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

+ **RFA 517/2016**

RAMESH SEHGAL Appellant

Through: None.
versus

VINAY ADLAKHA & ANR. Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **02.02.2018**

RFA 517/2016 & CM Nos.27156/2016 (stay) & 27158/2016 (delay)

1. This is an appeal arising out of the impugned judgement and order dated 8th April 2016 by which Plaintiff/Respondent No.1 were held entitled to possession of the ground floor only upto ceiling level of House No.A-2/1, measuring 87.5 Sq. Yard, Krishan Nagar, Delhi. Appellant /Defendant No.1 was directed to hand over the vacant peaceful possession to Plaintiff within three months from the date of order.

2. Plaintiff and Defendant No.1 are brother and sister. They are children of Late Shri Harcharan Singh Sehgal. He had, by Will dated 2nd August 1999 bequeathed his immovable property as under:-

“a) First floor with upper storey rights (except ground floor) of property No.A-2/10, measuring 87^{1/2} sq.yards, out of Khasra No.577/528, situated at Krishan Nagar, in the area of Village Ghondli, Illaqua Shahdara, shall go and devolve upon Shri Ramesh Sehgal son of the testator.

b) Ground floor portion, only upto 'Ceiling Level' of

Property No.A-2/10, measuring area 87^{1/2} sq.yards, out of Khasra No.577/528, situated at Krishan Nagar, in the area of Village Ghondli, Illaqua Shahdara, shall go and devolve upon Smt. Vinay Adlakha, daughter of the testator.

c) Property No.66, measuring area 112^{1/2} sq. yards situated at Mahilla Colony, Gandhi Nagar, Delhi-31, shall go and devolve upon Shri Ashok Sehgal son of the testator.”

3. The Trial Court accepted the Will on the basis of the evidence given by the Plaintiff. The attesting witness PW-1 Ms. Pooja also deposed in support of the Will. She was the grand-daughter of Late Shri Harcharan Singh Sehgal. On the basis of evidence on record, the Trial Court upheld the execution of Will. The Defendant no.1 claimed that he was in possession of the property since 1974 and he should not be dispossessed. Defendant No.1, also could not lead any evidence to establish as to in what manner he became owner of the property. The Plaintiff was thus granted decree of possession and ownership in the suit property.

4. In the present appeal, notice was issued on 1st September 2016. Both the Respondents were served in the matter and they did not choose to file reply either to application for condonation of delay or the stay application. Delay of 20 days is condoned and CM No.27158/2016 for condonation of delay is disposed of.

5. On the last date of hearing, Appellant appeared before the Court and following order was passed.

“Appellant is present after first pass over. He submits that there has been a settlement between him and the Respondent, who is his sister. Learned counsel for the Respondents states that he has no instructions. Let

*parties be present on the next date of hearing.
List on 2nd February, 2018.”*

6. Today, despite three pass overs none appears for Appellant. It appears that Appellant is no longer interested in pursuing the appeal. The court also does not find any infirmity in the impugned order.

7. Appeal is accordingly dismissed. All the other pending miscellaneous applications are disposed of accordingly.

PRATHIBA M. SINGH, J.

FEBRUARY 02, 2018/dk