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

\+ CS(OS) 641/2004

RAM KUMAR DHIR ..... Plaintiff

Through: Mr. S.K. Bhaduri & Ms. Kiran Dharam, Advs,

versus

GOPAL KRISHNA DHIR ..... Defendant

Through: Ms. Smita Kapil & Mr. V.L. Madan, Adv. for D-1.
Mr. Gaurav Kumar, Adv. for D-2.
Mr. Sachin Datta, CGSC with Mr. Dinesh Sharma, Adv. for L&DO.

AND

2.

\+ CS(OS) 1709/2007, IA No.9606/2008 (u/O 39 R-1&2) & IA No.9011/2010 (u/O 1 R-10)

RAM KUMAR DHIR ..... Plaintiff

Through: Mr. S.K. Bhaduri & Ms. Kiran Dharam, Advs.,

versus

THE LAND & DEVELOPMENT OFFICER AND ANR. ..... Defendants

Through: Mr. Gaurav Kumar, Adv. for D-3.
Mr. Sachin Datta, CGSC with Mr. Dinesh Sharma, Adv. for L&DO.

AND

6.

\+ CS(OS) 607/2010, IA No.4225/2010 (u/O 39 R-1&2), IA No.4515/2010 (u/O 39 R-4), IA No.7277/2010 (u/O 16 R-6) & IA No.1854 & 11831/2011 (both for early hearing of IA No.4515/2010)

JAGDISH CHAND DHIR ..... Plaintiff

Through: Mr. Gaurav Kumar, Adv.

Versus

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RAM KUMAR DHIR & OTHERS ..... Defendants

Through: Mr. S.K. Bhaduri & Ms. Kiran Dharam, Advs. for D-1
Ms. Smita Kapil & Mr. V.L. Madan, Adv.
Mr. Rajinder Singh, Adv. for D-4.
Mr. Sachin Datta, CGSC with Mr. Dinesh Sharma, Adv. for L&DO.

AND

41.

\+ CS(OS) 2421/2004

GOPAL KRISHAN DHIR ..... Plaintiff

Through: Ms. Smita Kapil & Mr. V.L. Madan, Adv. for D-1.

versus

RAM KUMAR DHIR ..... Defendant

Through: Mr. S.K. Bhaduri & Ms. Kiran Dharam, Advs,

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.02.2013**

1. The counsels for all the parties have been heard. All the four suits concern property No.80/45-AB, Malviya Nagar, New Delhi – 110 017 lease of land underneath which was granted by L&DO to one Sh. Bansi Lal Dhir who died on 02.05.1991 leaving four sons and four daughters. It is the contention of some of the counsels that one of the sons had been given away in adoption. It is further informed that the wife and mother of Sh. Bansi Lal Dhir had pre-deceased him.

2. One of the sons viz. Sh. Gopal Krishna Dhir on 25.09.1992 applied for mutation of the leasehold rights from the name of Sh. Bansi Lal Dhir to

his own name and which was allowed by the L&DO on 23.10.1992.

3. In or about the year 2003 two other sons of Sh. Bansi Lal Dhir viz. Sh. Ram Kumar Dhir and Sh. Jagdish Chand Dhir filed objections with the L&DO regarding mutation in the name of Sh. Gopal Krishna Dhir.

4. The L&DO vide order dated 23.07.2003 revoked the said mutation in the name of Sh. Gopal Krishna Dhir.

5. However on representations from Sh. Gopal Krishna Dhir, the L&DO vide letter dated 24.05.2004 restored the mutation as carried out on 23.10.1992 and revoked the letter dated 23.07.2003.

6. CS(OS) No.641/2004 has been filed by Sh. Ram Kumar Dhir for declaration that he is the owner in possession of the First Floor, Mezzanine and half terrace of the Second Floor of the said property and for permanent injunction restraining Sh. Gopal Krishna Dhir from dispossessing him from the said portion of the property and from raising construction on the said property and from claiming himself to be the exclusive owner of the said property.

7. Sh. Jagdish Chand Dhir applied for impleadment in the said suit and which was allowed.

8. CS(OS) No.1709/2007 has been filed by Sh. Ram Kumar Dhir against L&DO and Sh. Gopal Krishna Dhir impugning the letter dated 24.05.2004 of the L&DO restoring the mutation in favour of Sh. Gopal Krishna Dhir. Sh. Jagdish Chand Dhir applied for impleadment in the said suit also and which was allowed.

9. CS(OS) No.607/2010 has been filed by Sh. Jagdish Chand Dhir for partition of the entire property and all the legal heirs of Late Sh. Bansi Lal

Dhir and / or their heirs are parties to the said suit.

10. The counsels inform that besides these three suits CS(OS) 2421/2012 has been filed by Sh. Gopal Krishan Dhir against Sh. Ram Kumar Dhir only, for possession of the portion of the property in occupation of Sh. Ram Kumar Dhir. With the consent of counsels, the said suit though not listed today, has been requisitioned.

11. It is on enquiry informed, that only Sh. Gopal Krishan Dhir and Sh. Ram Kumar Dhir are in occupation of the property.

12. It is yet further informed that Sh. Gopal Krishan Dhir on the basis of mutation in the L&DO in his favour also got the mutation in his name carried out in the records of MCD and applied to MCD for sanction for further construction/addition/alteration in the said property and which was allowed and in pursuance whereto has raised construction on a part of the second floor of the said property. The other three brothers applied to MCD for revocation of the said plans which had been sanctioned and which was ordered by the MCD. Sh. Gopal Krishan Dhir preferred an appeal to the Appellate Tribunal, MCD against the said order of revocation of plans. During the pendency of the said appeal the other three brothers applied for impleadment as a party in the said appeal and which was dismissed. It is further informed that subsequently the Appellate Tribunal, MCD allowed the said appeal of Sh. Gopal Krishan Dhir. CM(M) No.316/2012, 402/2012 & 355/2012 have been filed by the other three brothers challenging the orders of the Appellant Tribunal MCD refusing their impleadment and of allowing the appeal.

13. Subject to the orders of Hon'ble the Chief Justice, list these three CM (M) petitions before this Bench on 28th February, 2013.

14. Sh. Ram Kumar Dhir has filed CS(OS) 641/2004 on the basis of a Will of the year 1988 of Shri Bansi Lal Dhir bequeathing the said property to Sh. Ram Kumar Dhir and Sh. Gopal Krishan Dhir only.

15. Sh. Gopal Krishan Dhir had got the mutation of the property carried out in his name on the basis of a Will of the year 1991 of Shri Bansi Lal Dhir bequeathing the property exclusively to him.

16. All the counsels are in agreement that it is in the suit for partition being CS(OS) 607/2010 that all the *inter se* disputes between the parties are to be decided and which would also cover the disputes subject matter of CS(OS) 641/2004, CS(OS) 1709/2007 & CS(OS) 2421/2012. It has as such been put to the counsels as to why CS(OS) 607/2010 only be not proceeded with further, to avoid any conflicting findings and to expedite trial.

17. After deliberations at some length, the parties are in agreement with aforesaid but on the conditions hereinafter recorded.

A. That in the event of Sh. Gopal Krishan Dhir in CS(OS) 607/2010 succeeding in establishing the Will of Shri Bansi Lal Dhir of the year 1991, Sh. Gopal Krishan Dhir should be entitled to possession of the portion of the property in occupation of Sh. Ram Kumar Dhir. Sh. Ram Kumar Dhir present in Court and as identified by his counsel undertakes to this Court that in the event of Sh. Gopal Krishan Dhir succeeding in CS(OS) 607/2010 and being held to be the

exclusive owner of the property, he shall, subject of course to his rights of appeal therefrom, hand over vacant, peaceful and physical possession of the entire portion of the property in his occupation to Sh. Gopal Krishan Dhir or his legal heirs. It is therefore agreed that in the event of decision in CS(OS) 607/2010 in favour of Sh. Gopal Krishan Dhir, holding him to be the sole owner of the property, a decree for possession be also passed in that suit against Sh. Ram Kumar Dhir or his legal heirs.

B. It is informed that Sh. Gopal Krishan Dhir has also claimed *mesne* profits against Sh. Ram Kumar Dhir. The decree if any, for possession against Sh. Ram Kumar Dhir shall therefore also include a decree for *mesne* profits and for which inquiry shall separately be ordered.

C. The counsel for Sh. Gopal Krishan Dhir on behalf of Sh. Gopal Krishan Dhir undertakes to this Court not to deal with the property on the basis of the mutation in the name of Sh. Gopal Krishan Dhir in the records of L&DO or MCD.

D. It is further agreed that L&DO & MCD shall abide by the decision in CS(OS) 607/2010.

E. In the event of Sh. Ram Kumar Dhir, in CS(OS) 607/2010 succeeding in establishing the Will of the year 1988 and Sh. Gopal Krishan Dhir failing to prove the Will of the year 1991, Sh. Ram Kumar Dhir shall be entitled to the injunctions and the declaration as sought by him in CS(OS) 641/2004. It would

then also fall for adjudication as to who is entitled to the second floor of the property and the said question shall also be decided in CS(OS) 607/2010.

F. As far as CM (M) 316, 402 & 355, all of 2012 are concerned, the petitioners therein agree that the same may not be pursued any further in as much as the benefit of the second floor constructed by Sh. Gopal Krishan Dhir shall accrue to whosoever is found to be entitled thereto. The counsel for Sh. Gopal Krishan Dhir states that Sh. Gopal Krishan Dhir will not claim any special equities for the reason of having spent money in construction thereof. The counsels agree that the said CM petitions may be dismissed as withdrawn on these terms.

G. It is further agreed that the second floor is in possession of Sh. Gopal Krishan Dhir and he will continue to be in possession thereof.

H. All parties agree to maintain *status quo* qua possession, title and construction of the property.

I. It is informed that an application under Section 340 of the Cr.PC being Crl.M.A.6029/2005 has been filed in CS(OS) 641/2004 averring interpolation in documents by Sh. Gopal Krishan Dhir. If at the stage of final adjudication of CS(OS) 607/2010 it is held that Sh. Gopal Krishan Dhir is guilty of such interpolation, the applicants of the said Cr.M.A. 6029/2005, shall be entitled to seek prosecution of Sh. Gopal Krishan Dhir. With this clarification this Crl.M.A.6029/2005 is

also disposed of.

J. It is the case of the counsel for Sh. Gopal Krishan Dhir that Sh. Bansi Lal Dhir besides the Wills of the years 1988, 1991 had also executed Wills of the years 1978 and 1985 and even though claim on the basis thereof has not been made in CS(OS) 607/2010, but the same have been pleaded in CS(OS) 2421/2012. It is argued that Sh. Gopal Krishan Dhir shall be entitled to rely on the said Wills in CS(OS) 607/2010 subject to the plea of defendants in CS(OS)607/2010 that the same are not pleaded therein.

18. On the aforesaid terms CS(OS) 641/2004, CS(OS)1709/2007 and CS(OS) 2421/2012 are disposed of. However the files of the said suits shall hereafter remain tagged with the file of CS(OS) 607/2010 and the documents filed therein shall be permitted to be proved and read in evidence in CS(OS) 607/2010. The parties shall further be entitled to rely upon any admissions in their favour in pleadings in the said disposed of suits.

CS(OS) 607/2010.

19. On the pleadings of the parties the following issues are framed:-

(i). Whether the Wills of the years 1978, 1985, 1988 &1991 or any of them are the validly executed Wills of Sh. Bansi Lal Dhir and if so, to what effect? (Onus of proving on the party setting up the respective Will)

(ii). Whether there was a Family Settlement between Sh. Ram Kumar Dhir and Sh. Gopal Krishan Dhir as recorded in the document dated 28th January, 2001 and if so its effect? OPRKD

(iii). Whether Sh. Ram Kumar Dhir was given away in adoption and if so its effect? OPGKD

(iv). Relief.

20. It is clarified that no issue on shares is framed in as much as if the Wills are proved, the share in the property will be in accordance with the said Wills and if none of the Wills is proved then subject to the decision of the issue on adoption, there is no dispute that Sh. Bansi Lal Dhir left four sons and four daughters and that they will inherit equally.

21. No other issue arises or is pressed.

22. The parties to file their list of witnesses within 15 days.

23. After hearing the counsels, it is agreed that Sh. Ram Kumar Dhir will lead evidence first and his witnesses shall be cross examined first by the Advocates for the other brothers and sisters as per convenience and lastly by Sh. Gopal Krishan Dhir; thereafter the other brothers and sisters as per exigency shall lead their evidence and their witnesses shall be cross examined first by the counsel for Sh. Ram Kumar Dhir and thereafter by the counsel for Sh. Gopal Krishan Dhir; the witnesses of Sh. Gopal Krishan Dhir shall be cross examined first by the counsels for the other brothers and sisters as per exigencies and lastly by the counsel for Sh. Ram Kumar Dhir.

24. In accordance with above, Sh. Ram Kumar Dhir to file affidavits by way of examination-in-chief of all his witnesses within four weeks.

25. In view of the aforesaid all pending applications in CS(OS) 607/2010 are also disposed of.

26. The date i.e. 9th April, 2013 already fixed before the Joint Registrar in CS(OS) 2421/2012 stands cancelled.

27. List before Joint Registrar on 2nd May, 2013 for fixing the dates of trial.

28. List CM(M)s before this Bench on 28th February, 2013 in accordance with para 13 above.

RAJIV SAHAI ENDLAW, J

FEBRUARY 15, 2013
pp/gsr..

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

26

1 CS(OS) 607/2010

JAGDISH CHAND DHIR ..... Plaintiff

Through: None.

versus

RAM KUMAR DHIR & OTHERS ..... Defendants

Through: Mr. Aman Garg & Mr. Aditya Garg, Advs. for D-3.
Mr. Manish, Adv. for Mr. S.K. Singh in CM(M) No.402/2012.
Mr. Gaurav Singh, Adv. in CM(M) No.355/2012.
Mr. I.K. Bhaduri, Adv. in CM(M) No.316/2012.

AND

3. CM(M) 316/2012 & CM APPL. 4793/2012 (for stay)

SH. KEWAL KISHAN DHIR .... Petitioner

Through: Mr. S.K. Bhaduri, Adv.

Versus

SH. GOPAL KRISHAN DHIR & ANR. ... Respondents

Through: None.

AND

4. CM(M) 355/2012 & CM APPL. 5368/2012 (for stay)

SH. JAGDISH CHAND DHIR .... Petitioner

Through: Mr. Gaurav Singh, Adv.

Versus

SH. GOPAL KRISHAN DHIR & ANR. ... Respondents

Through: None.

AND

5. CM(M) 402/2012 & CM APPL. 6254/2012 (for stay)

SH. RAM KUMAR DHIR .... Petitioner

Through: Mr. Manish & Mr. S.K. Singh, Advs.

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR. ... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **28.02.2013**

1. In terms of order dated 15.02.2013 in CS(OS) No.641/2004, CS(OS) No.1709/2007, CS(OS) No.607/2010 & CS(OS) No.2421/2012 and of which only CS(OS) No.607/2010 is now surviving, the CM(M)s No.316/2012, 355/2012 & 402/2012 are disposed of.

2. The date of 23.04.2013 in the CM (M) petitions is cancelled.

3. In the previous order dated 15.02.2013 in CS(OS) No.641/2004, CS(OS) No.1709/2007, CS(OS) No.607/2010 and CS(OS) No.2421/2012, CS(OS) No.2421/2012 is erroneously mentioned in the cause title and footnote as 2421/2004, the same be read as 2421/2012.

RAJIV SAHAI ENDLAW, J

FEBRUARY 28, 2013
'gsr'