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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) No. 819/2006

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27th August, 2015

SMT. ADITI UPADHYAY

..... Plaintiff

Through: Mr.V.K.Garg, Sr. Adv. with Ms.
Noopur Dubey, Advocate.

versus

SHRI LALIT KUMAR & ORS

..... Defendants

Through: Mr. Raman Kapur, Sr. Adv. with Mr.
Dhiraj Sachdeva, Mr. R.P.Singh and
Mr. Aviral Tiwari and Mr. Varun,
Adv. for D-1 to 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit being decided by the present judgment is a suit for declaration, permanent injunction and partition filed by Smt. Aditi Upadhyay against her two brothers Mr. Lalit Kumar and Mr. Mahesh Kumar; defendants no.1 and 2, the sister Ms. Kamlesh Kumar Gola; defendant no.3 and defendant no.4/Smt. Vidyawati the mother of the plaintiff as also of the other parties. Defendant no.4 died during the

pendency of the present suit. As per the suit plaint, the plaintiff states that either it be declared that there was an oral family settlement dated 22.4.1999 by which plaintiff was made the owner of the property bearing no. R-298, IInd Floor, Greater Kailash-I, New Delhi or that there should be a decree of partition with respect to this Greater Kailash Property and another property bearing no.U-11, Green Park, New Delhi. The plaintiff claims that these two properties belonged to her father (and defendant nos.1 to 3) and since the father died intestate she succeeds to a share in these properties as the heir of her father Sh. O.P. Kumar.

2(i). The case of the plaintiff as per the plaint is that the entire Greater Kailash property was originally owned by her grandfather Sh. Hira Lal. As per the para 3 of the plaint, Sh. Hira Lal during his life time partitioned his Greater Kailash property among his four sons and the share of his one son Sh. O.P. Kumar, father of the plaintiff, was as per the request of Sh. O.P. Kumar instead of being given to Sh. O.P. Kumar was bequeathed to the two sons of Sh. O.P. Kumar i.e defendant nos. 1 and 2. This Will of the grandfather Sh. Hira Lal is dated 24.9.1986. The plaintiff therefore pleads that though this property was bequeathed by the grandfather to her brothers/defendant nos.1 and 2, yet, this property really belonged to the

father Sh.O.P. Kumar as bequeathing of this property by the grandfather to the defendants no. 1 and 2 was for the actual ownership of Sh. O.P. Kumar.

(ii) The further case of the plaintiff is that the father Sh. O.P. Kumar got an oral family settlement arrived at between the family members whereby the second floor of the property bearing no.R-298, IInd Floor, Greater Kailash-I, New Delhi was given to the plaintiff as an absolute owner and the other two sons of Sh. O.P. Kumar were given the property U-11, Green Park, New Delhi after giving life interest in the same to his wife Smt. Vidyawati; and who is also the mother of the plaintiff and defendant nos. 1 to 3.

(iii) The plaintiff further pleads that the fact that there was an oral family settlement is clear because a Relinquishment Deed dated 22.4.1999 was executed by defendant nos.1 and 2 in favour of the plaintiff recognizing the plaintiff to be an exclusive owner of the entire second floor of the property no. R-298, Greater Kailash-I, New Delhi. Plaintiff pleads that after the father Sh. O.P. Kumar died leaving behind the parties to the suit as his legal heirs, the defendants started questioning the oral family settlement dated 22.4.1999 reflected by the Relinquishment Deed dated 22.4.1999 and asked the plaintiff to vacate the Greater Kailash property.

(iv) Plaintiff finally pleads that defendants did not agree to the *bona fide* request of the plaintiff that either she should be given the second floor of the Greater Kailash property or this Greater Kailash property and the Green Park property be partitioned among the legal heirs of Sh. O.P. Kumar i.e parties to the suit, and hence she has filed the suit.

3(i). The sister of the plaintiff i.e defendant no.3 has supported the case of the defendant nos. 1 and 2 and there is a common written statement filed by defendant nos. 2 and 3. Defendant nos. 1 and 4 have filed a common written statement.

(ii) The case of the defendant nos. 1 and 2, brothers of the plaintiff and the sons of Sh. O.P. Kumar (and in fact of all the defendants) is that there was never any oral family settlement dated 22.4.1999 as alleged by the plaintiff. It is stated that the Relinquishment Deed dated 22.4.1999 though bears the signatures of the defendant nos.1 and 2, but, the same was not registered and which is compulsory for transferring interest in an immovable property and which was for the reason that the plaintiff's husband had gone abroad, and only as an assurance the plaintiff was thus given a limited right to stay in the Greater Kailash property by virtue of the Relinquishment Deed dated 22.4.1999. It is stated that since the plaintiff had only a temporary

right of stay in the Greater Kailash property hence the Relinquishment Deed was not registered before the concerned Sub-Registrar. The defendants therefore plead that the plaintiff is not the exclusive owner of the second floor of the property bearing no R-298, Greater Kailash-I, New Delhi as claimed.

(iii) As per the further case of the defendants, father Sh. O.P. Kumar before he died on 9.8.2005, had executed his Will dated 12.11.2002 whereby the Green Park property was bequeathed by the father Sh. O.P. Kumar in favour of his two sons i.e defendant nos. 1 and 2 with life interest in favour of her mother/defendant no.4. Defendants therefore deny any right of the plaintiff claiming rights and seeking partitioning of the Greater Kailash property and the Green Park property.

4. In this suit, the following issues were framed on 24.7.2009:-

- “1. Whether the plaintiff has any right, title or interest in properties bearing no.R-298, Greater Kailash, Part-I, New Delhi and U-11, Green Park (Main), New Delhi OPP
2. Whether there was any oral settlement dated 22.4.1999 as alleged by the plaintiff? OPP
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the plaintiff is entitled to decree for partition as prayed for? OPP

5. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP
6. Relief.”

5. **Issues No. 1 to 3**

These issues are required to be dealt with together and therefore are being discussed together. As per these issues, it will be decided as to whether there was an oral family settlement dated 22.4.1999 as per the case of the plaintiff and plaintiff because of this oral family settlement became the owner of the second floor of the property bearing no R-298, Greater Kailash-I, New Delhi. In case there was arrived at an oral family settlement, then, plaintiff will have a legal right and a cause of action to file a suit seeking the reliefs claimed therein.

6. On behalf of the plaintiff, it is argued that though the family settlement was oral, the fact that there was an oral family settlement becomes clear because a Relinquishment Deed dated 22.4.1999 is admittedly executed by defendant nos. 1 and 2 in favour of the plaintiff. It is argued that this Relinquishment Deed was acted upon becomes clear from the fact that the plaintiff did the ‘Greh Pravesh’/‘House Warming Ceremony’ of this Greater Kailash Property. Though no date is given of Greh Pravesh, it is

said to have taken place quite soon after the oral family settlement dated 22.4.1999.

7. The issue before this Court is that was there any oral family settlement dated 22.4.1999 as is the case of the plaintiff. In my opinion, it cannot be held that there existed any oral family settlement dated 22.4.1999 and the reasons for so holding are as under:-

(i) In the Relinquishment Deed dated 22.4.1999 Ex.P1, there is no mention whatsoever that there took place an oral family settlement. There is absolutely no reference not only to an oral family settlement but in fact to any family settlement between the family members of Sh. O.P. Kumar. Therefore, it is only the plaintiff's self-serving case that in the Relinquishment Deed Ex.P1 the expression "oral family settlement" should be deemed to be included. Once in my opinion, there is nothing to indicate in the Relinquishment Deed Ex.P1, that there was an oral family settlement, in my opinion, the Relinquishment Deed cannot be read as to have been executed pursuant to an oral family settlement of the same date.

(ii) The Relinquishment Deed cannot also be taken to have been executed pursuant to an oral family settlement of the same date, inasmuch

as, if the object was to give ownership rights to the plaintiff of the Greater
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Kailash property then nothing prevented the parties from registering the Relinquishment Deed. Admittedly, the relinquishment deed to have legal effect must be registered as per Section 17(1)(b) of the Registration Act, 1908 and once relinquishment deed is not registered, no title will flow pursuant to the same in the Greater Kailash property. In fact, I accept the stand and the case of the defendants that the Relinquishment Deed Ex.P1 even was not registered as the object of executing the same was only as an assurance to allow plaintiff a temporary stay in the property as her husband had in the meanwhile gone to USA. I may also note that today the admitted position is that the plaintiff alongwith her son has shifted to USA to stay with her husband.

(iii) If there was an oral family settlement, the best way in which this oral family settlement would have been proved is by showing that the parties acted upon and pursuant to this oral settlement for making the plaintiff as the owner of the second floor of the Greater Kailash property. This acting upon and acting in furtherance of the family settlement would have been if the plaintiff would have at least applied for mutation before the Municipal Authorities for transferring the property in her name. No doubt mutation does not confer title, but asking for mutation of the property would

have been an act in furtherance to the claim of exclusive ownership of the second floor of the Greater Kailash property of the plaintiff. Concededly plaintiff has not applied for mutation and thus it is seen that the plaintiff cannot be said to have taken any step in furtherance of the alleged family settlement so as to show that in fact an oral family settlement was arrived at on 22.4.1999.

Another manner in which the family settlement could have been shown to have been acted upon was if the plaintiff had filed any income tax returns or got entered in public record or written to any public authority showing that the plaintiff had claimed exclusive ownership of the second floor of the Greater Kailash property, but admittedly, no document has been filed before this Court and no case laid out that plaintiff before any public authority pursuant to the alleged oral family settlement dated 22.4.1999 claimed ownership rights in the Greater Kailash property. This is therefore another reason to reject the claim of there having taken place any oral family settlement dated 22.4.1999 as claimed by the plaintiff.

Yet another reason for holding that there is no oral family settlement dated 22.4.1999 is because if the plaintiff had become owner of the second floor of the Greater Kailash property then plaintiff should have

atleast paid her share of the house tax of the Greater Kailash property, but once again and admittedly no document whatsoever has been filed by the plaintiff before this Court that she paid house tax either to the Municipal Authorities or to anyone who paid house tax for the plaintiff's share of the house tax payable for the second floor of the Greater Kailash property. If this was done, then this would have been proof of acting upon the family settlement, but, admittedly no proof in this regard has been filed before this Court and not even an oral deposition in this regard is made by the plaintiff.

(iv) Learned senior counsel for the defendants is also justified in arguing that there could not have been given the second floor of the Greater Kailash property to the plaintiff pursuant to the alleged oral family settlement because the oral family settlement itself does not speak of the second floor of the Greater Kailash property being given in ownership rights to the plaintiff and the Relinquishment Deed Ex.P1 only talks of giving of 1/4th undivided share of defendant nos. 1 and 2 of the Greater Kailash property to the plaintiff. For this reason also therefore the plaintiff cannot lay a claim to the second floor of the Greater Kailash property, which floor was not of the defendant nos. 1 and 2 themselves because the Greater Kailash property was an undivided property of the brothers of Sh. O.P. Kumar (sons

of Sh. Hira Lal) and the defendant nos.1 and 2. It has emerged, the indubitable position on record that the Greater Kailash property was of the father of Sh. O.P. Kumar; Sh. Hira Lal i.e grandfather of the plaintiff and defendant nos. 1 to 3; and this property of Sh. Hira Lal vested in three other sons of Sh. Hira Lal and the defendant nos. 1 and 2 by virtue of a Will Ex.D-1 dated 24.9.1986 executed by Sh. Hira Lal. This Will Ex.D-1 is an admitted document and this Will shows that Sh. Hira Lal divided the Greater Kailash property to his three sons Sh. Moti Lal, Sh. Mohan Lal and Sh. Hari Ram in 1/4th share each and the 4th part he bequeathed to his two grandsons (i.e sons of Sh. O.P. Kumar) the defendant nos. 1 and 2 in the present case. Once the property is a joint property, and there is no proof filed before this Court that the property was partitioned before 22.4.1999 between the sons of Sh. Hira Lal and the defendant nos.1 and 2 for the defendants no.1 and 2 to have got exclusive ownership rights of the second floor of the Greater Kailash property for being given to the plaintiff, this is another reason that if the defendant nos. 1 and 2 themselves were not the owners of the specific portion of the Greater Kailash property viz the second floor of the Greater Kailash property, surely they could not have therefore given ownership rights of specific portion i.e the second floor of the Greater Kailash property to the plaintiff. Though learned senior counsel for the defendants sought to

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orally argue that a partition suit is pending between the sons of Sh. Hira Lal in this Court, but once there are no documents on record, I cannot look into the same, but in any case this aspect that the Greater Kailash property was a joint property which was undivided (not partitioned) is clear from the fact that both the documents being the Will of Sh. Hira Lal Ex.D-1 dated 24.9.1986 and the Relinquishment Deed Ex.P1 dated 22.4.1999, only talk of undivided shares in the Greater Kailash property and not the specific portion being the second floor of the Greater Kailash property.

(v) The contention of the learned senior counsel for the plaintiff that since plaintiff has done 'Greh Pravesh' in the Greater Kailash property, and which has been deposed to on behalf of the plaintiff as PW1 and Ms. Vrushali Desai as PW2, and that since 'Greh Pravesh' can only be done by an owner, it should hence be held that plaintiff has proved acting upon of the family settlement. This is argued to be all the more so because it is argued that there is no specific cross-examination of their witnesses on behalf of the defendants that there was no 'Greh Pravesh' of the plaintiff in the Greater Kailash property.

The contention of the plaintiff in this regard is misconceived because 'Greh Pravesh' is not necessarily only done by an owner. 'Greh

Pravesh' is a house warming ceremony which is done when a person enters in a new premises. Plaintiff was given this premises inasmuch as her husband had gone abroad and the defendant nos. 1 and 2 wanted to give comfort to the sister/plaintiff, and hence even assuming 'Greh Pravesh' is proved to have taken place by the plaintiff in the second floor of the Greater Kailash property, in my opinion, this would not give ownership rights to the plaintiff with respect to the Greater Kailash property on the ground that it is shown that there is an acting upon an oral family settlement, and which oral family settlement has not in any manner otherwise been proved by the plaintiff by acting upon before public authorities. Of course, I may note that even on a point of fact the contention of the learned senior counsel for the plaintiff is not totally correct that defendants have not cross-examined PW1 and PW2 on the aspect of 'Greh Pravesh' inasmuch as the defendants have put up a specific case to the witnesses that the Relinquishment Deed dated 22.4.1999 was only executed to give temporary stay to the plaintiff/sister and this suggestion in my opinion is sufficient for disputing the ownership rights of the plaintiff in the Greater Kailash property sought to be got proved by an action of 'Greh Pravesh'.

(vi) Yet another reason for holding that there never took place any oral family settlement by which plaintiff can be said to have been given ownership rights of the Greater Kailash property is on account of the fact that the defendants have proved the Will dated 12.11.2002 executed by the father Sh. O.P. Kumar and in this Will Ex.DW2/1, father Sh. O.P. Kumar has talked himself only to be the owner of the Green Park property and which has been bequeathed to the two sons and Sh. O.P. Kumar's widow for life. There is no mention in this Will that there was an oral family settlement whereby the Greater Kailash property has been already given to plaintiff and hence she is not getting anything under the Will dated 12.11.2002. If plaintiff would have got the second floor of the Greater Kailash property by virtue of an alleged oral family settlement then surely in this Will dated 12.11.2002 the father Sh. O.P. Kumar would have given this as the reason for not giving any property to the plaintiff. On the contrary the Will gives the reason for ousting the two daughters including the plaintiff that the father Sh. O.P. Kumar had spent sufficiently on the marriages of the daughters and hence they are not being given any share in the Green Park property. Also, the fact that the father Sh. O.P. Kumar does not mention anything as regards the Greater Kailash property in his Will, and which shows that the Greater Kailash property was of the defendant nos.1 and 2

and the father Sh. O.P. Kumar was never the owner of the same as alleged by the plaintiff.

8. In view of the above, issue nos.1 to 3 are decided against the plaintiff and in favour of the defendants.

9. **Issue Nos. 4 and 5**

(i) By these issues it will be discussed and decided as to whether the plaintiff has any right to seek partition not only for the Greater Kailash property but also for the Green Park property. Plaintiff would have got co-ownership rights of the Green Park property if the father Sh. O.P. Kumar had died intestate.

(ii) So far as the Greater Kailash property is concerned, the same was never of the father Sh. O.P. Kumar as this Greater Kailash property was of the grandfather Sh. Hira Lal and who by his Will dated 24.9.1986 had bequeathed the same to defendant nos.1 and 2, and there is no challenge by the plaintiff to this Will dated 24.9.1986.

(iii) The case of the defendants as per their written statements is that the father Sh. O.P. Kumar died leaving behind his Will dated 12.11.2002. This Will is referred to as many as three times by the defendants in their

written statements. Plaintiff who has filed replication has not even at single place in the replication stated that the Will is a forged and fabricated document or that the Will dated 12.11.2002 is not signed by the father Sh. O.P. Kumar or the Will dated 12.11.2002 is not duly executed. In my opinion, though this can be enough to hold that the Will dated 12.11.2002 is proved, in any case the defendants have proved this Will by leading evidence of the attesting witness DW2 Dr. Ajay Aggarwal. DW2 has filed his affidavit by way of evidence that the deceased Sh. O.P. Kumar has signed the Will dated 12.11.2002 in his presence and in the presence of the other witness and that he and the other witness signed in the presence of the deceased Sh. O.P. Kumar. This witness has also deposed that the testator Sh. O.P. Kumar was in a sound disposing mind. It is also seen that in the cross-examination nothing could be elucidated from the witness DW2 Dr. Ajay Aggarwal that the Will was not duly executed and this witness has stood steadfast with respect to due execution and attestation of the Will. Also, there is no cross-examination of DW2 Dr. Ajay Aggarwal with respect to the soundness of mind of the deceased testator Sh. O.P. Kumar. Therefore, the Will dated 12.11.2002 is held to have been proved to have been duly executed by the father Sh. O.P. Kumar and also duly attested by

the attesting witnesses. It is therefore held that the Will Ex.DW2/1 stands duly proved in favour of the defendants and against the plaintiff.

10. In view of the above, issue nos.4 and 5 are decided against the plaintiff and in favour of the defendants.

11. **Relief**

In view of the decision of all the issues in the suit in favour of the defendants and against the plaintiff, the suit will stand dismissed. Parties are left to bear their own costs. Decree sheet be prepared.

AUGUST 27, 2015
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VALMIKI J. MEHTA, J.