

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

% *Date of decision: September 10, 2015*

+ **RFA(OS) 56/2015**

VEENA TULI

..... Appellant

Represented by: Mr.Vivek Aggarwal and
Ms.Savita Aggarwal,
Advocates.

versus

KRISHAN KUMAR TULI

..... Respondent

Represented by: Mr.Rakesh Mukhija, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. For the purposes of deciding the instant appeal we have considered the record of the suit which has been sent to this Court as per practice directions issued. Learned counsel for the appellant states that the appeal may be heard today itself and no date for hearing of the appeal be fixed as contemplated by sub-Rule 1 of Rule 11 of Order 41 of the Code of Civil Procedure.

2. Krishan Kumar Tuli filed a suit being CS (OS) No.682/2012 for partition in respect of freehold property bearing No.8637, Feroz Street, Gaushala Marg, Kishan Ganj, Delhi-110006 (in short 'the suit property') claiming 5/6th share therein. In the suit Krishan Kumar Tuli did not implead the four sisters and only impleaded the legal heirs of Rajinder Tuli, that is, Veena Tuli, Kapil Tuli, Shivali Tuli and Deepak Tuli (Deepak Tuli was wrongly mentioned as wife of Rajinder Tuli) as Defendant Nos.1 to 4

respectively. In the plaint it was pleaded that M.L.Tuli, father of Krishan Kumar Tuli and Rajinder Tuli was the sole and absolute owner of the property having purchased and constructed the same out of his own funds and resources. Since wife of M.L.Tuli, Ms.Agya Wati Tuli pre-deceased him and M.L.Tuli died intestate on May 11, 1998 the property devolved on his six legal heirs, that is, two sons and four daughters namely Krishan Kumar Tuli, Rajinder Tuli, Ms.Nirmal Kohli, Ms.Sudesh Sabharwal, Ms.Vinod Kohli and Ms.Santosh Soni, each inheriting $1/6^{\text{th}}$ share in the suit property. On November 23, 2009 Rajinder Tuli son of M.L.Tuli passed away leaving behind his wife Veena Tuli, two sons Kapil and Deepak and daughter Shivali as his legal heirs.

3. Krishan Kumar Tuli further claimed that on October 07, 2011 Ms.Nirmal Kohli, Ms.Sudesh Sabharwal, Ms.Vinod Kohli and Ms.Santosh Soni, the four sisters executed the relinquishment deed dated October 07, 2011 in favour of Krishan Kumar Tuli surrendering and relinquishing their undivided proportionate right of $1/6^{\text{th}}$ share each in favour of Krishan Kumar Tuli in the suit property and thus he became the owner of $5/6^{\text{th}}$ share in the suit property.

4. A common written statement was filed by the defendants stating about the previous litigations between the parties and the various orders passed. It was stated that the plaint was liable to be dismissed for not production of the original title documents and site plan of the suit property, non-joinder of all the legal heirs of M.L.Tuli, that is, four sisters named above, documents filed by Krishan Kumar Tuli were fabricated and that the movable assets of M.L.Tuli, that is, cash, gold jewellery, bank accounts, fixed deposits were not disclosed which have been misappropriated by Krishan Kumar Tuli and

the four sisters. The execution of the relinquishment deeds executed by the four sisters was denied and it was further contended that the said deeds were not registered and stamped. It was pleaded that Krishan Kumar Tuli was not entitled to any decree of partition of 5/6th share in the suit property till the veracity of the four release deeds were not ascertained. The possession and occupation of Krishan Kumar Tuli in the suit property was admitted by the defendants.

5. A counter claim was also filed by Veena Tuli being Counter Claim No.2/2013 impleading Krishan Kumar Tuli, Ms.Nirmal Kohli, Ms.Santosh Soni, Ms.Sudesh Sabharwal and Ms.Vinod Kohli as defendants, seeking declaration of the four relinquishment deeds executed by Ms.Nirmal Kohli, Ms.Sudesh Sabharwal, and Ms.Vinod Kohli on October 7, 2011 and by Ms.Santosh Soni on December 21, 2011 as null and void and claiming half share in the suit property. It was stated that release deeds dated October 7, 2011 and December 21, 2011 were executed as a counter blast to the civil suit No.308/2011 filed by Veena Tuli to protect her right to enter the suit property which was being constantly obstructed by Krishan Kumar Tuli. Veena Tuli highlighted the area in her possession in the suit property in the said plaint and stated that she stayed in one room with attached open veranda and a temporary kitchen on the first floor from 1976 to 1998 when she along with her husband was forcibly dispossessed from the suit property and in the garb of repair work Krishan Kumar Tuli damaged the roof of the temporary structures etc. and the wall of open veranda. It is stated that the four sisters got married during the lifetime of M.L.Tuli and being settled in their matrimonial home have never claimed their share in the suit property.

6. The Counter Claim No.2/2013 though filed on November 07, 2012

was not registered and only on October 25, 2013 summons were issued in the counter claim after it was registered. Learned counsel for Krishan Kumar Tuli accepted summons on the said date however, the Registry issued no summons to the four sisters who were defendants in the counter claim. An application was filed by Veena Tuli being I.A.No.10986/2014 under Section 151 CPC for issuance of notice in the counter claim to the four sisters being defendant Nos.2 to 5 on which notice was issued on May 29, 2014. In response to I.A.No.10986/2014 affidavits were filed by the four sisters, that is, Ms.Nirmal Kohli, Ms.Sudesh Sabharwal, Ms.Vinod Kohli and Ms.Santosh Soni admitting the execution of relinquishment deeds in favour of Krishan Kumar Tuli and questioning the authority of Veena Tuli to challenge the validity of the relinquishment deed executed by them. Counsel for the four sisters, that is, defendant Nos.2 to 5 in the counter claim appeared before the Court and admitted execution of the relinquishment deeds.

7. Vide the impugned judgment dated March 13, 2015 in CS (OS) No.682/2012 learned Single Judge passed a preliminary decree returning a finding that Krishan Kumar Tuli was entitled to 5/6th undivided share in the suit property whereas the legal heirs of late Rajinder Tuli, i.e. the defendants in the suit were entitled to 1/6th undivided share in the suit property and a Local Commissioner was appointed to ascertain the feasibility of partition of the suit property by metes and bounds and if any, alternative modes of partition. However, in impugned order dated March 13, 2015, the counter claim No.2/2013 was renotified for the date fixed and the two applications, that is, I.A.No.10986/2014 under Section 151 CPC by the counter claimant and I.A.No.7857/2013 by Krishan Kumar Tuli under Order XII Rule 6 CPC

were disposed of. Hence the present appeal by Veena Tuli, defendant No.1 in CS (OS) 682/2012.

8. The grievance of Veena Tuli in the present appeal is that the learned Single Judge passed a preliminary decree without deciding the Counter Claim No.2/2013 wherein the validity/veracity/timing of the four relinquishment deeds were challenged without framing issues on the real controversy between the parties and without deciding the maintainability of the suit filed after 14 years of the death of the father. It is pleaded that by virtue of the preliminary decree passed in CS (OS) No.682/2012, Counter Claim No.2/2013 filed by Veena Tuli has become infructuous and that no decision was rendered by the learned Single Judge on I.A.No.12631/2012 under Order VI Rule 16 CPC filed by Veena Tuli seeking striking of the plaint, that is, CS (OS) No.682/2012 being unnecessary, scandalous, frivolous, vexatious and an abuse of the process of Court.

9. The main ground of attack of Veena Tuli to the claim of Krishan Kumar Tuli is that the relinquishment deeds executed by the four sisters are liable to be cancelled. Indubitably this was the prayer made in the counter claim and the learned Single Judge could not have passed a preliminary decree in CS (OS) No.682/2012 without having decided the counter claim. Thus we are required to deal with the grounds urged by Veena Tuli seeking cancellation of the relinquishment deeds and claim of half share in the suit property.

10. In the written statement filed by the defendants including Veena Tuli to CS (OS) No.682/2012 there is no denial that M.L.Tuli died intestate leaving behind the suit property of which 1/6th share devolved on each of the six children of M.L.Tuli. Even if the relinquishment deeds executed by the

four sisters are cancelled Veena Tuli can still not claim half share in the suit property as M.L.Tuli having died intestate each of the children would be entitled to 1/6th undivided share in the suit property.

11. This brings us to the issue whether Veena Tuli has the locus standi to challenge the relinquishment deeds. The relinquishment deeds have been executed by the four sisters namely Ms.Nirmal Kohli, Ms.Sudesh Sabharwal, Ms.Vinod Kohli on October 07, 2011 and by Ms.Santosh Soni on December 21, 2011 in favour of Krishan Kumar Tuli. Veena Tuli not being a party to the said relinquishment deeds has no locus standi to challenge these documents/deeds.

12. In view of the admission of the four sisters that they have relinquished their 1/6th undivided share each in the suit property in favour of Krishan Kumar Tuli the learned Single Judge was within its jurisdiction to have passed a preliminary decree on admissions and was not required to direct the parties to lead evidence after settling the issues.

13. In the decision reported as (1974) 1 SCC 242 Nagindas Ramdas vs.Dalaptram Ichharam the Supreme Court held that the judicial admissions are the best evidence and stand on a much higher footing than the evidentiary admissions. It was held:

“Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by

themselves, not conclusive. They can be shown to be wrong.”

14. Undoubtedly having acted upon the four relinquishment deeds and directing a preliminary decree of partition in respect of the suit property ascertaining the shares of Krishan Kumar Tuli and legal heirs of Rajinder Tuli in the ratio of 5/6th and 1/6th respectively, prayers ‘A’ and ‘B’ in the counter claim no more survive. However, in the counter claim Prayers ‘C’ and ‘D’ which reads as under still survive:

“c. To allow damages in favour of the Claimant and against the Defendants for fraudulently depriving the Claimant and her children from enjoying the use of common portion of the suit property for about 14 years i.e. since 11.5.1998.

d. To allow this Counter Claim of the Claimant with exemplary cost on all the Defendants for harassing the widow Counter Claimant and her children for dragging them into second round of wasteful litigation.”

15. Thus the counter claim was required to be kept pending by the learned Single Judge and Veena Tuli would be within her right to lead evidence on prayers ‘c’ and ‘d’ and so would be her right in the application being I.A.No.12631/2012 under Order VI Rule 16 CPC.

16. The suit is still pending before the learned Single Judge and we say no more except concurring with the view expressed by the learned Single Judge passing the preliminary decree in CS (OS) No.682/2012 vide the impugned order dated July 13, 2015.

17. Appeal is accordingly dismissed.

CM No.10407/2015 (Stay)

Application is disposed of infructuous.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

**SEPTEMBER 10, 2015
'vn'**