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

% **Date of Decision: 04<sup>th</sup> July, 2025**

+ CM(M) 1132/2025 & CM APPL. 38334-38336/2025

SUNITA SHARMA & ORS.

...Petitioner

Through: Mr. Uttam Datt, Senior Advocate  
with Ms. Sonakshi Sinigh and Mr.  
Kumar Bhaskar, Advocates

versus

KANTA DEVI THRU LRS & ORS.

.....Respondent

Through:

**CORAM:**

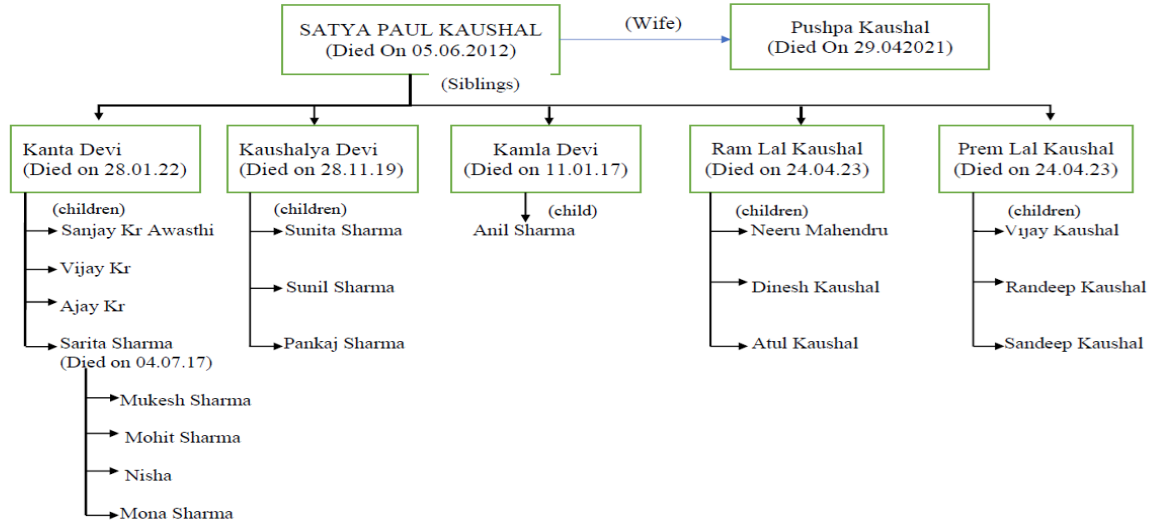
**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Petitioners take exception to order 17.04.2025 passed by learned Trial Court whereby their names have been deleted from the array of the parties.
2. Smt. Kanta Devi (since deceased) had filed a suit for *partition, injunction and mesne profits*.
3. Such suit was directed against six defendants.
4. A property bearing no. C-5A/200, DDA Flats, Janak Puri, New Delhi was owned by Sh. Satya Paul Kaushal. He bequeathed the same in favour of his wife Smt. Pushpa Kaushal by virtue of registered *Will* dated 09.07.1996. Sh. Satya Paul Kaushal died on 05.06.2012, leaving behind no Class-I legal heir except his wife Sh. Pushpa Kaushal who was, even otherwise, the sole beneficiary of the aforesaid property as per the *Will*.
5. Smt. Pushpa Devi also, unfortunately, died on 29.04.2021.
6. She died intestate.
7. She also did not leave behind any Class-I legal heir.



8. The family tree, as annexed with the present petition, is reproduced as under:



9. The suit in question was filed on 21.10.2021 by Smt. Kanta Devi, who is real sister of Sh. Satya Paul Kaushal. She died on 28.01.2022.

10. Defendant nos. 3 to 6 are children of her two sisters i.e. Smt. Kaushalya Devi and Smt. Kamla Devi and, admittedly, her two such sisters had also pre-deceased Smt. Pushpa Kaushal.

11. During pendency of the aforesaid suit, one application was moved from the side of LR of deceased defendant no. 2 whereby he pressed for deletion of names of defendant nos. 3 to 6 from the array of parties. According to him, as per Rules of intestate succession, said defendants were not preferred legal heirs of the deceased Smt. Pushpa Kaushal and, therefore, their names need to be deleted from the array of parties.

12. This Court has gone through the aforesaid family tree and also the relevant provisions of Hindu Succession Act, 1956.

13. Section 15 of Hindu Succession Act deals with general rule of



succession in case of female Hindu dying intestate. It reads as under: -

**“15. General rules of succession in the case of female Hindus.—**(1) *The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—*

*(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*

*(b) secondly, upon the heirs of the husband;*

*(c) thirdly, upon the mother and father;*

*(d) fourthly, upon the heirs of the father; and*

*(e) lastly, upon the heirs of the mother.*

(2) *Notwithstanding anything contained in sub-section (1)—*

*(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and*

*b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”*

14. Admittedly, since Smt. Pushpa Kaushal died issueless and her husband had pre-deceased her, in terms of Section 15(1)(b) of Hindu Succession Act, her property is to devolve upon the heirs of her husband.

15. This takes us to Section 8 of Hindu Succession Act which reads as under:-

**“8. General rules of succession in the case of males.—***The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—*

*(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;*

*(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*

*(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*

*(d) lastly, if there is no agnate, then upon the cognates of the deceased.”*



16. Since there was no Class-I legal heir of husband of Smt. Pushpa Kaushal, as per Rule of Succession, the property would devolve upon the relatives specified in Class-II of the Schedule.

17. Class-II of the Schedule reads as under: -

*“Class II*

*I. Father.*

*II. (1) Son’s daughter’s son, (2) son’s daughter’s daughter, (3) brother, (4) sister.*

*III. (1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s daughter’s son, (4) daughter’s daughter’s daughter.*

*IV. (1) Brother’s son, (2) sister’s son, (3) brother’s daughter, (4) sister’s daughter.*

*V. Father’s father; father’s mother.*

*VI. Father’s widow; brother’s widow.*

*VII. Father’s brother; father’s sister.*

*VIII. Mother’s father; mother’s mother.*

*IX. Mother’s brother; mother’s sister.*

*Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.”*

18. As per Hindu Succession Act, among the heirs specified in the Schedule, those in Class-I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in Class-II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on.

19. Thus, those in earlier entry in Class-II shall be preferred to those in any succeeding entry.

20. Sh. Satya Paul Kaushal had three sisters and two brothers but fact remains that when Smt. Pushpa Kaushal died on 29.04.2021, only one such sister (Smt. Kanta Devi) and two brothers (Sh. Ram Lal Kaushal and Sh. Prem Lal Kaushal) were alive and, therefore, such brothers and sister fall in Entry-II of Class-II.

21. Since the other two sisters i.e. Smt. Kaushalya Devi and Smt. Kamla



Devi had died before the death of Smt. Pushpa Devi, their children fall under Entry-IV of Class-II heir.

22. Therefore, since such children of the two deceased sisters of the husband of plaintiff are in the succeeding/later entry, they need to be excluded.

23. The aforesaid aspect has been very appropriately considered by the learned Trial Court and it has, therefore, been observed by the learned Trial Court that when there are surviving relatives such as brothers and sisters in Entry-II, the relatives in Entry-IV have no right to succeed to the property and, therefore, they cannot be considered as legal heirs.

24. There is no illegality or impropriety in such observation.

25. Learned Senior Counsel for petitioners submits that there was verbal understanding amongst all the parties and it was agreed that defendant nos. 3 to 6 would also be given some share and, therefore only, plaintiff Smt. Kanta Devi had impleaded them as defendants in the present suit.

26. Needless to say, if any party, voluntarily, wants to relinquish or give up or gift anything to his other relatives, it is entirely upto any such party but as far as present case is concerned, petitioners have no 'legal right' to seek any such share in terms of law of succession.

27. This Court, therefore, does not find any merit or substance in the present petition.

28. The petition is accordingly dismissed.

29. Pending applications also stand disposed of in aforesaid terms.

**(MANOJ JAIN)**  
**JUDGE**

**JULY 4, 2025/dr/shs**