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

% **Date of Decision: 25.08.2025**

+ **FAO 502/2017, CM APPL. 9474/2020 & CM APPL. 37253/2022**

SUDARSHAN KUMAR SHARMA & ANR.Appellants

Through: Mr. Aayush Agarwala and Ms. Mallika Luthra, Advs.

M: 9309523696

Ms. Varsha Sharma, daughter of A-1(i) (Through VC)

Mrs. Suman Lata Sharma wife of A-1(i)

Mr. Gulzar Rai Sharma, A-1(iii)

versus

RAJENDER KUMAR SHARMA & ANR.Respondents

Through: Mr. Raj Kumar, Adv.

M: 9958031223

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+ **RFA 368/2016**

SUDARSHAN KUMAR SHARMAAppellant

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versus

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Through: Mr. Raj Kumar, Adv.

M: 9958031223



CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J: (ORAL)

1. In the present appeals, the original suit was filed by the parents of the parties seeking a decree of possession in respect of the portion consisting of two rooms on the second floor, and shop no. 1 on the ground floor of the property bearing No. IX/1653, Main Road, Dakshini Gandhi Nagar, Delhi-110031 ("Suit Property"), occupied by one of the sons of the parents of the parties, i.e., respondent no.1 and his wife. The said suit was filed by the original plaintiffs on the basis of their ownership.
2. The suit property was owned by the mother of the parties, who died during the pendency of the suit. However, this fact was not brought forth before the learned Trial Court, on account of which, the suit was dismissed as abated.
3. Before this Court, the appellants have based their claims on the will dated 4th May, 2011 executed by the mother of the parties, Late Smt. Kailash Wanti in favour of father of the parties, i.e., Sh. Sudarshan Kumar Sharma. During the course of the present appeal, father of the parties has also expired and appellants thus, also rely on the will dated 22nd December, 2017, executed by the father of the parties, i.e., Late Sh. Sudarshan Kumar Sharma. However, both the wills were not placed before the learned Trial Court.
4. Thus, when the matter was listed for hearing on 13th August, 2025, this Court passed the following order:

"1. In the present appeals, the original suit was filed by the parents of the parties seeking a decree of possession in respect of the portion consisting of two rooms on the second floor and shop no.1 on the ground floor of the property bearing No. IX/1653, Main Road, Dakshini Gandhi Nagar, Delhi, occupied by one of the sons of the parents of the parties,




i.e., respondent no.1 and his wife.

2. The property in question was owned by the mother, i.e., Late Smt. Kailash Wanti. She died during the course of the suit proceedings, which fact was not brought before the learned Trial Court. Thus, vide the impugned judgment dated 11th December, 2015, the learned Trial Court disposed of the said suit and held that the suit had abated, since the fact of the death of the mother of the parties was not brought before this Court.

3. Learned counsel appearing for the appellants submits that the father of the parties, i.e., Sh. Sudershan Kumar Sharma was the sole owner by way of the Will dated 04th May, 2011 executed by the mother of the parties, i.e., Late Smt. Kailashwanti. The said will is reproduced as under:

1961
04/5/11 (70)
600
1971 Annexure (4)
3
72
WILL-DEED
Dc/04/04/1033667



This WILL DEED is Executed, at Delhi on this 4th day of May 2011, by Smt. Kailash Wanti W/o Sh. Sudershan Kumar Sharma R/o IX/1653, Main Road, Gandhi Nagar, Delhi-31, hereinafter called the Testator.

: IN FAVOUR OF :

her husband Sh. Sudershan Kumar Sharma S/o Sh. Bihari Lal R/o IX/1653, Main Road, Gandhi Nagar, Delhi-31, hereinafter called the Beneficiary.

Life is short and uncertain. I am 72 years old. Only God knows when it may come to an end. I, therefore, with my free will and consent without any pressure or compulsion from others and in my sound disposing mind make this WILL as under:-

Whereas I the Testator am the absolute owner and in possession of One Built up Property No.IX/1653, Mpl.No.579, Plot No.262, measuring area 80 Sq. Yds., consisting of whatsoever therein, with the rights of upper storey construction upto last storey, fitted with Electricity and water tap, out of Khasra No. 639/55, 402/340/62/3/1/1, situated at abadi of Main Road, Gandhi Nagar, in the area of village Seelampur, Ilaqa Shahdara, Delhi-31 and bounded as under:-


EAST....:- Gali.

WEST....:- Common wall & shop of others.

NORTH....:- Portion of the said Property.

SOUTH....:- Shop of others.

contd...2.

 Smt. Kailash Wanti



page...2.

I hereby bequeath that so long as I am alive, I shall remain the absolute owner of my aforesaid properties, but after my death, my husband SH. SUDERSHAN KUMAR SHARMA, shall be the absolute owner of my aforesaid property and he shall have full right to use the said property in any manners having full rights to sell, to mortgage, to gift or to transfer etc. the said property to any other person in any way without any interference or disturbance from my other legal heirs.

If my husband shall predeceased me or after the death of my husband my sons (1) Sh. Ramesh Chand Sharma, (2) Sh. Ashok Kumar Sharma, Dilbagh Rai Sharma and my grand son Sh. Gulzar Rai Sharma S/o Sh. Raj Kumar Sharma, shall be the absolute owners of my aforesaid Property, in equal shares and they shall have full right to use the said property in any manners having full rights to sell, to mortgage, to gift or to transfer etc. the said property to any other person in any way without any interference or disturbance from my other legal heirs.

My other legal heirs i.e. my daughters namely (1) Kaushalya, (2) Santosh, (3) Raj Rani and my other son Sh. Rajender Kumar, his wife and his legal heirs or my any other relatives shall have no right or concern with my above said property in future in any case.

If any one raises any objection against this WILL deed then the same objection shall be considered as null and void before the Law-Court and Biradary Panchayat.

contd...3.



Lot 104
Kailashwanti



page...3.

This is my first and last 'WILL' in respect of properties mentioned herein and shall be acted upon after my death. The said beneficiary(s) shall be fully entitled to get the substitution/mutation of my aforesaid property, effected in his/their own name(s) in the concerning revenue record of Govt/MCD or in any other department concerned, on the basis of this WILL DEED.

IN WITNESS WHEREOF the Testator has signed this WILL DEED on the date month and year first above written.

WITNESSES:-

1.

Sulind
Subhash chand
S/o Sh. Amirchand
Rt 1647, Rasth Swami
Sardang Road
Chandh Nagar De
R.P. 0153510



TESTATOR

copy of
Kailash Wanti

2.

Amir
Anil manchanda
S/o Dhanraj
Rt 1A Sts Kushtanag
Cantt D. 92
LLC 124/1942

True Copy
Amir

4. Thus, by relying upon the aforesaid Will dated 04th May, 2011 of Late Smt. Kailash Wanti, learned counsel appearing for the appellants submits that by way of the aforesaid Will, the father of the parties, i.e., Late Shri Sudarshan Kumar Sharma, was the sole beneficiary of the property in question.

5. It is submitted that it is only after the death of the father of the parties that the property in question was to be divided amongst two sons, i.e., Shri Ramesh Chand Sharma and Shri Ashok Kumar Sharma and the grandson Gulzar Rai Sharma. It is further submitted that respondent no.1 herein, i.e., Shri Rajender Kumar Sharma was excluded from the Will.

6. However, the aforesaid Will dated 04th May, 2011 is disputed by learned counsel appearing for respondent nos. 1 and 2.

7. If that be the case, the appellants would have to prove the said Will dated 04th May, 2011, since objections to the same have been raised by



the respondents. Thus, in the absence of disclosure before the learned Trial Court about the demise of Late Smt. Kailash Wanti, i.e., mother of the parties, this Court cannot presume that the father of the parties, Late Shri Sudarshan Kumar Sharma, was the sole beneficiary of the property in question.

8. *This Court is informed that during the pendency of the present appeals, the father of the parties, i.e., Late Shri Sudarshan Kumar Sharma has also passed away on 03rd January, 2020. Thus, the appellants before this Court are the daughters and sons of Late Shri Sudarshan Kumar Sharma, except Shri Rajender Kumar Sharma, the other son, who is arrayed as respondent no.1 in the present proceedings.*

9. *This Court is prima facie of the view that the original suit having been filed by the parents of the parties, was a suit for possession, by which the parents of the parties sought eviction of their son Shri Rajender Kumar Sharma and his wife, i.e., respondent nos. 1 and 2 herein.*

10. *However, since both the parents of the parties have died, the appellants are the other brothers and sisters of respondent no.1, who claim themselves to be the legal heirs of their father, on the basis of Will.*

11. *However, this Court notes that the veracity of the Will relied by the appellants, is yet to be testified in the Court of law, since objections to the same have been raised on behalf of respondent nos. 1 and 2.*

12. *In view of the objections raised by respondent nos. 1 and 2 and in the absence of establishing any veracity of the Will, executed either by their mother, Late Smt. Kailash Wanti or their father, Late Shri. Sudarshan Kumar Sharma, this Court cannot presume the present appellants to be the sole legal heirs of the parents of the parties.*

13. *Further, the appellants now seek their right on the basis of the Will dated 04th May, 2011, executed by Late Smt. Kailash Wanti and Will dated 22nd December, 2017, executed by Late Shri Sudarshan Kumar Sharma.*

14. *Thus, this Court is of the view that appellants herein would have to establish their rights through the Wills, which were not the subject matter in the suit, since the suit was filed on behalf of the parents of the parties, who sought decree of possession on the basis of their right of ownership.*

15. *Further, this Court is of the view that the appellants before this Court, would have to now establish their right, title and interest, over the property in question, to the exclusion of respondent nos. 1 and 2, by establishing the aforesaid Wills executed by the parents of the parties.*

16. *The aforesaid amounts to a different and distinct cause of action in favour of the appellants, which was not the position in the original suit filed by the parents of the parties. Neither the affect of the aforesaid Wills*



adjudicated by the Trial Court, nor such case on the basis of Wills was set up before the Trial Court. No issues in this regard were framed before the Trial Court, as the said question regarding the Wills, was not even raised before the Trial Court.

17. At this stage, learned counsel appearing for the appellants submits that he may be granted time to take instructions.

18. Accordingly, at request, re-notify on 25th August, 2025, in Top Ten Matters in the Advance List.”

5. Today, learned counsel appearing for the appellants, on instructions, submits that his clients would be satisfied in case the suit property is sold, and all the four Legal Representatives (“LRs”), i.e., Mr. Dilbagh Rai, Mr. Gulzar Rai Sharma, Sh. Rajender Kumar Sharma and LRs of deceased Ramesh Chand Sharma, are given an equal share in the sale proceeds.

6. Learned counsel appearing for the appellant submits that though the appellants are relying upon the two wills dated 04th May, 2011 and 22nd December, 2017, executed by their parents, however, with a view to settle the long drawn dispute, the appellants have no objection in including respondent no.1 also, in the share of the suit property.

7. Ms. Varsha Sharma, the daughter and Mrs. Suman Lata Sharma, wife of deceased appellant no.1(i), i.e., Mr. Ramesh Chand Sharma and appellant no. 1(iii), i.e., Mr. Gulzar Rai Sharma, are present before this Court, through Video Conferencing (“VC”). The Court has interacted with them, and they have stated in categorical terms that they shall not rely upon the aforesaid wills as executed by their parents, and that they have no objection if Sh. Rajender Kumar Sharma, is also granted share in the property in question.

8. Sh. Rajender Kumar Sharma, i.e., Respondent no.1, is present in Court. The Court has interacted with him, and he has also given his consent to the aforesaid statement made by the learned counsel appearing for the appellants.



9. Attention of this Court has been drawn to the order dated 04th October, 2023, and in particular to paragraphs 4, 7 and 10, which are reproduced as under:

“xxx xxx xxx

4. During the pendency of the appeal, the original appellant also passed away on 03.01.2020, and is survived by four sons [including respondent No. 1], three daughters, and the wife and children of a predeceased son. The list of the original appellant's legal heirs is mentioned in paragraph 2 of CM APPL. 9392/2020, as follows:-

a)	Ramesh Chand Sharma	Son
b)	Dilbag Ray Sharma	Son
c)	Harish Kumar Sharma	Son
d)	Rajender Kumar Sharma	Son
e-1)	Renu Sharma wife of Shri Ashok Kumar Sharmas	daughter in law
e-2)	Prem Kumar Sharma minor son of Ashok Kumar Sharma,	grandson
e-3)	Isha Sharma minor daughter of Ashok Kumar Sharma	granddaughter
F)	Smt. Sudesh	daughter
g)	Smt. Anju	daughter
h)	Smt. Santosh	daughter.”

xxx xxx xxx

7. By order dated 28.01.2022, it was recorded that the legal representative Nos. c, e-1 to e-3, f, g and h, mentioned in CM APPL. 9392/2020, have no objection to the application being allowed.

xxx xxx xxx

10. For the aforesaid reasons, the applications are disposed of with the direction that the original appellant will be substituted by the following heirs and legal representatives:

- I. (a) Ms. Suman Lata Sharma, wife of late Mr. Ramesh Chand Sharma (deceased son of the original appellant);
- (b) Ms. Varsha Sharma, daughter of late Mr. Ramesh Chand Sharma (deceased son of the original appellant);
- (c) Ms. Punam Sharma, daughter of late Mr. Ramesh Chand Sharma (deceased son of the original appellant);
- II. Mr. Dilbagh Ray Sharma, son of the original appellant; and
- III. Mr. Gulzar Rai Sharma, son of Ms. Sudesh, daughter of the original appellant, resident of IX/1653, main road, Gandhi Nagar, Delhi – 110031.

xxx xxx xxx”

10. By referring to the aforesaid order, learned counsel appearing for the



appellants submits that the three sisters have already indicated that they do not wish to have any share in the property in question.

11. The aforesaid statement is confirmed by the parties who are present before this Court, as well as the learned counsels for the appellants and respondent no. 1.

12. This Court notes that as per the Amended Memo of Parties, the following are the parties in the present appeal:

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA NO. 368 OF 2016

IN THE MATTER OF:

SH.SUDARSHAN KUMAR SHARMA
& ANOTHER ...APPELLANTS

VERSUS

SHRI RAJENDER KUMAR SHARMA
& ANOTHER ...RESPONDENTS

AMENDED MEMO OF PARTIES

1. Sh.Sudarshan Kumar Sharma
(Since deceased) through his LRs

i) Ramesh Chand Sharma (deceased)
through his LRs:-

(a) Suman Lata Sharma - Wife

(b) Varsha Sharma - Daughter

(c) Punam Sharma - Daughter

All Ra/o 9/1653, Main Gandhi Nagar,
Road, Gandhi Nagar, SO East,
Delhi-110031

ii) Dilbagh Rai S/o Late Sudarshan Kumar Sharma

iii) Gulzar Rai Sharma S/o Ms.Sudesh
D/o Late Sudarshan Kumar Sharma

Both R/o IX/1653, Main Road,
Dakshini Gandhi Nagar, Delhi-110031 ...Appellants

Versus



2025:DHC:7373



1. Sh. Rajender Kumar Sharma
S/o Late Shri Sudarshan Kumar Shamra
Proprietor of M/s. R.K.Electronics
Shop No.1, IX/1653, Main Road,
Dakshini Gandhi Nagar, Delhi-110031
2. Smt.Ritu Bala Sharma
W/o Shri Rajender Kumar Sharma
R/o IX/1653, Main Road,
Dakshini Gandhi Nagar, Delhi-110031 ...Respondents

R.P.PANDEY

Advocate

Enrl.No.D/246/1974

Counsel for Appellants No.1(ii) & 1(iii)

Ch. No. 455, Civil Wing,

Tis Hazari Courts, Delhi-110054

Mob. No. 9818730840

Delhi

Dated: 09.10.2023

13. Perusal of the aforesaid Amended Memo of Parties shows that all the parties, who have an interest in the suit property, in terms of the submissions noted in the preceding paragraphs, are before this Court.

14. Accordingly, it is directed that the property bearing *No. IX/1653, Main Road, Dakshini Gandhi Nagar, Delhi-110031* shall be sold, and proceeds of the same shall be distributed equally amongst the respective four parties, as given in the aforesaid Amended Memo of Parties, i.e., three parts of the appellants and one part of the respondents.

15. At this stage, learned counsels appearing for the parties, are *ad idem* in their submission, that a Local Commissioner be appointed so that the sale can happen through the said Local Commissioner.



16. Accordingly, Ms. Zeba Khair, Advocate, Mob: 8800507452, is appointed as a Local Commissioner, to deal with all the parties to the present appeal for the purpose of sale of the suit property.

17. All the parties before this Court are directed to bring their respective buyers before the Local Commissioner. The Local Commissioner shall sell the property in question to the buyer, who gives the highest return for the suit property.

18. All the parties are directed to cooperate with each other and also with the Local Commissioner for the purposes of sale of the property and execution of the Sale Deed.

19. The fees of the Local Commissioner is fixed at Rs. 5,00,000/- (Rupees Five Lakh Only), which shall be paid from the proceeds of the sale.

20. At the time of execution of the Sale Deed, a separate demand draft shall be given to the Local Commissioner towards his/her fees.

21. Let the aforesaid exercise for sale be completed expeditiously, preferably, within a period of six months, from today.

22. With the aforesaid directions, the present appeals, along with the pending applications, are disposed of.

MINI PUSHKARNA, J

AUGUST 25, 2025/KR