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

+ **CS(OS) 50/2025 I.A. 2013/2025 I.A. 2014/2025 I.A. 2015/2025**

MR KHALEEL SYED REHMAN

.....Plaintiff

Through: Muhhamad Ali Khan, Mr. Omar Hoda, Ms. Eesha Bakshi, Mr. Uday Bhatia, Mr. Arjun Sharma, Mr. Kamran Khan, Ms. Jayanti Singh & Mr. Gurbani Bhatia, Advs.

versus

**SYED HABEEB UR REHMAN PRIVATE TRUST
AND ORS**

.....Defendants

Through: Mr. Sanjeev Anand, Sr. Adv. with Mr. Rahul Anand & Mr. Akshay Thakur, Advs. for D-1 to 3.
Mr. Rohan Thawani & Ms. Maryam Junaid, Advs. for D-6

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

**ORDER
24.01.2025**

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1. This suit seeks declaration, permanent injunction, rendition of accounts, and other attendant relief against the defendants.
2. As per the facts narrated in the plaint, plaintiff is one of the siblings of Mr. Syed Habeeb-ur-Rehman (**'deceased'**) who passed away on 16th December 2024 at Delhi. Plaintiff and defendant nos. 7 to 12 are the surviving siblings of the deceased. Plaintiff states that the deceased was earlier serving in the Indian Army; retired in 1979 and entered the hospitality industry. He joined ITC Pvt. Ltd. as Managing Director in 1994 and later as an Executive Director, whom he served for the next 12 years.



3. The deceased married twice but no child was born out of either wedlock. From 2022, due to deteriorating health conditions of the deceased, Ms. Jasmine Saini (*defendant no.2*), an employee of ITC, took over the role of the deceased's caretaker and started living with him along with her mother (*defendant no.3*). Plaintiff and other siblings were in various parts of the world and therefore, were not in touch with the deceased.

4. Plaintiff came to know that the deceased was admitted to the ICU in December 2024 and thereafter, having undergone treatment and attempting to recovery, he finally passed away on 16th December 2024. Plaintiff states that he was laid to rest in accordance with Islamic principles on 19th December 2024 in Hyderabad, Telangana.

5. Since defendant no.2 was the caretaker, plaintiff attempted to contact her but she refused to speak to him was or at best gave vague responses.

6. Accordingly, plaintiff claims that they got suspicious and came to know that a Will dated 27th December 2022 had been executed by the deceased which was found to be duly registered.

7. Plaintiff e-mailed defendant no.2 along with the deceased's legal advisor and Chartered Accountant to share a copy of the Will. As per the Will, majority of the properties and assets were bequeathed to defendant no.2, defendant no.4, defendant no.6, and primarily to defendant no.1, the Private Trust of which defendant nos.2 and 3 were the Managing Trustees.

8. Plaintiff claims that since the deceased was a practicing Muslim (*Sunni Hanafi*), his estate would be governed by Shariat Law, specifically Sunni Hanafi law of inheritance, as per which any bequest more than 1/3rd of estate to unrelated parties will be invalid. On this basis the suit has been filed to declare the plaintiff and defendant nos.7 to 12 as legal heirs under Shariat Law and declare the purported Will as invalid.



9. Counsel for defendant nos.1 to 3 and for defendant no.6 entered appearance and raised preliminary objection on the suit's maintainability. It was contended that the suit's basis is invalidity of the Will basis Shariat Law, however, the deceased married twice in his lifetime. The first marriage was with Late Smt. Sukhwant Singh on 7th November 1970, under Special Marriage Act, 1954 ('SMA'). Copy of certificate issued under Section 13, SMA was handed up in the Court. This certificate has been issued by the Registration Officer for Shimla District.

10. It was further stated that the deceased's second marriage was with Late Smt. Sahiba Rehman under the SMA. This is evident from para A (viii) of the registered Will, which the Court has perused.

11. It is, therefore, contended that the exclusion in the provisions of Indian Succession Act, 1925 ('ISA') relating to testamentary successions as per Section 58, are inapplicable since by a subsequent SMA, particularly Section 21, the said restriction is rendered inapplicable, if the person marries under SMA. The said provisions are extracted as under:

Indian Succession Act, 1925:

"58. General application of Part.—

(1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by Section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any will made before the first day of January, 1866.

(2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of [India] applicable to all cases of testamentary succession."

Special Marriage Act, 1954:



“13. Certificate of marriage.—

(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

...

21. Succession to property of parties married under Act.—Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Section that Intestates) had been omitted therefrom.”

12. It was accordingly submitted that the suit itself cannot subsist.

13. Plaintiff’s counsel refutes applicability of SMA as plaintiff is a legal heir under Legal Heir Certificate issued in relation to Late Mr. Syed Fida Hussain, father of plaintiff and the deceased, which has been placed on record of this Court.

14. Plaintiff’s counsel seeks to address further arguments in this regard.



15. In the meantime, a certified copy of the Marriage Certificate issued under Section 13, SMA be requisitioned from the Marriage Officer/Registration Officer, District Shimla, Himachal Pradesh.

16. Registry is directed to requisition the same from concerned authorities at Shimla who shall send the certificate, as stated above, to the Registry of this Court. Copy of this order be sent to the Registry to communicate with the concerned authorities for compliance and copy of said certificate be requested and placed on record of this Court by the next date of hearing. Screenshot of marriage certificate of the deceased's first marriage with Late Smt. Sukhwant Singh be also tagged along with a copy of this order.

17. In the meantime, attempts be also made by counsel for contesting defendants to file any other documents in support of their arguments on the issue of maintainability.

18. List on 14th May 2025.

19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 24, 2025/sm/sc