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

+ RSA 205/2016

SHAMIM BANO

..... Appellant

Through

Mr. Rashmi Chopra, learned Amicus Curiae with Ms. Asiya, Advs. with appellant in person.

versus

KANEEZ FATIMA & ORS

..... Respondent

Through

Mr. Himal Akhatar, Adv. for R2.
Mr. Prashant Sharma, Adv. for R3
with R3 in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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23.10.2018

Part payment of cost in terms of proceedings dated 04.10.2018 to the tune of Rs.5,000/- has been made on behalf of the respondent no.3 to the learned Amicus Curiae and the learned Amicus Curiae does not press for the remainder of the costs of Rs.5,000/- which are thus waived.

The substantial question of law in terms of Section 100 (4) of the CPC is yet to be framed.

During the course of the submissions in relation thereto, it has been pointed out on behalf of the respondents no. 2 & 3 by the learned counsel present that whereas the Suit No. 839/07 had been filed in the Court of learned CCJ, East, Karkardooma Courts, Delhi in relation to the property bearing no. B-29, Welcome Colony, Kabootar Market, Seelampur, Delhi-53 in which the plaintiff of the said suit i.e. the present appellant had claimed

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1/6th share in relation to which the suit had been decreed in favour of the plaintiff thereof i.e. the present appellant to the extent of 1/8th share in the said property measuring 22 – ½ sq. yards, the averments made in the present RSA 205/2016 at page no. 5 thereof in paragraph 2(g) is to the effect : -

“(g) That in fact, the property No. B-28 and the suit property No. B-29 belonged to Smt. Kaneez Fatima (mother of the plaintiff the appellant herein). Smt. Kaneez Fatima executed a will dated before witnesses prior to her death and in respect of such a will, a the probate case No. 11/2015 is going on in court No. 50 before Ld. ADJ court at KKD court Delhi in which the contesting respondents are appearing and next date is fixed for 4.7.2016 . Therefore the plaintiff is entitled not only 1/6th but is entitled for the full ownership of the suit property bearing No. B-29.”

and as per which it had been stated therein that the Suit Property No. B-29 belonged to Smt. Kaneez Fatima (mother of the plaintiff i.e. the appellant herein) and Smt. Kaneez Fatima executed the will dated (no date is mentioned) before witnesses prior to her death and in relation to the said will, a probate case No. 11/2015 was going on before the learned ADJ at KKD Court, Delhi in which the contesting respondents were appearing and that the plaintiff was entitled not only to 1/6th but is entitled for the full ownership of the suit property bearing No. B-29. Thus, the learned Amicus Curiae in view of the averments made in para 2(g) of the present RSA 205/2016 seeks time to make submissions and to move an appropriate application in relation thereto.

In response to a specific Court query, it is submitted on behalf of the

respondents no. 2 & 3 that the said probate case No. 11/2015 is pending before the learned ADJ, Karkardooma Courts, Delhi .

The matter be renotified for 8th February, 2019.

ANU MALHOTRA, J

OCTOBER 23, 2018/MK