

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

+ **CS(OS) No.430/2007 & IAs No. 9483/2007
(under Order 6 Rule 17 CPC) & 5316/2007
(under Order 7 Rule 11 CPC)**

#Mrs. Meera Shamsheer Singh

..... Plaintiff

! Through: Mr. Abhay Maini Tripathi, Advocate

Versus

\$ Shri Sudhir Sivashanker

.....Defendant

^ Through: Mr. Chetan Sharma, Sr. Advocate
with Mr. D. Moitra, Ms. Alkam
Shree, Mr. Sanjeev Tiwari and
Ms. Rina Sarkar, Advocates.

CORAM:-

* **HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N.AGGARWAL, J (ORAL)

This suit itself has been taken up for final disposal.

2 Briefly stated the facts of the case are as follow:-

The plaintiff and the defendant are real sister and brother. The dispute between them is to the succession to property bearing No.80, Paschimi Marg, Vasant Vihar, New Delhi which admittedly belonged to late Shri T. Sivashanker, being the step father of the parties to this suit. Late Shri T. Sivashanker was a retired Civil Servant (ICS) and held important positions both pre and post retirement prior to his death on 17.07.1996. Smt. Shanti T. Sivashanker was the mother of the parties to this suit. She after death of her first husband had married Sh. T. Sivashanker but there was no child born to them from the said marriage. Late T. Sivashanker made three Wills during his lifetime on 05.09.1981, 15.02.1989 and on 04.10.1993. The testator Shri T. Sivashanker rescinded his earlier two Wills dated 05.09.1981 and 15.02.1989 while executing the third Will on 04.10.1993. The later Will dated 04.10.1993 duly got registered with the office of Sub Registrar, Delhi. By this Will, he bequeathed all his movable and immovable assets including the property bearing No.80, Paschimi Marg, Vasant Vihar, New Delhi in favour of his widow Smt. Shanti T. Sivashanker. He also provided for a contingency in his later Will of 04-10-93 that in case he and his wife Smt. Shanti T. Sivashanker die

simultaneously then all his estate should devolve to Sudhir Sivashanker, son of Smt. Shanti T. Sivashanker from her first husband.

3 Smt. Shanti Sivashanker also executed a Will simultaneously on the same day her husband T. Sivashanker had executed his later Will dated 04.10.1993 and she by her said Will bequeathed all her movable and immovable assets which she may own at the time of her demise in favour of her husband late Shri T. Sivashanker. The testatrix Smt. Shanti Sivashanker also made a provision in her said Will of 04.10.1993 that in case she and her husband T. Sivashanker die simultaneously or about the same time then her entire estate should devolve upon her son Sudhir Sivashanker (defendant). Smt. Shanti Sivashanker also provided in her Will dated 04.10.1993 independently that her entire movable and immovable estates should go to her son being the defendant herein in case the events as mentioned in paras II and III of her said Will do not occur. Smt. Shanti Sivashanker expired on 29.02.2000. It shall be significant to mention here that the parties to the present suit were litigating against each other regarding their alleged right in the property bearing No.80, Paschimi Marg, Vasant Vihar, New Delhi even during the life time of late Smt. Shanti Sivashanker. The plaintiff herein

being the daughter of Smt. Shanti Sivashanker from her first husband had filed two civil suits, one for permanent injunction and the second for declaration and other related reliefs being suit No.431/1998 and suit No.345/1999 during the life time of her mother late Smt. Shanti Sivashanker. In the first suit filed by her for permanent injunction, she had prayed for an injunction order against the defendant to restrain him from alienating the suit property in favour of any third party, relying upon the Will dated 15.02.1989 of late T. Sivashanker. The said first suit was dismissed by the court of Shri R.K. Sharma, Civil Judge, Delhi vide detailed judgment dated 06.03.2000 running into 25 pages. Paras 20 and 21 of the said judgment dated 06.03.2000 are extracted below :

"20 It is the case of the plaintiff that the testator Sh. T. Sivashanker has expired on 17.07.1996 and that defendant No. 2 has survived the testator. Thus, according to the Will the suit premises vest solely and absolutely in defendant No. 2. The plaintiff has no right in the suit premises as per the will dated 15.02.1989 executed by Sh. T. Sivashanker.

21 Since the only basis for claiming a right in the suit premises put forth by the plaintiff in the present suit is the Will and since I have already held that as per the Will, there is no vested interest created in the plaintiff as per the Will dated 15.02.1989 executed by Sh. T. Sivashanker, relied upon by the plaintiff herself, the plaintiff has no locus-standi to file the present suit and the suit as framed is not maintainable."

4 It was held by the Civil Judge in the aforementioned first suit

that the plaintiff had no locus standi to file the suit for permanent injunction against her brother being the defendant herein on the basis of will dated 15.02.1989 of late Sh. T. Sivashanker. While the first suit filed by the plaintiff against the defendant for permanent injunction was pending, the plaintiff filed another suit being suit No. 345/1999 and in the said suit she prayed for a declaration that Will dated 04.10.1993 of late Sh. T. Sivashanker be declared null and void. In the second suit, the plaintiff also made a prayer for declaration of her right that she was entitled to have a share in the suit property on the basis of intestate succession. This second suit filed by the plaintiff stood also dismissed vide judgment and order dated 30.10.2007 passed by Sh. Sidharth Mathur, Civil Judge, Delhi. The learned Civil Judge while dismissing the second suit has noted the conduct of the plaintiff that she was interested only in delaying the proceedings pending in that suit.

5 In both the abovementioned suits filed by the plaintiff during the lifetime of her mother late Smt. Shanti Sivashanker, her mother had filed her Written Statement in which she made a categorical statement that the suit property bearing No. 80, Pashchimi Marg, Vasant Vihar, New Delhi belongs to her son Sudhir Sivashanker and her daughter being the plaintiff herein has nothing to do with the

said property. The judgments passed in the above two suits are stated to have acquired finality inter-parties because the plaintiff against whom the said judgments were passed has not preferred any appeal against these judgments, though limitation for filing of the appeal has expired long ago.

6 From the above discussion and on a plain reading of Will dated 04.10.1993 executed both by husband and wife namely late Sh. T. Sivashanker and late Smt. Shanti Sivashanker, it clearly emerges that the plaintiff has no *locus standi* to file the present suit seeking partition and a share in the suit property bearing No. 80, Pashchimi Marg, Vasant Vihar, New Delhi as the said property devolve exclusively to the defendant Sudhir Sivashanker. By no means it can be said that the said property has to devolve between the plaintiff and the defendant by inte-state succession as its succession has to be by testamentary succession in terms of the Will dated 04.10.1993 left by late Smt. Shanti Sivashanker.

7 For the foregoing reason, the application for amendment of the plaint filed by the plaintiff fails and is hereby dismissed. The application filed by the defendant for dismissal of the suit under Order 7 Rule 11 CPC succeeds and is therefore allowed. This suit is accordingly dismissed for want of cause of action against the

defendant. There shall be no orders as to costs.

8 The interim orders passed by this Court in the present suit stand vacated.

FEBRUARY 13, 2008
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S.N.AGGARWAL
[JUDGE]