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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 22<sup>nd</sup> April, 2024*+ **TEST.CAS. 50/2015**

SHIV KUMAR SHARMA &amp; ORS ..... Petitioners

Through: Ms. Nisha Narayanan, Adv.  
versus

STATE &amp; ANR ..... Respondents

Through: None.

**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 276 of the Indian Succession Act, 1925 has been filed by the Petitioners, who are as follows:

- i. Shiv Kumar Sharma,
- ii. Naresh Kaushik,
- iii. Vijaya Lakshmi,
- iv. Rakesh Kaushik,
- v. Rajneesh Kaushik,

seeking issuance of probate in respect of the Will executed by the testatrix- Ms. Phoolwati dated 16th December, 2008. The Objector in respect of the said Will is Respondent No.2-Nand Kaushik Rituraj. On behalf of Respondent No.2 i.e. the Objector, on the last date before the Id. Joint Registrar, the Id. Counsel appeared for Respondent No. 2, and submitted that the matter had been settled.

3. Vide order 22<sup>nd</sup> May, 2015, notice in the present petition was issued



to the Respondent-State, as also the Objector. Valuation report in respect of the subject properties was also directed to be filed. On 11<sup>th</sup> May, 2016, it was noted that the Sub-Divisional Magistrate had filed the valuation report dated 13<sup>th</sup> May, 2016. Initially, vide order dated 19<sup>th</sup> July, 2017, this Court dismissed the present petition in default, and thereafter, on 4<sup>th</sup> September, 2018, the petition was restored to its original status. Issues were framed on 23<sup>rd</sup> October, 2018. Thereafter, vide order dated 19<sup>th</sup> April, 2023, it was recorded that the parties were in the process of settling the matter. On 14<sup>th</sup> August, 2023 and 4<sup>th</sup> December, 2023, the matter was stated to be pending before the Mediation Centre. On 27<sup>th</sup> March, 2023, the Id. Joint Registrar noted that the parties had placed on record the settlement agreement dated 30<sup>th</sup> November, 2023, along with the consent e-mail of all of the parties.

4. Today, the original Will, which is in a sealed cover, has been perused by the Court. The Petitioners- Mr. Shiv Kumar Sharma, Mr. Naresh Kaushik, Ms. Vijaya Lakshmi, Mr. Rakesh Kaushik, Mr. Rajneesh Kaushik as also Mr. Nand Kaushik Rituraj are all the six children of the testatrix.

5. During the pendency of this petition, parties have settled their disputes, vide settlement agreement dated 30<sup>th</sup> November, 2023. The said settlement agreement contains the terms and conditions on which the parties have resolved their disputes. As per the said settlement agreement, the Will dated 16<sup>th</sup> December, 2008<sup>1</sup> shall not be acted upon and the terms agreed upon, as part of the said settlement agreement, shall be binding between the parties.

6. As per the said settlement agreement, the first and second party

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<sup>1</sup> Wrongly mentioned as 16<sup>th</sup> November, 2008 in paragraph 1 of the settlement agreement dated 30<sup>th</sup> November, 2023.



agreed to jointly sell the property bearing no. '**F-20, Near F-Block, Gurudwara Mansarovar Park, G.T. Road, Shahdara, Delhi**' and 1/6th each of the sale consideration shall be received by each of the legal heirs. Parties also have agreed to sell the same within six months, extendable by another four months. One of the brothers Mr. Rajneesh Kaushik passed away and his share is agreed to be given to Mr. Rakesh Kaushik. In addition, Petitioner Nos. 2 and 3 also agreed that their shares shall also be given to Mr. Rakesh Kaushik. The terms and conditions of the said settlement agreement are contained in paragraph 1 to 12 of the settlement agreement. The same are extracted herein below:

*"1. That both the First Party and Second Party agree to jointly move an application for treating the present petition namely Test Case. 50/2015, as a Suit for partition to give effect to the terms of settlement entered into between parties in accordance with law. Both the parties agree that the afore stated said WILL dated 16.11.2008 of late Smt. Phoolwati shall not be acted upon and be ignored and terms and conditions of the Settlement Agreement will be abided by the parties.*

*2. That both the First Party and Second Party shall jointly sell the property bearing No. F-20, Near F Block, Gurdwara Mansarovar Park, G.T. Road, Shahdara Delhi, and 1/6th share each of the sale consideration received in terms of the Sale Deed executed shall be given to all the parties. The parties agree that they will jointly make efforts to sell the property and any of the party to the Agreement can bring a bonafide buyer after verifying his credentials who is offering the best price for the property in question.*

*3. That the parties further agree that the property shall*



*be sold within a period of 6 months extendable by another 4 months. In the event of disagreement to the sale of property or should the parties fail to sell the property for any reason whatsoever within the afore stated time limit, either party can approach the court to sell the property by filing an Execution Application.*

*4. That the parties have agreed that the share of the deceased brother Late Sh. Rajneesh Kaushik shall be given to the Petitioner No. 4 herein Sh. Rakesh Kaushik, who himself is physically challenged (Wheel chair borne and 85 % permanent disability after suffering an accident in 2017) and he along with his family has been taking care of the deceased brother all these years. The office of the Medical Director, Guru Teg Bahadur Hospital, Delhi had issued a Permanent Disability Certificate No. 1449/06/2018 dated 03.12.2018 to Rakesh Kaushik declaring him 85 % permanent loco motor disabled*

*5. That the parties have also agreed that the share of Petitioner No. 2 Sh. Naresh Kaushik and petitioner no. 3 Smt. Vijaya Lakshmi shall also be given to their brother Rakesh Kaushik (**Petitioner No. 4**).*

*6. That the parties further agree that all expenses incidental to the sale of the subject property shall be equally borne by both the First Party and the Second Party. That any incidental expenses incurred in the present Probate case in court shall also be equally borne by all the parties.*

*7. That the parties further agree that the Sale Deed shall be signed and executed by all the parties to the Settlement and in case any of the parties are unable to personally come to execute the Sale Deed, he/she shall give a POA to Shiv Kumar Sharma appointing him as their POA holder to execute the Sale Deed.*



8. *That the parties admit that no other civil/criminal pending between the parties and any dispute other than the one mentioned herein in respect to subject property filed by any of the parties shall stand settled in terms of the present Settlement Agreement. The parties agree that a Preliminary Decree in terms of the present Settlement entered into between the parties may be passed.*

9. *By giving consent to this Settlement Agreement the parties hereby state that they have no further grievances, allegations, claims or demands against each other in respect of subject property.*

10. *Both the parties hereby state that they have fully understood the terms, consents, effect and consequences of the settlement Agreement. In case of breach/violation/deliberate disobedience, the party breaching the terms of the Settlement Agreement shall render himself/herself liable for contempt proceedings.*

11. *That the terms have been settled between the parties of their own free will, volition and without there being any undue pressure, coercion, influence, misrepresentation or mistake (both of fact or law) in any form, whatsoever, and the settlement agreement has correctly recorded the said agreed terms.*

12. *Both the parties undertake that they will abide by the terms and conditions set out in the Settlement Agreement."*

7. The said settlement agreement has been digitally signed by the Id. Mediator, Mr. Sharat Kapoor. The consent emails of all the parties have also been attached to the said settlement agreement.

8. The original Will dated 16th December, 2008, and the original death



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certificate of the testatrix, be now made part of the record. The terms and conditions of the settlement agreement dated 30th November, 2023 are lawful. There is no impediment in recording the settlement. All parties and anyone acting for an on their behalf shall be bound by the terms of the settlement agreement dated 30th November, 2023.

9. Accordingly, the petition is disposed of, binding the parties of the present petition, to the settlement agreement dated 30th November, 2023. The settlement agreement dated 30th November, 2023 shall be considered as a decree passed by the Court.

10. The present petition is disposed of. All pending applications are also disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**APRIL 22, 2024**

*dj/dn*

*(corrected & released on 26<sup>th</sup> April, 2024)*