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

CNR No. DLHC012347982018

+ **CS(OS) 439/2018, I.A. 12164/2018, I.A. 16360/2021, I.A. 862/2023 & I.A. 6727/2023**

DEVENDER KUMAR TALWAR

.....Plaintiff

Through: Mr. Dinesh Monga and Mr. Mohit Kumar, Advocates.

versus

RAJIV TALWAR AND ORS.

....Defendants

Through: Mr. Swetank Shantanu, Mr. Pushkar Karni Sinha, Mr. Shreyansh Anand and Mr. Kushal Kumar Chauhan, Advocates for D-1 alongwith Mr. Rajiv Talwar, D-1 in person.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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04.08.2026

1. Preliminary arguments of the learned counsel for the plaintiff as also the learned counsel for the defendant no.1 have been heard.
2. According to the previous orders passed by this Court, the only issue in the petition that needs consideration is the Will executed by late Sh. Ganda Ram Talwar. At the time of execution of the Will, the property was bequeathed among the plaintiff, the defendant no.1 and father of the defendant no.1. The relevant portions of the Will are extracted hereunder:-



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WILL
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TRUE COPY

I, Ganda Ram Talwar son of Late Shri. Diwan Chand Talwar, aged about 84 years, resident of No. B-257 Greater Kailash- I, New Delhi 110048, do hereby make this my Will and Testament and I hereby revoke all previous wills and codicils and other testamentary dispositions made by me at any time here-to-fore. It will take effect after my death.

2. WHEREAS, it is my wish and desire that after my death, there should be no dispute or litigation between my heirs regarding my estate and effects, so I in my full senses and in full understanding of the nature, and the effect of this Will, declare this to be my last Will and bequeath as under :-

3. WHEREAS I am the owner of a 2 $\frac{1}{2}$ storeyed house No. B-257 Greater Kailash-I New Delhi, built upon a Plot of land purchased from Smt. Gurdavi, Shri Krishan Lal and Smt. Rati Parkash wife/sons of Shri Devi Dayal by a Deed of Sale dated 20.9.1962 and registered before the Sub Registrar New Delhi and registered as No. 7059⁷⁰⁵⁹ in Additional Book No. 1 Vol. 372 on Pages 34 to 36 on 25.9.1962 after obtaining sanction of the building plan from the Municipal Corporation of Delhi. In other words the said house is my self acquired property and I have full powers and right to dispose off by Will or otherwise and the same is absolutely free from all sorts of encumbrances, charges, liens, claims, etc.

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4. The said house consists of three floors viz.
(i) Ground Floor, (ii) First Floor, & (iii) Second Floor
(Barsati) and ~~xxx~~ I hereby leave, give and bequeath
absolutely the above said house to my two sons namely
Shri Ram Chander Talwar aged about 54½ years, and Shri
Devinder Kumar Talwar aged about 43½ years and my
Grand Son Shri Rajeev Talwar aged about 24½ years, son of
Shri Ram Chander Talwar in the following order and on
the terms and conditions specified below :-

- (i) The entire ground floor will go to my younger son Shri Devinder Kumar Talwar subject to the condition that my wife Smt. Vidya Wati Talwar will continue to occupy and use the front bed room with attached bath room facing the municipal park, on the ground floor upto the time of her death, if she survives me.
- (ii) The entire first floor will go to my elder son Shri Ram Chander Talwar.
- (iii) The second floor i.e. Barsati floor will go to my Grand son Shri Rajeev Talwar son of Shri Ram Chander Talwar who is now about 24½ years old.

5. All expenses towards inheritance and transfer etc., of property and Estate Duty, if any, shall be borne as under :-

- (a) Ground floor by Shri Devinder Kumar Talwar.
- (b) First Floor by Shri Ram Chander Talwar.
- (c) Second floor by Shri Rajeev Talwar.

6. I have a joint account with my wife and my Pension Account in my own name, standing in the banks. On my death the money in these accounts will be the sole and absolute property of my wife Shrimati Vidya Wati Talwar.

7. I bequeath all my moveable property consisting of some brass utensils of old type, three charpoys, two folding chairs and some books etc., to my wife Shrimati Vidya Wati Talwar and after her death will revert to my

Continued to P-3

3. It is undisputed that at the time when the Will was executed, the subject



suit property comprised ground floor, first floor and the second floor, comprising only the Barsati. As per the Will, the ground floor was bequeathed to the plaintiff and first floor bequeathed to the eldest son late Sh. Ram Chandra Talwar and the second floor i.e. Barsati was bequeathed to the defendant no.1. It is stated that before the death of the testator in the year 1995, the testator had completed the construction of the second floor and it is on account of this construction that the dispute in respect of the third floor and the terrace has been agitated in the present suit. Admittedly, both the parties had agreed to not lead any evidence and restrict their arguments to the interpretation of the intention of the testator behind the execution of the Will.

4. The issues were framed by this Court *vide* the order dated 13.09.2023 which are extracted hereunder:-

“2. With the consent of the parties, the following issues are framed for determination in the suit:

- i) Whether the Plaintiff is the co-owner of the portion of the suit property (being 1/3rd share in half portion of 2nd floor and 1/3rd share in the 3rd floor of the suit property) as alleged in para 20 of the Plaint? OPP*
- ii) Whether Plaintiff is entitled to preliminary and final decree of partition? If so, to what effect. OPP*
- iii) Whether Defendant No.1 has acquired right of adverse possession, as claimed in para-4 of preliminary objections in the written statement? OPD*
- iv) Whether suit is within limitation? OPP*
- v) Whether suit is barred under Order II Rule 2? OPD*
- vi) Whether Plaintiff has valued the suit property correctly and paid the requisite court fee in accordance with law? OPP*
- vii) Reliefs”*

5. List for further arguments on 29.10.2026.

TUSHAR RAO GEDELA, J

AUGUST 4, 2026

Sumit