



2025:DHC:7459-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 12.08.2025

Judgment pronounced on: 29.08.2025

+ FAO(OS) 59/2018

ARYA ORPHANAGE

.....Appellant

Through: Mr. A. S. Chandhiok, Sr. Adv.
with Mr. Digvijay Rai, Mr.
Kunal Kalra, Mr. Rahul
Mourya, Mr. Archit Mishra &
Ms. Nidhi Yadav, Advs. and
Mr. Nitinija Chaudhry (AR)

versus

MUKTI DUTTA & ORS

.....Respondents

Through: Mr. Samman Vardhan Gautam,
Mr. Shrey Gupta, Ms. Khushi
Sharma, Mr. Priyam Tiwari &
Ms. Anshika Priyadarshini,
Advs. for R-2.

+ FAO(OS) 101/2024 & CM APPL. 40490/2024

ARYA ORPHANAGE THROUGH ITS PRESIDENT SH
SUDHIR KUMAR GUPTA

.....Appellant

Through: Mr. A. S. Chandhiok, Sr. Adv.
with Mr. Digvijay Rai, Mr.
Kunal Kalra, Mr. Rahul
Mourya, Mr. Archit Mishra &
Ms. Nidhi Yadav, Advs. and
Mr. Nitinija Chaudhry (AR)

versus

MUKTI DUTTA & ORS

.....Respondents

Through: Mr. Ruchir Mishra, Mr.
Mukesh Kr Tiwari, Ms. Reba
Jena Mishra & Ms. Poonam
Shukla, Advs.



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Mr. Samman Vardhan Gautam,
Mr. Shrey Gupta, Ms. Khushi
Sharma, Mr. Priyam Tiwari &
Ms. Anshika Priyadarshini,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. These two Appeals have been filed by the Appellant under Section 10 of the Delhi High Court (Original Side) Rules, 1967, against separate orders passed by the learned Single Judge while deciding two separate applications. The first application, filed for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 [hereinafter referred to as 'the CPC'] was dismissed *vide* order dated 16.01.2018 [hereinafter referred to as 'Impugned Order dated 16.01.2018'], whereas, the second application, filed under Order XII Rule 1A of the CPC, has been allowed, while permitting the Respondent No.2(iii) to transpose as a plaintiff in the Civil Suit *vide* order dated 04.01.2024 [hereinafter referred to as 'Impugned Order dated 04.01.2024']. The parties to the dispute are common; however, on account of distinct Impugned Orders, this Court deems it appropriate to bifurcate both the Appeals while referring to the parties similarly.

COMMON FACTUAL MATRIX:

2. The common facts leading to filing of the present Appeals and



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considered relevant for their adjudication, revolve solely around the property bearing no. 13, Barakhamba Road, New Delhi-110001 [hereinafter referred to as 'the suit property'].

3. One Late Mr. Lala Narain, who was the lessee of the suit property by virtue of a Perpetual Lease Deed dated 31.05.1932, passed away intestate on 07.11.1950, leaving behind his wife Mrs. Karma Devi, one son Mr. Krishan Dutta and three daughters namely Mrs. Vidyawati, Mrs. Kaushlaya Devi Dhawan and Mrs. Sumitra Sahai. On 06.05.1952, the son, Mr. Krishan Dutta, during the lifetime of his mother, Mrs. Karma Devi (died in 1964), got the entire suit property mutated in his name. Subsequently, Mr. Krishan Dutta *vide* a Will dated 07.06.1976, executed by him, bequeathed the entire suit property in favour of the Appellant. He passed away in 1976, whereafter his wife, Mrs. Rani Dutta, became the executor of the Will and resultantly applied for Probate/Letters of Administration.

4. All three sisters, through a joint written statement, recorded their no objection to the grant of probate in favour of Mrs. Rani Dutta. Consequently, *vide* Order dated 08.11.1978, in Probate Case bearing no. 232/1977 filed by Mrs. Rani Dutta, the Court was pleased to grant the Letter of Administration in her favour.

5. Mrs. Rani Dutta passed away on 01.01.1990, pursuant to which, on 18.11.1993, possession of the suit property was handed over to the Appellant. Subsequently, the Appellant issued a notice of eviction to all the occupants of the suit property including the daughter of late Mr. Lala Narain. In response thereto, Late Mrs. Sumitra Sahai, the



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third sister, instituted a suit seeking mandatory injunction against the Appellant. However, claiming distress on account of her advanced age, she later withdrew the suit, which was accordingly dismissed as withdrawn on 14.12.1998.

6. Thereafter, multiple rounds of litigation were initiated between the parties, however, this Court is of the view that the same are not material for adjudication of the issues raised before it, therefore, are not being deliberated upon, except for the Civil Suit which was filed by the Respondent No.1 [Plaintiff before the learned Single Judge]. Since, two sisters namely Mrs. Vidyawati and Mrs. Kaushalya Devi, had already passed away in 1990, whereas the third sister, Mrs. Sumitra Sahai passed away in 2003, the Civil Suit was initiated by the legal heirs of the three sisters. By way of the Civil Suit, instituted by the Respondent No.1 [legal heir of Late Mrs. Vidyawati], she sought a declaration that the mutation dated 06.05.1952, the Will dated 07.06.1976 and the Letter of Administration issued pursuant thereto are null and void. Additionally, the Respondent No.1 also sought for partition of the suit property alongside seeking permanent and mandatory injunction against the Appellant. The Civil Suit is presently pending adjudication before the learned Single Judge and is at the stage of Defendant's evidence, the issues having already been framed.

7. With the consent of learned counsel for the parties, both the Appeals were heard together and are being disposed of by this common order. However, since the points of controversy in both the Appeals are distinct and arise from separate Impugned Orders, this



Court deems it appropriate to deal with the two Appeals independently.

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CONTENTIONS OF THE PARTIES BEFORE THE LEARNED SINGLE JUDGE:

8. The Appellant, before the learned Single Judge, sought dismissal of the Civil Suit under Order VII Rule 11 of the CPC on five grounds which are set out hereinafter. *Firstly*, the suit is barred by limitation. *Secondly*, the suit is barred under Order XXIII Rule 1(4) of the CPC. *Thirdly*, the suit is barred by Section 263 read with Sec 299 of the Indian Succession Act, 1925 [hereinafter referred to as ‘the Act, 1925’]. *Fourthly*, the suit is barred by *res judicata*. *Fifthly*, the suit is barred by Section 6 of the Hindu Succession Act, 1956 [hereinafter referred to as ‘the Act, 1956’]. However, at a later stage, upon certain enquiries made by the learned Single Judge, the Appellant withdrew its first ground of the suit being barred by limitation.

FINDINGS OF THE LEARNED SINGLE JUDGE

9. With respect to the second ground, the learned Single Judge held that the earlier suit filed by Late Mrs. Sumitra Sahai sought permanent injunction and not partition of the suit property. Therefore, the bar under Order XXIII Rule 1(4) of the CPC was found to be inapplicable. Whereas the fourth ground of *res judicata* was rejected, with an observation that the injunction suit filed by Late Mrs. Sumitra Sahai did not decide any substantive *lis* regarding ownership. Additionally, it was also noted that the dismissal of the amendment



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application filed in the earlier suit filed by Late Mrs. Sumitra Sahai, did not amount to a final adjudication. Accordingly, the plea of *res judicata* was held to be untenable.

10. On the third ground raised by the Appellant, the learned Single Judge held that the Respondent No.1 did not dispute the right of Late Mr. Krishan Dutta over the suit property; rather, it was contended by her that his entitlement was restricted only to 50% of the suit property. The bar under Section 263 of the Act, 1925 was rejected, as probate proceedings pertain to the validity of the Will and not to the determination of title. The Will dated 07.06.1976, *ex facie*, referred only to a residential house without prescribing any specific shares. With respect to Section 299 of the Act, 1925, the learned Single Judge observed that it merely provides an appellate remedy against probate orders and cannot be a ground for rejection of the Civil Suit.

11. With respect to the fifth ground raised under Section 6 of the Act, 1956, the learned Single Judge, upon perusal of paragraph no.21 of the plaint, observed that the Respondent No.1 relied on the 2005 amendment to the Act, 1956 only to establish her right to seek partition and not to create a new right over the suit property. Further while dealing with the clarification regarding Section 23 of the Act, 1956, it was observed that the bar under the said provision, which restricted daughters from seeking partition of a dwelling house, stood *ipso facto* abrogated by the 2005 amendment. Moreover, upon enquiry by the learned Single Judge, the Appellant conceded that the Respondent No.1 was not claiming coparcenary rights. Since Section



6 of the Act, 1956 applies only to coparcenary property, the learned Single Judge held that this ground was inapplicable.

CONTENTION OF THE PARTIES BEFORE THIS COURT

12. Assailing the Impugned Order dated 16.01.2018, learned senior counsel for the Appellant reiterated that the plaint filed in the Civil Suit does not disclose any cause of action, as the Civil Suit is hopelessly barred by limitation. It was further argued that the Will of Late Mr. Krishan Dutta had already been accepted by Late Mrs. Sumitra Sahai, thereby precluding the Respondents' claim.

13. *Per contra*, the learned counsel for the Respondent relied upon the Will dated 07.06.1976, executed in favour of *Arya Anathalaya*. It was submitted that since Mr. Narain Dutta had passed away prior to the enactment of the Act, 1956, his widow Late Mrs. Karma Devi by virtue of Section 14(1) of the HSA, 1956, has absolute right in form of full ownership with respect to the suit property.

ANALYSIS AND REASONING OF THIS COURT

14. At the outset, it is pertinent to note that both Late Mr. Narain Dutta and Late Mrs. Karma Devi died intestate. By virtue of Section 14(1) of the Act, 1956, since Late Mr. Narain Dutta died intestate, Late Mrs. Karma Devi became an absolute owner of his property. The relevant provision is produced hereinbelow-

“14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner”



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(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

Although the controversy pertaining to Section 14(1) and Section 14 (2) of the Act, 1956, is pending adjudication before a Constitutional Bench of the Supreme Court, the present dispute does not attract the bar under provision of Section 14(2) of the Act, 1956. Particularly, in light of the fact that the mutation proceeding, *vide* which the suit property was mutated in favour of Late Mr. Krishan Dutta, is contested by the legal heirs before the learned Single Judge and do not fall under either of the nomenclatures specified under the sub-section 2(i). Moreover, once an absolute ownership had been conferred upon Late Mrs. Karma Devi, any subsequent Will executed only by her could alone govern the succession of the suit property.

15. In this regard, reference is made to ***Smt. Bhimabai Mahadeo Kambekar (D) thr LR v. Arthur Import and Export Company & Ors.***¹, wherein the Supreme Court, placing reliance on its earlier judgments, reiterated that mutation in the revenue records with respect to any land neither creates nor extinguishes a title over such land, nor does it create any presumptive value upon the title. As such, in the opinion of this Court, since the Probate Proceeding leading to the issuance of Letter of Administration, was initiated on the basis of Will dated 07.06.1976, which in turn was executed on account of mutation, both the Will dated 07.06.1976 and Mutation dated 06.05.1952 are pending consideration before the learned Single Judge and therefore,

¹ (2019) 3 SCC 191



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in view of the aforesaid judgement, as mutation does not create a title in favour of the person in whose name the property stands mutated, the probate proceeding cannot, at this stage, be considered by this Court to either create or restrict any right over the suit property.

16. With respect to the other ground raised by the learned senior counsel for the Appellant that the Civil Suit is barred under Order VII Rule 11 for being violative of statutory law and disclosing no cause of action, in the opinion of this Court, the same is devoid of merit. This is for the reason that the entire dispute, along with any/every consequential proceeding that has undergone between the parties including the probate proceeding, is an offshoot of the mutation dated 06.05.1952. Additionally, the learned Single Judge has already dealt with each and every aspect raised before this Court in detail, and this Court concurs with the findings rendered by the learned Single Judge in paragraph nos.37 to 66 of the Impugned Order dated 16.01.2018.

17. Therefore, the subsistence of a cause of action, as set out in the plaint, will be finally examined by the learned Single Judge upon appreciation of the pleadings and the evidence led by the parties while deciding the Civil Suit.

18. In view of the aforesaid, this Court does not find any error in the findings of the learned Single Judge in dismissing the application moved under Order VII Rule 11 of the CPC, to the extent that the grounds raised therein by the Appellant are not substantiated in view of the particular facts and circumstances of the present case.



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**CONTENTION OF THE PARTIES BEFORE THE LEARNED
SINGLE JUDGE:**

19. Since the question before this Court only pertains to the transposition allowed by the learned Single Judge, the contentions of the parties and the findings of the learned Single Judge on this aspect are being examined in the succeeding paragraphs.

20. The Respondent No.2(iii), by way of his application, sought transposition as a Plaintiff with an intent to continue the Civil Suit before the learned Single Judge, in the backdrop of application for withdrawal of the Civil Suit filed by the Respondent No.1 [erstwhile Plaintiff before the learned Single Judge]. The Respondent No.2(iii) in his support contended that the Appellant was the only contesting Defendant, and hence, substantial questions of law and fact were required to be adjudicated.

21. Whereas, the Appellant in its reply to the aforestated application for transposition contended that transposition could not be allowed, as the cause of action was not the same. Additionally, it was also contended that the aforestated application was not maintainable, *inter alia*, on three grounds. *Firstly*, the plea of the Respondent No.1 in its written statement was only in consonance to the relief of partition sought by the Respondent No.1. *Secondly*, the Respondent No.2(iii) did not seek any declaratory relief against the Letter of Administration in his written statement. *Thirdly*, the daughters of Late Mr. Lala Narain, had provided a No Objection Certificate with respect



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to the Will dated 07.06.1976 and as such, the Respondent Nos.1 to 17 were estopped from claiming any rights in the suit property.

FINDINGS OF THE LEARNED SINGLE JUDGE

22. Placing reliance on Order XXIII Rule 1A of the CPC as well as various judgements of the Supreme Court, the learned Single Judge allowed the application for transposition by the Respondent No.2(iii), while noting that the rights of the legal heirs/Respondent Nos.1 to 17 were protected under the said provision. Moreover, the Respondent No.1, being one of the legal heirs of the three sisters, had also challenged the legality and validity of the Will dated 07.06.1976 via the Civil Suit. Since the three sisters were parties to the probate proceedings, their legal heirs were held to have possessed a substantial right and an equal interest in challenging the said Will executed in favour of the Appellant.

23. The learned Single Judge, while rejecting the contention of the Appellant regarding the distinct cause of action of the Respondent No.1 and that of the Respondent Nos.2 to 17, noted that this defence did not hold any merit, particularly in view of the fact that a perusal of the plaint and the written statement filed in the Civil Suit demonstrates that there existed no conflict of interest between the Respondent No.1 and Respondent No.2(iii).

CONTENTION OF THE PARTIES BEFORE THIS COURT

24. Learned senior counsel for the Appellant made a reference to Order XXIII Rule 3 of the CPC, in order to substantiate the plea that the order of the learned Single Judge allowing the transposition of the



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Respondent No.2(iii) is contrary to statutory law. Additionally, reliance was also placed on paragraph no.4 of the application for withdrawal of the Civil Suit filed by the Respondent No.1, to substantiate that the Respondent No.1 admitted that she is satisfied with the Will dated 07.06.1976, as executed by Late Mr. Krishan Dutta.

25. Learned senior counsel for the Appellant also drew the attention of this Court to an affidavit dated 17.03.1980, signed by the second daughter, Late Mrs. Vidyawati Devi, wherein at paragraph no.2, she admitted that she was paid Rs. 50,000/- by Late Mrs. Rani Dutta. Thus, contending that rights as created in favour of the three sisters by Late Mr. Krishan Dutta had already been effected upon. Accordingly, the sisters have enjoyed the benefit of the Will and consequently, their legal heirs at this stage cannot dispute the validity of the Will.

26. In addition, the attention of this Court was also drawn to Section 263 of the Act, 1925, to contend that once Probate stands granted, it can only be recalled and cannot be set aside by a Civil Court. Further, it has also been averred that the Impugned Order dated 04.01.2024 is based on the premise that the suit is a partition suit, however, the same is a declaratory suit with partition only being a consequential relief.

27. Learned senior counsel for the Appellant has also taken a plea that cause of action of the Respondent No.1 is unique to her only which in no manner can be adopted by the Respondent No.2(iii). Additionally, it was also contended that since four decrees have



already been granted in favour of the Appellant, declaring it to be the absolute and sole owner of the suit property. As such, the decrees have never been challenged and by virtue of the same it has attained finality.

28. *Per contra*, learned counsel for the Respondents have submitted that the withdrawal of the Civil Suit by the Respondent No.1 was an unconditional one and duly permitted by the learned Single Judge and that the transposition of the Respondent No.2(iii), was rightly held to be maintainable in accordance with Order XXIII Rule 1A of the CPC by the learned Single Judge.

FINDINGS AND ANALYSIS OF THIS COURT

29. We have heard learned senior counsel for the Appellant and learned counsel for the Respondent No.2, and with their able assistance, have carefully perused the paper book and material on record.

30. Learned senior counsel for the Appellant has relied upon the equitable *principle of estoppel* and waiver of the rights of three daughters in view of the Will through prior acceptance of benefits, such reliance, in view of this Court, is misplaced. Undisputedly, the affidavit dated 17.03.1980 indicates a receipt of Rs. 50,000/- by Late Mrs. Vidyawati, however, such receipt is again subject to the adjudication of the validity of the Will. Even otherwise, the said receipt cannot exclude the legal heirs from claiming their rights as established by the statutory law of succession.

31. Learned senior counsel for the Appellant has also raised a plea,



against the bar under Order XXIII Rule 3 of the CPC, this Court finds such a plea to be untenable. The relevant provision is reproduced hereunder-

“

ORDER XXIII

(Withdrawal and adjustment of Suits)

3. *Compromise of suit.*—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]”

To attract the bar under this provision, the parties must enter in a compromise or adjustment, which shall be reduced in writing and signed by the parties, which thereafter is recorded by the Court and a decree to that effect is passed, subsequently. However, this provision is not applicable to the present dispute, to the extent that no such compromise decree was either executed between Late Mr. Krishan Dutta and the three sisters or upon demise of Mr. Krishan Dutta, between, Late Mrs. Renu Dutta and the three sisters.

32. With respect to the argument advanced by the learned senior counsel for the Appellant, in relation to Section 263 of the Act, 1925, this Court deems it appropriate to not delve deeply into the said plea as the question of validity of the probate proceeding is already



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pending adjudication before the learned Single Judge.

33. As far as the other grounds advanced by learned senior counsel for the Appellant are concerned, this Court notes that the learned Single Judge in paragraphs nos.20 to 33 of the Impugned Order dated 04.01.2024 has already dealt with these grounds in detail. Accordingly, this Court does not deem it appropriate to interfere with the findings of the learned Single Judge and finds itself to be in agreement with the reasoning adopted therein.

CONCLUSION

34. In light of the foregoing discussion, this Court finds no illegality, perversity or incorrect approach adopted or the conclusions arrived at by the learned Single Judge in the Impugned Orders.

35. Hence, having found no merit, the present Appeals, along with pending application(s), stand dismissed.

36. Needless to state that the proceedings before the learned Single Judge will be carried forward being uninfluenced by the order of this Court and the parties are at liberty to participate in further proceedings to take place in the Civil Suit.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 29, 2025/jn/hr