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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 574/2022**

SIMRAN KANWAR

.....Plaintiff

Through: Mr. M. P. Sahay, Ms. Yaman Verma,
Ms. Chitra Chanda, Mr. Kartik Jindal
and Mr. Tushar Ranaut, Advocates

versus

ONKAR SINGH MARWAH & ORS.

.....Defendants

Through: Mr. Varun Sarin, Ms. Kanak Bose
and Ms. Parul Dutta, Advocates for
D-1
Ms. Damini Chawla, Advocate for D-
2 & D-3
Mr. Y. P. Narula, Sr. Advocate with
Mr. Abhay Narula, Advocate
(Through VC)
Mr. Ujas Kumar, Advocate for D-7

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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27.03.2025

CS(OS) 574/2022

1. The present suit has been filed by the niece of late Ms. Mala Marwah ('deceased') seeking partition of the moveable and immovable estate of the deceased on basis of the Will dated 02.08.2019. In this suit the plaintiff seeks partition of the estate vis-à-vis the beneficiaries under the Will dated 02.08.2019 as well as rendition of accounts qua the moveable estate.
2. Learned counsel for the Plaintiff, defendant no. 1, defendant nos. 2 and 3, defendant nos. 4 and 5, and defendant no. 7 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).

3. At the outset, this Court notes that the suit will fail if Will dated 02.08.2019 is declared invalid in TEST.CAS. 17/2023. This suit can continue only if the Will dated 02.08.2019 is declared valid and genuine in TEST.CAS. 17/2023.

4. The necessity of leading evidence in this case is essentially to ascertain the moveable estate and partition of immovable asset, which would fall to the share of the plaintiff only if the Will dated 02.08.2019 is proved to be valid.

5. Plaintiff, defendant no. 1, defendant nos. 2 and 3, defendant nos. 4 and 5, and defendant no. 7 have handed over proposed issues.

6. Having perused the pleadings and the proposed issues handed over, the following issues are framed:

- i. Whether the plaintiff is entitled to a decree against the defendants to render true account of the amount realized by each of the defendants on basis of nomination or otherwise including all items

¹ 2005 SCC OnLine DEL 1046 at para 8



- of movable property including cash? (OPP)
- ii. If issue no. (i) is decided in favour of the plaintiff, whether the plaintiff is entitled to seek a decree against the defendants for restoration of the amounts withdrawn by them along with interest? If, so, at what rate and for what period? (OPP)
 - iii. Whether the plaintiff is entitled to a decree of partition of the suit property i.e., property no. 31, Hanuman Road, New Delhi-110001 on basis of Will dated 02.08.2019 in TEST CAS. 17/2023? (OPP)
 - iv. Whether plaintiff is barred from seeking eviction of defendant no. 1 from property no. 31, Hanuman Road, New Delhi-110001 as he has a life interest in the said property on the basis of Will dated 02.08.2019 as well as family settlement [recorded in minutes of meeting dated 21.12.2010 and 03.01.2011]? (OPD 1)
 - v. Whether the present suit has been correctly valued and requisite Court fee has been paid? (OPD 2 & 3)
 - vi. Whether defendant nos. 2 and 3 who are not otherwise legal heirs of late Ms. Mala Marwah are entitled to retain the amounts of fixed deposits only on the basis that they are the nominees of the said fixed deposit? (OPD 2 & 3)
 - vii. Relief and costs.
7. The parties agree that evidence will first be recorded and completed in TEST. CAS. 17/2023.
8. List before the learned Joint Registrar (J) on **24.04.2025**.

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