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

+ **FAO 150/2023 & CM APPL. 33257/2023**

SMT SHEELA DEVI & ANR.Appellants

Through: Mr. Binod K. Agrawal, Adv.
along with appellants in person.

versus

SWATI KANT & ANR.Respondents

Through: Mr. Ranjan Sharma and Ms.
Kusum Devi, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **26.03.2025**

1. Having heard the learned counsels for the parties and on a perusal of the record, this appeal comes up for final disposal.
2. The appellants are the defendants in the suit which has been instituted by the respondents/plaintiffs. In fact, the appellant No. 1 is the mother and appellant No. 2 is the brother of the two respondents/plaintiffs.
3. The appellants have filed a suit for partition, permanent injunction & rendition of accounts, in respect of the properties which have been left behind by the deceased father who expired on 07.05.2021.
4. It is borne out from the record that on an application under Order XXXIX Rule 1 and 2 of Civil Procedure Code, 1908 [“CPC”], moved on behalf of the respondents/plaintiffs, an order dated 16.03.2022 has been passed, whereby the appellants/defendants have been restrained from creating any third party right in the property and maintain *status quo*.



5. Insofar as the impugned order is concerned, on the application moved by the respondents/plaintiffs, the impugned order is passed under Order XXXVIII Rule 6 of CPC, thereby directing that the entire rent which is being collected by the appellants/defendants, be deposited in the Court on a month-to-month basis and the same be invested in interest bearing fixed deposits with the State Bank of India in auto renewal mode after every six months.

6. Learned counsel for the appellants has pointed out that the deceased father left behind a Will dated 17.01.2019 in favour of appellant No. 1, whereby the right, title and interest in the property have been bequeathed in her favour. It is urged that the appellant No. 1 has been collecting rent in her own rights as the sole beneficiary of the Will executed by the deceased father.

7. On being asked, it is pointed out that the issues in the suit have already been framed and the matter is at the stage of recording of evidence of the plaintiffs and listed before the Trial Court on 23.07.2025.

8. Keeping in mind that the Will which is being propounded by the appellant No. 1 is yet to be proven in accordance with law during the trial, and also bearing in mind that in the event the appellants are not able to prove their Will, each of the legal heirs of the deceased will be entitled to the 1/4th share, hence the impugned order requires modification.

9. Therefore, the impugned order dated 29.04.2023 is hereby modified to the effect that the rental income being derived by the appellants to the extent of 50% may be appropriated by them for their own use and the rest of the 50% be deposited in the Court on a three-monthly basis and which be invested in auto renewal interest bearing



FDRs, subject to the final decision in the matter.

10. The appeal is, accordingly, disposed of. All pending applications are also disposed of.

11. The appellants shall, however, file a detailed statement of account before the Court rendering/setting out the details of the properties which have been let out and the rental income being derived and the mode thereof, since the time of filing of the suit before the Court along with the lease deed/rent agreement, as the case may be.

12. This order is passed without prejudice to the rights and contentions of the parties.

DHARMESH SHARMA, J

MARCH 26, 2025/*gunn/Sa*