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

+ **CS(OS) 509/2022 & I.A. 40027/2024**

SAHIL MARWAH & ANR.

.....Plaintiffs

Through: Mr. Y. P. Narula, Sr. Advocate with
Mr. Abhay Narula, Advocate
(Through VC)

versus

ONKAR SINGH MARWAH & ORS.

.....Defendants

Through: Mr. Varun Sarin, Ms. Kanak Bose
and Ms. Parul Dutta, Advocates for
D-1
Mr. M. P. Sahay, Ms. Yaman Verma,
Ms. Chitra Chanda, Mr. Kartik Jindal
and Mr. Tushar Ranaut, Advocates
for D-2
Mr. Ujas Kumar, Advocate for D-4

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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27.03.2025

CS(OS) 509/2022

1. The suit is listed for framing of issues. The suit pertains to partition of the estate of late Ms. Mala Marwah. The present suit has been filed on the premise that late Ms. Mala Marwah died intestate.
2. There is a Will dated 02.08.2019 propounded by the executor i.e., Mr. Vikas Malhotra stated to have been executed by late Ms. Mala Marwah and the same is a subject matter of probate in TEST. CAS. 17/2023. The issues pertaining to the proof of validity of the Will dated 02.08.2019 and the



objections raised by the Respondents therein have been framed separately on 19.02.2025 in TEST. CAS. 17/2023.

3. Plaintiff, defendant no. 1, defendant no. 2 and defendant no. 4 have handed over draft issues. In the draft issues, the parties have also proposed issues pertaining to the validity of the Will dated 02.08.2019. The said issues cannot arise for consideration in this suit as the genuineness and the validity of the Will is a subject matter of TEST. CAS. 17/2023 and the decision on the validity of the Will in the said proceedings will operate as a judgment and rem and bind the parties. It is trite law that once a Probate Court is considering a petition for grant of probate, it is that Court alone which is competent to decide on the question of execution and/or validity or otherwise of the Will in question. Thus, objections if any to the validity of the Will would have to be raised by the plaintiff only in the probate proceedings. (Re: **Amar Deep Singh v. State and Others**¹).

4. In addition to the plea of intestacy vis-à-vis estate of late Ms. Mala Marwah, the plaintiff in this suit has raised a challenge to the ownership of late Ms. Mala Marwah qua the suit property i.e., property no. 31, Hanuman Road, New Delhi and has alleged that she could not have made a bequest qua the said property, as she is not the absolute owner. Moreover, in case, the plaintiff herein succeeds in its objections and the Will dated 02.08.2019 is held to be invalid in TEST. CAS. 17/2023, the plaintiff has pleaded that he would be entitled to rendition of accounts qua the movable estate of late Ms. Mala Marwah as it would devolve by intestate succession.

5. Learned counsel for defendant no. 4 has stated that defendant no. 4 is supporting the plaintiff.



6. In these facts, the following issues are framed:
- i. Whether the plaintiff is entitled to a decree for permanent injunction against the defendants from alienating, transferring or otherwise parting with possession of the suit property and for in any manner disposing the assets of late Ms. Mala Marwah or part thereof without the consent of the plaintiffs? **(OPP)**
 - ii. Whether the plaintiff is entitled to a decree for mandatory injunction against the defendants to furnish details of all assets, businesses, bank accounts, lockers and insurance policies of the late Ms. Mala Marwah and to account for the amounts withdrawn by defendant no. 1 or by anyone on his behalf, after the demise of late Ms. Mala Marwah? **(OPP)**
 - iii. Whether the plaintiff is entitled to a decree for a decree of rendition of accounts against the defendants as prayed for in the plaint? **(OPP)**
 - iv. Whether the late Ms. Mala Marwah did not have exclusive ownership rights over the suit property as alleged in the plaint? **(OPP)**
 - v. Whether the terms of the family settlement as recorded in the decree dated 21.12.2010 passed in CS(OS) No. 203/2022 conferred on late Ms. Mala Marwah only limited/in prasenti rights for enjoyment of the suit property as alleged in the plaint? **(OPP)**
 - vi. Whether present suit is barred by principal of res judicata in view of plaintiff earlier suit i.e., CS(OS) No. 203/2022?

¹ 2005 SCC OnLine DEL 1046 at para 8



(OPD1)

vii. Relief and Cost.

7. The parties are directed to file their list of witnesses within four (4) weeks.
8. The parties agree that evidence will first be recorded and completed in TEST. CAS. 17/2023.
9. List before the learned Joint Registrar (J) on **24.04.2025**.

MANMEET PRITAM SINGH ARORA, J
MARCH 27, 2025/rhc/AKT/MG