

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

+ **CS(OS) 814/2010**

Judgment delivered on: 11.9.2012

MS RUCHI KHANDELWAL Plaintiff
Through Mr. K.R. Chawla with Mr. Aravind
Varma, Advs.
Versus

MANJU KHANDELWAL Defendant
Through Mr. N.K. Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

An absolutely false and vexatious suit has been filed by the plaintiff against her mother to seek decree of declaration, to declare the plaintiff owner of one half share of flat No. 672, VII floor, plot No. 71 Kanugo Apartment, Delhi in her capacity as a daughter of late Shri Vinod Kumar Khandelwal. The plaintiff has also claimed relief of partition for dividing the said flat by metes and bounds or by any other mode to be suggested by the Local Commissioner.

The brief facts set out by the plaintiff in the plaint are that the defendant is the mother of the plaintiff and the father, late Shri Vinod Kumar

Khandelwal had expired on 15th December, 2009 leaving behind the plaintiff, his daughter and the defendant as her widow. It is also the case of the plaintiff that late Shri Vinod Kumar Khandelwal and her mother defendant herein were co-owners of the flat bearing No. 672, VII floor, plot No. 71 Kanugo Apartment, Delhi and after the death of Shri Vinod Kumar Khandelwal the plaintiff also became the owner in respect of the half of the share of Mr. Vinod Kumar Khandelwal. It is also the case of the plaintiff that on the demise of her father, she went to the said flat during the mourning period i.e. on 15th December, 2009 and thereafter returned back on 29th December, 2009 after attending the kirya ceremony. It is further the case of the plaintiff that about a week back from the date of the filing of the suit the plaintiff went to visit her mother at the said flat but she found the behavior of her mother, defendant herein completely vicissitude. With such a variation in the behavior of the defendant, the plaintiff became apprehensive of the fact that the defendant may sell, transfer, alienate or create third party interest in the share of the plaintiff in the said flat. The plaintiff also made a request to the defendant to partition the said flat and to also give half share in all the moveable assets left by Late Mr. Vinod Kumar

Khandelwal. The defendant flatly refused to accede to the request of the plaintiff. In the written statement filed by the defendant, the stand taken by the defendant, is that late Shri Vinod Kumar Khandelwal and the defendant were co-owners of the flat in question and the plaintiff is the only child, out of the wedlock of the defendant and her husband late Shri Vinod Kumar Khandelwal. It is also the case of the defendant that late Shri Vinod Kumar Khandelwal had executed a Will dated 15.12.2004 thereby bequeathing his share in the said flat in favour of his wife defendant herein and also, all the moveable assets left by him. The defendant has also averred in their written statement, that in the year 1999 the plaintiff ran away to marry Mr. Toni Mehra alias Gulzar, who was already married person and an FIR No. 626/1999 was registered by late Shri Vinod Kumar Khandelwal in the police Station, Ashok Vihar under Section 365 IPC. The defendant has also averred that the plaintiff had embraced Muslim religion and thereafter, entered into a Nikahnama with the said Mr. Gulzar. The defendant has also averred that due to all such acts of the plaintiff her father was very much annoyed with her and in fact he had disowned the plaintiff by issuing a public notice in the newspaper "Vir Arjun" and "Punjab Kesari". The defendant has also averred

that late Shri Vinod Kumar Khandelwal was not having any kind of relationship with the plaintiff and even her entry was barred by the defendant in the said house. The defendant has further averred that before few days from the death of her husband, the husband of the plaintiff created a scene and made unnecessary demands from the defendant and her late husband, threatening to kill them for which a DD No. 18B dated 6.12.2009 was registered at P.S. Madhu Vihar. The defendant has also submitted that the plaintiff has falsely claimed half of the share in the said flat although knowing fully well that the defendant was a co-owner with her husband and, therefore, the defendant in any case has already half the share in the said flat and the rest half of the share was bequeathed by late Shri Vinod Kumar Khandelwal in her favour. The defendant has further averred that on 5th February, 2010 the plaintiff along with her husband came to the said flat and started abusing the defendant and they also made attempt to take forcible possession of the flat by dispossessing the defendant, but at the same time a few neighbours gathered at the spot and thereafter an undertaking was given by the plaintiff after ascertaining the genuineness and correctness of the Will dated 15.12.2004. It is also the case of the defendant that the said

undertaking was signed by two neighbours as witnesses who were present at the spot. It is also the case of the defendant that the plaintiff had also given a separate declaration to admit the genuineness and correctness of the Will dated 15.12.2004 and her no objection to the mutation of the said flat in the exclusive name of the defendant. Based on these averments the defendant has taken a stand that the suit filed by the plaintiff is absolutely false, misleading, bogus and vexatious. The plaintiff has filed replication to the said written statement. In the replication the plaintiff has denied execution of any Will dated 15.12.2004 by late Shri Vinod Kumar Khandelwal. The plaintiff has rather taken a stand that the Will dated 15.12.2004 on which the defendant is placing reliance is a forged, fabricated and doctored document. The plaintiff has also taken a stand that late Shri Vinod Kumar Khandelwal was the exclusive owner of the said flat and the defendant was never the co-owner of the same. The plaintiff in her replication has also taken a stand that the defendant being a step mother of the plaintiff intentionally, deliberately and mala fidely included her name in agreement to sell dated 10.07.2002 in order to defeat the valuable rights of the plaintiff in the suit property. The plaintiff has also denied execution of any undertaking dated 5.2.2010 and

declaration dated 26.4.2010. The plaintiff has placed on record photocopy of the agreement to sell dated 10th July, 2002 and original death certificate of late Shri Vinod Kumar Khandelwal. The defendant on the other hand has placed reliance on several documents, but most important documents based on which, the issue in question can reach a conclusion are four documents, namely, Will dated 15.12.2004, original undertaking of the plaintiff dated 5.2.2010, declaration dated 26.4.2010 and certified copy of the conveyance deed dated 17.9.2003. During the course of the admission/denial of the document the plaintiff has denied the undertaking dated 5.2.2010 and declaration dated 26.4.2010. The plaintiff was examined by this Court on 27th February, 2012. The said direction for recording the statement of the plaintiff was given by this Court in IA No. 10440/2011 moved by the defendant under Order 26 Rule 10A CPC. In the said application the defendant sought specimen signatures and thumb impressions of the plaintiff so that the same could be sent for scientific evaluation to the FSL. This application was moved by the defendant as the plaintiff had denied her signatures on the said undertaking dated 5.2.2010 and declaration dated 26.4.2010. When this Court proceeded to record the statement of the

plaintiff, at that time, counsel for the plaintiff came forward to say that the plaintiff did sign the undertaking dated 5.2.2010 and declaration dated 26.4.2010. In furtherance to which counsel for the plaintiff also took a stand that the plaintiff had signed the said documents without having gone through the contents of the same. In view of the said stand taken by the counsel for the plaintiff, this Court did not feel the necessity of taking the specimen signatures and thumb impressions of the plaintiff. The Court, however, thought it fit to record the statement of the plaintiff under Order 10 CPC read with Section 165 of the Evidence Act. The plaintiff in her statement disclosed her educational qualification as B.Com. She further deposed that she did her B.Com from Laxmi Bai College, University of Delhi. She also deposed that her father used to tell her before his death that he will leave behind a Will. She also disclosed that when she met her father she was informed by him that he had already executed a Will in favour of his wife. The plaintiff further deposed that she was also told by her father that in future he will change her Will so as to give a share in the property to the plaintiff as well. She has further deposed that her father never made any further Will as was promised to her. She further says that she came to know

about the contents of the Will dated 15th November, 2004 only after the filing of the present suit. She was also confronted with the original undertaking dated 5th February, 2012 and she admitted her signatures at mark 'A' and her thumb mark at point 'B'. She also admitted her signatures on the original declaration dated 26th April, 2010. She also deposed that when she had signed the documents they were blank. She also deposed that the said documents were signed by her at the instance of her mother. She also deposed that none of the witnesses of the said documents were present at the time of the execution of the same. If this Court compares the averments made in the plaint, statement given by the plaintiff under Section 165 of the Evidence Act, submissions made by the counsel for the plaintiff and the denial of the said declaration and undertaking by the plaintiff during the admission/denial of the documents, the same are totally in conflict with each other. In the plaint the plaintiff does not disclose the execution of the Will dated 15.12.2004. In the plaint she has also claimed half share in the said flat bearing No. flat No. 672, VII floor, plot No. 71 Kanugo Apartment, Delhi although simultaneously she has filed the copy of the agreement to sell dated 10.7.2002, which clearly shows that the defendant was a co-owner in

the said flat along with her husband late Shri Vinod Kumar Khandelwal. The plaintiff also does not disclose the execution of the undertaking dated 5.2.2010 and the said declaration dated 26.4.2010. In the admission/denial of the documents she has denied both the said documents. In her statement under Section 165 of the Evidence Act she states that she had signed the said documents but at the time of the signing of the said documents they were blank. The submission made by the counsel for the plaintiff on the same very day that too in the presence of the plaintiff was that the plaintiff did sign the said undertaking dated 5.2.2010 and declaration dated 26.4.2010, but she had signed the same without having gone through the contents of the same. To have signed the blank documents or to sign the documents without having gone through the contents of the same are again self contradictory. The plaintiff in her said statement has also admitted the fact that she was told by her father that before her death he would leave behind a Will in favour of his wife. She has also admitted the fact that no other Will was left behind by him before his death. Tracing and unfolding the said facts on record it is quite shocking and intriguing, that the plaintiff has the audacity to take false stands before the Court of law. Not only she has filed a false

and vexatious suit against her mother but audaciously she had denied the execution of the documents i.e. declaration and undertaking and in her statement under Section 165 of the Evidence Act, she took a somersault to say that the documents signed by her were blank documents. Indisputably the flat bearing No. 672, VII floor, plot No. 71 Kanugo Apartment, Delhi was owned by the mother along with her late husband Shri Vinod Kumar Khandelwal and the ownership of the said flat already stands transferred in the name of the defendant pursuant to the execution of the conveyance deed dated 17.9.2003. The plaintiff has also admitted the execution of the Will dated 15.12.2004 by her late father in her statement under Section 165 of the Evidence Act, although in the plaint she had suppressed the said fact. In the said Will late Shri Vinod Kumar Khandelwal, husband of the defendant has bequeathed half of his share in the said property, in favour of his wife, the defendant herein besides bequeathing all his moveable assets in her favour.

In the teeth of the said Will dated 15.12.2004, the undertaking dated 5.2.2010 and declaration dated 26.4.2010, the present suit filed by the plaintiff for seeking declaration and for claiming partition of the said property cannot be maintained. In the said Will late Shri Vinod Kumar

Khandelwal had also clearly expressed that he did not wish to have any kind of relationship with her daughter Ruchi and, therefore, she was precluded from inheriting any of the assets left by him. He in fact went to the extent of stating that it shall be better if she, her husband and children are not allowed to touch his dead body. He also referred to the filing of a false case by her against him before the Delhi High Court, as the plaintiff was debarred by him after having issued a citation in the newspaper.

The Hon'ble Supreme Court in the case of *T. Arivandandam V. T.V. Satyapal & others*, AIR 1977 SC 2421, has held that the Bar has a role to cure the deleterious tendency of parties to launch frivolous and vexatious cases. The Apex Court in paragraph 5 of the judgment observed as under:

"We have not slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful right to sue, he should exercise his power it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power O VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X, CPC. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (CH.XI) and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatma Gandhi. "It is dangerous to be too good"."

In *S.P. Chengalvaraya Naidu (dead) by L.R's V. Jagannath (dead) by L.R's and others*, AIR 1994 SC 853, the Hon'ble Supreme Court has categorically observed that :

"The Courts of law are meant for imparting justice between the parties. One, who comes to the court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds the vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as the other party."

Thus, It is a settled legal position that on a meaningful, not formal reading of the averments made in the plaint and material placed on record if the Court at any stage finds that the suit filed by the plaintiff is based on false, frivolous and vexatious allegations then such a frivolous litigation is required to be nipped at the bud and the present case is brazen example of the same.

Although taking such a kind of false stand plaintiff deserves to be proceeded against, for committing contempt of Court, but considering the fact that the plaintiff is a lady and on the other side the defendant also happens to be her mother, a costs of Rs. 1 lakh is imposed on the plaintiff for filing such a false, frivolous and vexatious case. The cost shall be

deposited by the plaintiff with the Delhi High Court Bar Association Lawyer's Social Security and Welfare Fund within a period of six weeks from the date of this order, failing which the Registrar General of this Court shall take coercive steps against the plaintiff to recover the amount of cost.



KAILASH GAMBHIR, J

SEPTEMBER 11, 2012

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