dated 25.07.2018 had dismissed the appeal on merits. However, a review application 441/2018 was filed by the appellant wherein it was urged the suit property is on a piece of plot ad-measuring 790 sq. yds, out of which 190 sq. yds. was purchased by the appellant to the exclusion of the others. Further 300 sq. yds. was purchased separately by the appellant's son from the seller Sh.Satish Chander and the balance 300 sq. yds. was purchased by Sh.Rama Shanker, father of the appellant. Separate set of documents, all dated 26.05.1994 were got prepared. It is alleged even the said 300 sq.yds., purchased by their father was bequeathed in favour of the son of appellant vide a registered Will dated 07.08.1997. These facts could not be brought before the learned Trial Court due to alleged negligence of the counsel for the appellant despite handing over to him the original documents. This is how the appellant herein is before this Court.

Along with the appeal, an application under Order *XLI* Rule 5 CPC was also filed bringing on record the entire documentation dated 26.05.1994 as also the registered Will dated 07.08.1997 but it was not noted and the appeal was dismissed on merits on the premise the whole property belong to Sh.Rama Shanker, who had died intestate and hence both the brother and sister viz. appellant and respondent, being the only class-I heirs were found entitled to $\frac{1}{2}$ share each in the property.

It is stated by the learned counsel for the appellant he is in possession of the above said original documents including the Will, etc; which documents could not be produced before the learned Trial

Court despite due diligence at the time of recording of evidence and hence there are sufficient reasons for review of the judgment passed by this Court.

In the circumstances issue notice to the respondent through all modes returnable on 19.03.2020, the date already fixed and in the meanwhile the final decree be kept in abeyance.

Compliance of Order XXXIX Rule 3 of the CPC be made within ten days from today. Order *dasti*.

YOGESH KHANNA, J.

JANUARY 07, 2020

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