

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

**CS (OS) No. 2169 of 2006 & IA No. 14130 of 2008**

Reserved on: December 17, 2013

Decision on: January 8, 2014

**PREM NATH CHOPRA**

..... Plaintiff

Through: Mr. Y.P. Narula, Senior Advocate  
with Mr. Aniruddha Choudhary & Mr. Abhay  
Narula, Advocates

versus

**ARUN CHOPRA & ORS**

..... Defendants

Through: Mr. Harish Malhotra, Senior  
Advocate with Ms. Shweta Bharti, Mr.  
Shantanu, Mr. Vikram Hazarika, Advocates.

**CORAM: JUSTICE S. MURALIDHAR**

**JUDGMENT**

**08.01.2014**

1. The Plaintiff, Mr. Prem Nath Chopra, son of late Mr. Chanan Das Chopra, has filed this suit for partition in respect of the immovable property at D-354, Defence Colony, New Delhi ('the suit property') and division of the movable assets of late Mr. Sham Lal Chopra as listed out in Annexure-A and Annexure-B to the plaint. The Defendants in the suit are Mr. Arun Chopra (Defendant No. 1), Mr. Vivek Chopra (Defendant No. 2), Mr. Virendar Katiyal (Defendant No. 3), Mr. Ranjan Katiyal (Defendant No. 4), Mrs. Sudesh Prabhakar (Defendant No. 5), Ms. Sunita Katiyal (Defendant No. 6), Mrs. Rita Sharma (Defendant

No. 7), Ms. Ruby Ahuja (Defendant No. 8) and Ms. Rosy Ahuja (Defendant No. 9).

2. The suit property was given on lease by the President of India in favour of Wing Commander Maharaj Kishan Chopra ('Mr. M.K. Chopra'), the brother of the Plaintiff. Mr. M. K. Chopra died on 30<sup>th</sup> January 1984 leaving behind his wife, Mrs. Har Kaur Chopra. They had no children. Mrs. Har Kaur Chopra died on 7<sup>th</sup> June 1988.

3. The case of the Plaintiff is that both Mr. M.K. Chopra as well as Mrs. Har Kaur Chopra died intestate. In the very first paragraph of the plaint it is stated that the Plaintiff was not aware as to how the conveyance deed in respect of the suit property has been registered in the name of deceased Group Captain Mr. Sham Lal Chopra ('Mr. S.L. Chopra') as the Plaintiff and the other heirs of Mr. M.K. Chopra never received any information or notice from the authorities, i.e., the Land and Development Office (L&DO).

4. The pedigree table of the parties as set out in the plaint is as under:

Mr. M. K. Chopra  
(died on 30<sup>th</sup> January 1984)  
|  
Mrs. Har Kaur Chopra (w/o Mr. M.K. Chopra)  
(died on 7<sup>th</sup> June 1988)  
|  
Mr. S.L. Chopra  
|

(his wife Mrs. Kamla Chopra had pre-deceased him and the couple had no issue and parents of the parties had pre-deceased them)

Class II heirs left by Mr. S.L. Chopra

|                                                   |                                                                                                                   |                                                                                                                                                                  |                                                                                                                                 |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Prem Nath Chopra<br>Brother<br>(Plaintiff herein) | H.L. Chopra<br>Brother<br>(now deceased)<br>his heirs<br>Arun Chopra<br>Vivek Chopra<br>(Nephews)<br>(Deft 1 & 2) | Shanti Devi<br>Sister<br>(now deceased)<br>her sons and<br>daughters<br>Virender Katiyal<br>Ranjan Katiyal<br>Sudesh Prabhkar<br>Sunita Katiyal<br>(Deft 3 to 6) | Kamla Ahuja<br>Sister<br>(now deceased)<br>her sons and<br>daughters<br>Rita Sharma<br>Ruby Ahuja<br>Rosy Ahuja<br>(Def 7 to 9) |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|

5. The case of the Plaintiff is that even late Mr. S.L. Chopra, another brother of the Plaintiff, died intestate on 4<sup>th</sup> October 2006. In para 4 it is stated that late Mr. S. L. Chopra was the owner of the suit property and a conveyance deed was registered in his name on 3<sup>rd</sup> February 1997. It is further stated that he inherited the suit property from his elder brother Mr. M.K. Chopra. The details of the movable assets of late Mr. S.L. Chopra are set out in Annexure A and Annexure B to the plaint. The case of the Plaintiff is that he has 25% share in the estate of late Mr. S.L. Chopra and Defendants 1 and 2, being the legal heirs of late Mr. H.L. Chopra, another brother of the Plaintiff, have a 12.5% share each. It is stated that Defendants 3, 4, 5 and 6, who are children of the sister late Mrs. Shanti Devi, have 6.25% share each and Defendants 7, 8 and

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9, who are children of late Mrs. Kamla Ahuja, have 8.33% share each in the estate of late Mr. S.L. Chopra. The Plaintiff is stated to be in actual possession of the ground floor of the suit property. It is stated that Defendant 1 and his wife are threatening to take the possession of first floor of the suit property from the tenant, ABP Private Limited. The Plaintiff's request to the Defendants to mutually settle the disputes was not heeded. In the circumstances, the present suit was filed.

6. While directing issuance of summons in the suit and notice in the application, IA No. 12977 of 2006 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ('CPC') on 24<sup>th</sup> November 2006, the Court directed the parties to maintain *status quo* as to the title and possession of the suit property.

7. In the written statement filed by the Defendants 1, 3 to 6 along with IA No. 14467 of 2006 under Order XXXIX Rule 4 CPC, it is pleaded that late Mr. S.L. Chopra had left behind a Will dated 9<sup>th</sup> February 2006 bequeathing the suit property to Defendant No. 1, Mr. Arun Chopra and his wife Mrs. Sarvjit Chopra and bequeathed the movable assets to all the children of his brothers and sisters. A copy of the said Will dated 9<sup>th</sup> February 2006 was enclosed with the written statement. The further case of Defendants 1 to 3 is that late Mr. S.L. Chopra inherited the suit property from his sister-in-law Mrs. Har Kaur Chopra and that Mrs. Har Kaur Chopra had executed a Will dated 18<sup>th</sup> January 1985. A copy of the said Will was also enclosed with the written statement as Annexure A/3.

8. At the hearing on 22<sup>nd</sup> January 2007, the Court noticed that none appeared for Defendants 2, 7 and 9 despite service and they were accordingly proceeded *ex parte*. The Court directed that original of the Will of late Mr. S.L. Chopra should be filed by Defendant No. 1 so that it can be inspected by the Plaintiff. The Court noticed that the tenant of the first floor had vacated the tenanted portion and his counsel was asked to deposit the keys before the Joint Registrar.

9. On 1<sup>st</sup> March 2007, the Court dealt with the application, IA No. 1683 of 2007 under Order VI Rule 17 CPC, filed by the Plaintiff by which he sought to withdraw certain admissions made in the plaint and reopen the question of succession to the suit property from late Mrs. Har Kaur Chopra to late Mr. S.L. Chopra as well as the mutation in the name of Mr. S.L. Chopra. The Plaintiff has also challenged the Will dated 18<sup>th</sup> January 1984 purportedly executed by Mrs. Har Kaur Chopra in favour of late Mr. S.L. Chopra pursuant to which mutation was carried out in his favour and the Will dated 9<sup>th</sup> February 2006 of late Mr. S.L. Chopra. By order dated 1<sup>st</sup> March 2007, the Court dismissed the said application for amendment on the ground that the Plaintiff had not claimed any right in the suit property for 18 years since the death of Mrs. Har Kaur Chopra and that this amounted to acquiescence and acceptance by the Plaintiff that late Mr. Sham Lal Chopra “was entitled to sole succession to the estate of Mrs. Har Kaur Chopra”. The keys of the first floor were released to Defendant No. 1 and he was permitted to let out the first floor without prejudice to the rights of the Plaintiff to claim 25% share in the suit property. The Court suggested to the Plaintiff that the ground

floor of the suit property can be let out on rent and some part of the rental can be marked to the Plaintiff. In any event the Plaintiff was staying in a different property.

10. At the hearing on 23<sup>rd</sup> April 2007, the Plaintiff has conveyed his acceptance and willingness to vacate the ground floor of the suit property for letting out the entire suit property with apportionment of the rent to different parties without prejudice to the rights and contentions of the parties. On that date, the earlier *ex parte* proceedings against Defendant Nos. 7 to 9 was recalled and they were permitted to file their respective written statements.

11. On 7<sup>th</sup> May 2007, IA No. 5225 of 2007 filed under Order VII Rule 11 CPC by Defendant No. 1 was rejected by the Court. In doing so, the Court noticed as under:

“The Plaintiff claims entitlement by succession. Defendant No. 1 seeks to exclude the Plaintiff alleging that a Will was executed by late Group Captain Sham Lal Chopra in his favour making him the exclusive owner of the property but whether the Will is valid and genuine is matter which will be examined in the suit. The plaint cannot be thrown out at the threshold.”

12. At the hearing on 15<sup>th</sup> May 2007, the Court recorded the mutually agreed arrangement between the parties, in terms of which different portions of the suit property were given on rent and the rent was to be shared between the parties.

13. In the meanwhile, the Plaintiff filed FAO (OS) No. 92 of 2007 against the order dated 1<sup>st</sup> March 2007 passed by the learned Single Judge rejecting the Plaintiff's application under Order VI Rule 17 CPC. By its order dated 23<sup>rd</sup> March 2007, the Division Bench ('DB') dismissed the appeal for the following reasons:

“We have read the pleadings filed by the parties very carefully and also the statements made in the application seeking amendment. It is clearly established from the averments made in the plaint that at no stage the Appellant contested the inheritance of the property by Group Captain Sham Lal Chopra and the Appellant has accepted him as the owner of the property. In fact he has categorically stated in paragraph 4 that the aforesaid Group Captain Sham Lal Chopra inherited the property from his elder brother Wg. Cmr. Maharaj Kishan Chopra. The aforesaid inheritance of the property by Group Captain Sham Lal Chopra took place sometime in 1988 and consequent upon the inheritance, mutation was also done in favour of Group Captain Sham Lal Chopra on the basis of the Will which was executed by Mrs. Har Kaur Chopra. The contention that the Appellant has come to know about the aforesaid Will only upon going through some of the documents lying in the house at the time of death of Shri S.L. Chopra cannot be accepted and is contrary to the averments made in the plaint. It is also apparent that the plea that is being taken in an afterthought and if the same is allowed, the same will amount to allowing the Appellant to take away admissions in the plaint. In the plaint there is no dispute that the estate left behind by late Mr. Sham Lal Chopra included B-354, Defence Colony, New Delhi. Inheritance of this property by Mr. Sham Lal Chopra, 18 years back is not questioned and challenged in a suit relating to partition

of estate of late Mr. Sham Lal Chopra. There is also delay of about 18 years during which period the Appellant accepted the mutation done in favour of Group Captain Sham Lal Chopra and, therefore, it will not be appropriate to interfere with the findings recorded by the learned Single Judge.”

14. Aggrieved by the aforementioned order, the Plaintiff filed SLP (Civil) No. 13636 of 2007 which was dismissed with observations by the Supreme Court by the following order dated 29<sup>th</sup> October 2007:

“Having heard the learned counsel for the parties, we are of the opinion that in the facts and circumstances of this case, the Plaintiff-Petitioner shall not be prejudiced in any way, even if his application for amendment of the plaint is rejected although both the learned Single Judge as also the Division Bench of the High Court proceeded wrongly on the premise that non-questioning the inheritance of property by Mr. S.L. Chopra had conferred a title on him, no title can be conferred by admission; an inheritance of property is governed by the provisions of the Hindu Succession Act, but the question as to whether the Respondents have obtained a title in the property by reason of execution of Wills or otherwise is required to be gone into in terms of the provisions of the Hindu Succession Act coupled with the question of proof of the genuineness of the Wills in terms of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. Mr. Nayar, learned counsel for the Respondents submits that the learned Single Judge has fixed the matter for trial on day after tomorrow and in view of the fact that the Respondents claim their exclusive title in the property by reason of the Wills executed by Mrs. Har Kaur Chopra and

Mr. S.L. Chopra, they have been directed to lead their evidence first.

The special leave petition is dismissed with the aforementioned observations.”

15. On 25<sup>th</sup> July 2007 the Court framed the following issues:

“1. Whether late Group Captain S.L. Chopra executed a legal and valid Will dated 9<sup>th</sup> February 2006? OP Defts 1 and 3 to 6

2. If Issue No. 1 is answered against Defendant Nos. 1 and 3 to 6, to what share are the parties entitled to in the immovable property? OP Parties

3. Relief.”

16. As regards the movable properties, the Court noticed by the same order that, even in terms of the Will, they had to be divided equally between the parties. Therefore, the parties were asked to file affidavits setting out the movable properties. By an order 19<sup>th</sup> November 2007, the Court directed the Plaintiff to summon the records from the office of Land & Development Office (‘L&DO’) in regard to the suit property. On behalf of the Defendants, Mr. Arun Chopra was examined as DW-1.

17. By its order dated 31<sup>st</sup> October 2008, the Court appointed a Local Commissioner (‘LC’) to evaluate the movable assets including shares

and securities and create four bundles/units for division among the Plaintiff and the Defendants.

18. By an application, IA No. 15257 of 2008 under Order VI Rule 17 CPC, the Plaintiff sought to amend the plaint and bring on record the shares to which the Plaintiff and the Defendants would be entitled to in the suit property in terms of the Hindu Succession Act, 1956 ('HSA'). By an order dated 22<sup>nd</sup> January 2009, the Court dismissed the application in view of the dismissal of the earlier application and the observations made by the Supreme Court. The Court clarified that if the Court came to the conclusion that "the Will executed in favour of the Defendants or the property being conveyed to the Defendants as per the Will was not lawful, the shares of different legal heirs will be in accordance with law with applicable laws and Hindu Succession Act."

19. Aggrieved by the said order dated 22<sup>nd</sup> January 2009, the Plaintiff filed FAO (OS) No. 94 of 2009 which was dismissed as withdrawn by the DB on 27<sup>th</sup> March 2009 clarifying that the above order of the learned Single Judge should not be construed as nullifying the order of the Supreme Court and that "the effect of the order of the Supreme Court can be argued by the Appellant at which aspect naturally shall be considered at the appropriate stage."

20. During the pendency of the suit, the Plaintiff expired on 11<sup>th</sup> October 2010. His legal representatives ('LRs') were brought on record by order dated 10<sup>th</sup> January 2011.

21. PW-1, Smt. Santosh Chopra, wife of the deceased Plaintiff, filed her affidavit of evidence (Ex.PW1/A) and was cross-examined by learned counsel for the Defendants on 16<sup>th</sup> and 17<sup>th</sup> August 2011. Thereafter, the Plaintiff's evidence was closed. On behalf of the Defendants, the affidavits of Mr. Arun Chopra, Mrs. Sudesh Prabhakar and Mrs. Uma Dhawan were filed and they were cross-examined. The first affidavit dated 23<sup>rd</sup> October 2007 of Mrs. Uma Dhawan, DW-3, was exhibited as DW-3/1A. She was extensively cross-examined on the said affidavit.

22. On 15<sup>th</sup> February 2008 the Court disposed of IA No. 710 of 2008 filed by the Plaintiff seeking certain issues to be framed in light of the subsequent facts that had transpired. The issues sought for were related to the validity of the Will purportedly executed by Mrs. Har Kaur Chopra. However, the Court recorded the submission of learned counsel for Defendants 1, 3 to 6 and that "the issues, as framed, entirely cover the disputes in the suit. No further orders are necessary particularly in respect of the alleged Will executed by Smt. Har Kaur Chopra."

23. Mrs. Uma Dhawan filed an additional affidavit on 23<sup>rd</sup> September 2011 and was further cross-examined on 1<sup>st</sup> November 2011. The recording of evidence was finally closed on 1<sup>st</sup> November 2011.

24. Defendant No. 4 expired and by an order dated 28<sup>th</sup> February 2012 his LRs were brought on record.

25. This Court has heard Mr. Y.P. Narula, learned Senior counsel for the Plaintiff and Mr. Harish Malhotra, learned Senior counsel for the Defendants.

26. There were extensive arguments on the question of interpretation of the order of the Supreme Court dated 29<sup>th</sup> October 2007. The case of the Plaintiff is that the aforementioned order of the Supreme Court has left open the question of the genuineness and validity of both the Wills, i.e., of Mrs. Har Kaur Chopra as well as Mr. S.L. Chopra. It was pointed out that when the Plaintiff sought to amend the issue specific to the above question a statement was made on behalf of the Defendants 1, 3 to 6, as recorded by the Court in its order dated 15<sup>th</sup> February 2008 that the issues, as framed, entirely covered all the issues that arose in the suit. Therefore, it is contended on behalf of the Plaintiff that validity of both the Wills are to be examined by the Court. On the other hand, the case of the Defendants is that the admissions by the Plaintiff to amend the plaint have consistently been rejected by the Court and that the above order of the Supreme Court should not be taken to mean the reopening of the question of the validity of the Will executed by Mrs. Har Kaur Chopra and that at best only the validity of the Will of late Mr. S.L. Chopra could be questioned.

27. As earlier noted, the Plaintiff sought to amend the plaint to challenge the two wills and the mutation in favour of Mr.S.L. Chopra by filing IA No. 1683 of 2007. By the said amendment, the Plaintiff sought to add the averments to the fact that late Mr. S.L. Chopra had

fraudulently got the property mutated in his and his wife's favour; that late Mr. M.K. Chopra purchased the suit property through Association of Claims, part of which belonged to the father of the parties, late Mr. Charan Dass Chopra; that late Mr. M.K. Chopra had no right to bequeath the suit property by executing a Will in favour of his wife Mrs. Har Kaur Chopra; that the Will of late Mrs. Har Kaur Chopra was itself fabricated; and that the Will of late Mr. S.L. Chopra was itself invalid.

28. The said application was dismissed by the learned Single Judge on 1<sup>st</sup> March 2007 and this order was affirmed by the DB by its order dated 23<sup>rd</sup> March 2007 in FAO (OS) No. 92 of 2007. The order of the Supreme Court in the Special Leave Petition (Civil) No. 13636 of 2007 against the aforementioned order of the DB was not a simpliciter order of *in limine* dismissal. It was passed after hearing the learned counsel for the parties. The question as to the effect of the above order requires to be addressed.

29. In *Kunhayammed v. State of Kerala* (2000) 6 SCC 359 the Supreme Court was considering the effect of an order passed by it dismissing an SLP and whether such an order would preclude the subsequent filing of a petition seeking review of the very order of the High Court which was challenged before the Supreme Court. In that context, the Supreme Court observed in para 40, as under:

“Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the

order still the order remains the one rejecting prayer for the grant of leave to appeal. The Petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.”

30. Relevant to the present case, the Supreme Court summed up its conclusions as regards an order passed by it dismissing an appeal which was against a speaking order:

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order

of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.”

31. In a subsequent judgment in ***Gangadhara Palo v. Revenue Divisional Officer (2011) 4 SCC 602*** the Supreme Court, on the question of merger, explained that “hence, if some reasons, however, meagre, are given by this Court while dismissing the special leave petition, then by the ‘doctrine of merger,’ the judgment of the High Court merges into the judgment of this Court and after merger there is no judgment of the High Court.”

32. In light of the above decisions, the order dated 29<sup>th</sup> October 2007 passed by the Supreme Court cannot be said to be an order dismissing the SLP simpliciter but with reasons. The orders of the High Court i.e., both of the learned Single Judge dated 1<sup>st</sup> March 2007 and of the DB dated 23<sup>rd</sup> March 2007 must be seen as having merged in the aforementioned order of the Supreme Court dated 29<sup>th</sup> October 2007. The said order of the Supreme Court, when examined in light of its constituent parts, should be understood as having held as under:

- (a) The learned Single Judge as well as the DB of the High Court “proceeded wrongly” on the basis that there was a failure by the Plaintiff to question the inheritance of the suit property by late Mr. S.L. Chopra;
- (b) The mere admission by the Plaintiff would not confer title to the suit property on late Mr. S.L. Chopra;

(c) The inheritance of property was governed by the HSA;

(d) The question as to whether the Defendants had title to the suit property under the two Wills, i.e., of late Mrs. Har Kaur Chopra and late Mr. S.L. Chopra, would have to be examined;

(e) The genuineness of the two Wills would have to be examined with reference to Sections 63 of the Indian Succession Act ('ISA') and Section 68 of the Indian Evidence Act ('IEA').

33. When the Plaintiff sought to add the issues which include a challenge to the Wills of late Mr. S.L. Chopra and Mrs. Har Kaur Chopra, the Defendants conceded the issues already framed covered all the disputes between the parties. This was recorded in the order dated 15<sup>th</sup> February 2008 by the Court. Having conceded the above position, the Defendants now cannot be heard to say that the suit is confined to examining the validity of the Will of late Mr. S.L. Chopra. The aforementioned order dated 29<sup>th</sup> October 2007 of the Supreme Court read with the order dated 15<sup>th</sup> February 2008 of this Court make it clear that both the parties clearly understood the question of genuineness of the Wills of late Mrs. Har Kaur Chopra as well as that of Mr. S.L. Chopra had to be examined by the Court in the suit.

34. In *Nedunuri Kameswaramma v. Sampati Subba Rao AIR 1963 SC 884* in similar circumstances, the Supreme Court observed as under:

“5..... No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but

since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings.”

35. The Defendants contend that it is not open to the Plaintiff to question the conveyance deed executed in favour of late Mr. S.L. Chopra on the basis of the Will of Mrs. Har Kaur Chopra once the application for amendment of the plaint to withdraw the admissions in the plaint in that regard was negatived by the Court. It is submitted that even if the Supreme Court's order dated 29<sup>th</sup> October 2007 permits such challenge, the Plaintiff would still have to abide by the law of limitation for challenging the conveyance deed executed on 3<sup>rd</sup> February 1997 on the ground of fraud. This was three years as per Article 59 of the Schedule to the Limitation Act, 1963 ('LA'). Reliance was also placed on the decision of the Supreme Court in ***Md. Noorul Huda v. Bibi Raifunnisa (1996) 7 SCC 767.***

36. Mr. Narula, learned Senior counsel for the Plaintiff, on the other hand, pointed out that where the document is void *ab initio*, a decree for setting aside would not be necessary as it was *non est* in the eye of law. Reliance was placed on the decision in ***Prem Singh v. Birbal AIR 2006 SC 3608.*** Further, it is submitted that once the fraud is proved, the Court ought to take cognizance thereof even if there are no pleadings in this regard. Reliance was placed on the decision in ***Lachhman Das v.***

*Jagat Ram (2007) 10 SCC 448, A.V. Papayya Sastry v. Government of Andhra Pradesh (2007) 4 SCC 221, S.P. Chengalvaraya Naidu v. V. Jagannath (1994) 1 SCC 1, Lazarus Estate Limited v. Beasley (1956) 1 ALL ER 341.* It is contended that if from the records of the L&DO it was established that late Mr. S.L. Chopra fraudulently got the suit property mutated in his and his wife's name, this Court would not be precluded from examining the validity of the conveyance deed.

37. The order dated 29<sup>th</sup> October 2007 of the Supreme Court clarified that there can be no conferment of title by way of admissions. In other words, merely because in paras 1 to 4 of the plaint it is stated that late Mr. S.L. Chopra got the conveyance deed in his favour, it cannot be understood to be an admission by the Plaintiff as to the validity of the conveyance deed. The Plaintiff has stated that he is not aware as to how the conveyance deed got executed in favour of late Mr. S.L. Chopra. Once the Defendants came forward with the plea that this happened by virtue of the Will of late Mrs. Har Kaur Chopra, the Plaintiff at the first instance sought to amend the plaint. Therefore, the order of the Supreme Court must be understood in light of the above steps taken by the Plaintiff. The order of the Supreme Court has expressly permitted the Plaintiff to question the validity of the claim of the Defendants regarding inheritance by late Mr. S.L. Chopra of the suit property. Further, if the Plaintiff is able to show that the conveyance deed was obtained by fraud, then the question of any limitation to challenge the conveyance deed on that ground would begin to run only from the date of discovery of such fraud.

38. The exact sequence of events by which the mutation in respect of the suit property took place in favour of Mr. S.L. Chopra emerges from the records of the L&DO, which have been perused by the Court. These records reveal that after the death of late Mr. M.K. Chopra, his wife Mrs. Har Kaur Chopra submitted an affidavit dated 29<sup>th</sup> April 1984 referring to the fact that she was the only legal heir and that late Mr. M.K. Chopra had left behind a registered Will bequeathing the suit property in her favour. In the records of the L&DO is a letter of the Air Headquarters dated 10<sup>th</sup> April 1984 confirming that late Mr. M.K. Chopra had left a Will bequeathing all his movable and immovable properties to late Mrs. Har Kaur Chopra. On the basis of the said affidavit and Will, which in Delhi was not required to be probated, the property stood mutated in favour of Mrs. Har Kaur Chopra as lessee.

39. It requires to be noted that there is no challenge to the Will of late Mr. M.K. Chopra or to the mutation in favour of Mrs. Har Kaur Chopra who became the lessee of the suit property. She died issueless and left behind a registered Will bequeathing the suit property in favour of Mr. S.L. Chopra and his wife, who then applied to the L&DO on 21<sup>st</sup> July 1988 for mutation of the suit property in their names by stating as under:

“Dear Sir,

This is to inform you that the above property stands in the name of Mrs. Har Kaur Chopra w/o late Wing Commander M.K. Chopra. Your office letter No. L&DO/P.S.II/2217 dated 30<sup>th</sup> July 1984 in this connection. Unfortunately, she

died on 7<sup>th</sup> June 1988. A death certificate issued by Municipal Corporation of Delhi is enclosed for your reference.

2. (Late) Mrs. Har Kaur Chopra has left us behind as the only legal heir as per the registered Will executed by her. A true copy of the Will duly certified by the Sub-Registrar, Asaf Ali Road, Delhi is enclosed.

3. The prescribed affidavit duly attested by Ist Class Magistrate is enclosed as required.

4. Since there is no other legal heir excepting us, it is requested that our names, i.e., Shri Sham Lal Chopra & Smt. Kamla Chopra, may kindly be substituted in the books of your office.

5. The lease deed is registered at Sl. No. 7747 in Additional Book No. 1, Vol. No. 2775 on pages 169 to 171 on 30<sup>th</sup> November 1971.”

40. The statement that there was no other legal heir of Mrs. Har Kaur Chopra was repeated in a joint affidavit dated 28<sup>th</sup> June 1988 of Mr. S.L. Chopra and Mrs. Kamla Chopra. In two subsequent affidavits dated 19<sup>th</sup> January 1989, which were enclosed with the letter dated 20<sup>th</sup> January 1989 addressed by late Mr. S.L. Chopra to L&DO, both he and his wife sought substitution of leasehold rights in respect of the suit property and stated that they were the only legal heirs.

41. From the file notings by officials of the L&DO, it appears that on 21<sup>st</sup> June 1989 one of the officers of the L&DO noted that “party met  
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me today. He has been asked to furnish no objection affidavit from all his brothers and sisters in case the lessee has died issueless and get the Will mutated by competent court of law.” In explanation Mr. Sham Lal Chopra and Mrs. Kamla Chopra wrote a letter to L&DO on 14<sup>th</sup> May 1990 stating as under:

“Your office has directed that we should furnish ‘no objection’ affidavits from brothers and sisters of Late Wing Commander M.K. Chopra as the lease has died issueless. This would have been applicable under Section 15 (1) (b) of Hindu Succession Act, 1956, if Smt. Har Kaur Chopra had died intestate. Since she has not died intestate and has left behind a registered Will, this is not applicable to our case and your demand is against law and facts and it is not binding or operative for us. Further, under Section 14 of the said Act, any property possessed by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner thereof.

Regarding your second alternative that the Will be got probated by a competent court, it is stated that as per government policy, this is not required. Besides, it may result in litigation, unnecessary expenditure, complications and unpleasantness amongst kith and kin which we hope your Department would not like to encourage.

It may be added that we shall be responsible if any dispute arises in future in connection with the ownership of the said property. For this we are prepared to execute an Indemnity Bond and give an undertaking therein to this effect.

Keeping in view the elaborate facts and legal sections quoted by us we hope you will be considerate enough to reconsider our case and issue necessary orders for mutation in our favour and you will not force us to take refuge in the court of law.”

42. The stand taken by late Mr. S.L. Chopra and Mrs. Kamla Chopra was legally correct since the question was not regarding the heirs of late Mr. M.K. Chopra since he was no longer the lessee of the suit property. The provisions of the HSA would have applied if he or Mrs. Har Kaur Chopra would have died intestate. Clearly late Mr. M.K. Chopra did not die intestate. He left a Will which was not challenged. In fact, that Will was accepted and acted upon by the L&DO. The suit property already stood mutated in favour of his wife Mrs. Har Kaur Chopra as lessee since 1984. That mutation was not challenged during her life time. Under Section 14 of the HSA, any property possessed by a female Hindu whether acquired before or after the commencement of the HSA shall be held by her as full owner thereof. Therefore, prior to her death, she was the lessee of the suit property in her own right and could deal with it in any manner she wished. She did not die intestate. She left a Will bequeathing her right in the suit property in favour of Mr. S.L. Chopra and his wife. Therefore, they were right in pointing out that the HSA would not apply.

43. The matter was examined by the L&DO. On 1<sup>st</sup> August 1990 the Settlement Officer, Mr. J.K. Trikha, noted the above contention and stated as under:

“The procedure laid down by this office requires applicants to file affidavits of legal heirs in the prescribed proforma and this cannot be termed as No Objection Affidavits. The party may be sent a proforma of the affidavits which are required to be submitted by all the legal heirs of late lessee otherwise they may bring a probate on the Will.”

44. However, the subsequent noting of another legal officer of the L&DO on 20<sup>th</sup> March 1991 accepted that the suit property had devolved on Mrs. Har Kaur Chopra by virtue of Will of her late husband. It noted that Mr. S.L. Chopra and his wife had in their affidavit affirmed that “there are no other legal heirs” of Mrs. Har Kaur Chopra. On that basis the following note was prepared:

“This case was discussed with A.L.A. Since the property No. D-354, Defence Colony had devolved on Smt. Har Kaur Chopra on the basis of Will of her late husband. Therefore, on her death it will devolve on the legal heirs of her late husband since she and her husband expired issueless. Since the beneficiary of her Will, Shri Shyam Lal Chopra and Smt. Kamla Chopra (brother and sister-in-law respectively of the husband of deceased lessee) in their respective affidavits have already affirmed that there are no other legal heirs. The property can be substituted in their names without further insisting of affidavits of the brothers and sisters of deceased lessee Smt. Har Kaur.”

45. The above noting acknowledges that in terms of the Will of Mrs. Har Kaur Chopra the only ‘beneficiaries’ were Mr. S.L. Chopra and his wife and therefore in that sense they were her only heirs. Since Mrs. Har Kaur Chopra did not die intestate, the question of determining her

Class I or Class II legal heirs in terms of the HSA did not arise. Her Will was not required to be probated under Section 213 of the ISA as explained in *Rajan Suri v. State of Delhi AIR 2006 Delhi 148*. Therefore the above opinion of the legal officer of the L&DO, on the basis of which the suit property stood mutated in favour of Mr. S.L. Chopra and his wife, was a legally plausible one to take.

46. It cannot be said that late Mr. S.L. Chopra and Smt. Kamla Chopra, by not disclosing the other heirs of late Mr. M.K. Chopra played a fraud on the L&DO. To repeat, the property already stood mutated in favour of Mrs. Har Kaur Chopra as lessee, on the basis of the Will, in her favour, of late Mr. M.K. Chopra. There was never a challenge either to the Will of late Mr. M.K. Chopra or to the mutation on that basis in favour of Mrs. Har Kaur Chopra. Mrs. Har Kaur Chopra was free to deal with her right in the suit property as she pleased. Since she did not die intestate, but left a Will, the question of getting no objections from the other legal heirs of late Mr. M.K. Chopra did not arise. In the affidavit sworn to on 19<sup>th</sup> January 1989, the statement made by Mr. S.L. Chopra and his wife was about their being the only heirs of the deceased Mrs. Har Kaur Chopra in terms of her Will. The Will was not required to be probated. Since the Will was registered there was indeed a presumption of its genuineness for the purposes of mutation. Therefore, even if the Will of Mrs. Har Kaur Chopra has not been proved by the Defendants in accordance with law, it cannot be said that the conveyance deed on the basis of the said Will was obtained by fraud. Consequently, the challenge to the said conveyance deed by the

Plaintiff, being beyond three years after its execution, is clearly barred by limitation in terms of Article 59 of the Schedule to the LA. For the above reasons, the Court is of the view that the challenge by the Plaintiff to the conveyance deed in respect of the suit property favour of late Mr. S.L. Chopra should fail.

47. The only question that now remains concerns the validity of the Will of late Mr. S.L. Chopra. The legal requirements of proving a Will has been explained by the Supreme Court in the leading decision in ***H. Venkatachala Iyengar v. B.N. Thimmajamma*** AIR 1959 SC 443 as under:

“18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in

a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the Will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the, prudent mind in such matters."

48. In *Gopal Swaroop v. Krishnan Murari Mangal* it was explained that in order to establish the genuineness of a Will in terms of Section 63 of IEA, the following aspects have to be proved:

“(1) That the Testator has signed or affixed his mark to the Will or the Will has been signed by some other person in the presence and under the direction of the Testator.

(2) The signature or mark of the Testator or the signature of the persons signing for him is so placed has to appear that the same was intended thereby to give effect to the writing as a Will.

(3) That the Will has been attested by two or more witnesses each one of whom has signed or affixed his mark to the Will or has been seen by some other person signing the Will in the presence and by the direction of the Testator or has received from Testator a personal acknowledgement of the signature or mark or the signature of each other person.

(4) That each of the witnesses has signed the Will in the presence of the Testator.”

49. The attesting witness produced in the case is Mrs. Uma Dhawan. One criticism of this witness is that she does not say that the testator was in a sound disposing state of mind and that she does not say that she was called by the testator to attest the Will. Mrs. Uma Dhawan has been cross-examined extensively on this aspect. There is nothing in her cross-examination which indicates that she was not called by the testator to attest the Will. In her cross-examination on 23<sup>rd</sup> January 2008 she stated that: “I met Mr. S.L. Chopra on 9<sup>th</sup> February 2006 in the morning when I was leaving Delhi. It was perhaps at 11.30 am. I went to his house to meet him.” She further states that “when I visited the house of Shri S.L. Chopra on 9<sup>th</sup> February 2006 none else was present there. I stayed there for 20-25 minutes.” She has denied the suggestion that “Shri S.L. Chopra did not execute any Will.” She

denied the suggestion that she did not put her signature on the Will of Shri S.L. Chopra or did not visit Delhi in February 2006.

50. The mere fact that, in her additional affidavit, Mrs. Uma Dhawan states that the Will was not notarized in her presence does not mean that the Will was not signed by the testator. There is no need for the attesting witness to have seen the notarizing of the Will, which could well have happened after she signed the Will as an attesting witness. The Will was in any event not required to be notarized. That Mrs. Uma Dhawan did not know who drafted the Will, or where it was typed or who typed make no difference to its genuineness or validity. She has negated the suggestion that Mrs. S.L. Chopra did not execute any Will.

51. In the considered view of the Court, Mrs. Uma Dhawan is a reliable and independent witness and has proved the essential elements of the Will of late Mr. S.L. Chopra. Therefore, the non-production of the notary or Mr. T.S. Sood as witnesses does not affect the genuineness or validity of the Will.

52. According to the Plaintiff, soon after the death of late Mr. S.L. Chopra, the Plaintiff and his wife, along with Defendant No. 1, went to locate a locker in the Central Bank of India, and no mention was made by Defendant No. 1 about the Will at that time. It is, therefore, sought to be suggested that the Will was fabricated thereafter.

53. There may have been good reasons why Defendant No.1 did not speak about the Will during the visit to the Bank. It is not for the Court to surmise what those reasons might be. It cannot lead to the inference that the Will did not exist at that time.

54. Having examined the evidence, the Court is satisfied that the Defendants have been able to prove the genuineness and validity of the Will dated 9<sup>th</sup> February 2006 of late Mr. S.L. Chopra as required by law. Issue No.1 is accordingly answered in favour of the Defendants and against the Plaintiff. Consequently, Issue No.2 does arise.

55. The suit is dismissed with costs of Rs. 20,000 which will be paid by the Plaintiff to the Defendants. The interim orders stand vacated and the pending applications are disposed of.

**JANUARY 8, 2014**  
*Rk*

**S. MURALIDHAR, J.**