

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

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Judgment Reserved on: 06th May, 2016
Judgment Delivered on: 30th May, 2016

+ **FAO (OS) 54/2016 & CM No.6336/2016 (stay)**

PREETI SEHGAL

.... Appellant

versus

SARLA SEHGAL & ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr A. Maitri Dev, Advocate.

For the Respondent: Mr Sachin Datta, Sr Advocate with Mr B.B. Gupta, Ms Nauras Subrawardhy, Ms Prity Sharma and Ms Kanupriya Tiwari, Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The appellant/plaintiff impugns the order dated 20.01.2016, passed in CS(OS) 585/2011, whereby a preliminary decree of partition has been passed holding the appellant/plaintiff entitled to $\frac{1}{3}^{\text{rd}}$ share in the immovable properties stated in para 9(i), (iii) and (iv) of the amended plaint and $\frac{1}{3}^{\text{rd}}$ right out of the 50% ownership rights of Sh. N.L. Sehgal in House No.101, Bilkeshwar Colony, Haridwar (Uttarakhand), stated in para 9(ii) of the plaint and $\frac{1}{3}^{\text{rd}}$ of the amount

lying in the sole bank account of late Sh. N.L. Sehgal and $\frac{1}{3}^{\text{rd}}$ share of the 50% of the amounts in the joint accounts of Late Sh. N.L. Sehgal held jointly with his wife, the respondent No. 1.

2. The appellant/plaintiff filed the subject suit for partition, rendition of accounts, permanent and mandatory injunctions against the respondents. The appellant seeks partition of the properties (movable and immovable) left behind by late Sh N.L. Sehgal, who was the husband of the respondent No.1 and the father of the appellant and the respondent No.2.

3. It is not in dispute that Sh. Sh N.L. Sehgal died intestate on 27.09.2010. There is also no dispute that the parties on the death of Sh N.L. Sehgal are the only legal heirs of Late Sh. N.L. Sehgal and succeeded to his estate equally i.e. each having $\frac{1}{3}^{\text{rd}}$ undivided share in the same.

4. The appellant in the plaint contends that the estate of late Sh N.L. Sehgal comprised certain immovable properties, huge amount of cash in the shape of bank balance in the bank accounts stated in the plaint. It is also averred in the plaint that a substantial amount of money has been misappropriated by the respondents.

5. By the impugned order, the learned Single Judge has noted that insofar as the immovable properties mentioned in Paras 9(i), (iii) and

(iv) of the amended plaint were concerned, they were admittedly in the name and owned by late Sh N.L. Sehgal and, therefore, were liable to be partitioned equally between the parties. Paragraph 9 of the amended plaint reads as under:-

“9) That the Plaintiff’s father purchased various properties from time to time in his name and in the joint names of himself and Defendant No.1. The said details are as follows:-

i) Property No.1/30, Roop Nagar, Delhi

This property is comprising of basement, Ground Floor, First Floor and Second Floor.

Basement of the above said property is lying vacant.

The portion of Ground Floor comprising 2 rooms and 1 study room along with Kitchen and Bathroom are in possession of the Plaintiff. From the remaining portion Girls’ Hostel is being run.

On the First Floor the Defendant No.1 is living and residing. The said portion is comprising of 2 rooms, 1 study room, Kitchen and bath room. From the remaining portion Girls’ Hostel is being run.

This property was purchased somewhere in 1987 and stands in the name of Late N.L. Sehgal. Initially the half portion was belonging to Plaintiff’s father/N.L. Sehgal. In 1992-93 after the settlement of family dispute, remaining portion was also purchased by the Plaintiff’s father/Late

N.L. Sehgal.

As stated herein above the entire house/property is under use and occupation of Plaintiff and Defendant No.1.

ii) House No.101, Bilkeshwar Colony, Haridwar (U.P.)

This is a constructed house comprising of Ground Floor and First Floor. The property is lying constructed on 180-200 Sq Yds.

As per the Plaintiff's information this house is in the name of Plaintiff's father/N.L. Sehgal. However, Defendant No.1 is claiming that this house is in the joint names of Late N.L. Sehgal and Defendant No.1/Sarla Sehgal.

This house is lying vacant and lying locked.

iii) Commercial Shop/Show-room at Raj Kamal Building, Bank Street, Karol Bagh, New Delhi.

This shop/show-room is in the name of late Shri N.L. Sehgal and is lying vacant and lying locked.

(iv) One Bed-room Apartment numbered S-5, Silver Oak Apartments, Spring Road, Mussorrie (U.P.)

This apartment is in the name of Late Shri N.L. Sehgal. This property is lying vacant and lying locked.

iv) One Bed-room Apartment numbered S-6, Silver Oak Apartments, Spring Road, Mussorrie (UP)

This apartment is in the name of Late Shri N.L.Sehgal. This property is lying vacant and lying locked.

- v) One Bed-room Apartment numbered S-6, Silver Oak Apartments, Spring Road, Mussorrie (UP)

This apartment is in the name of defendant No.1. This property is lying vacant and lying locked.

- vi) Commercial Flat No.108, Jyoti Bhawan, Dr Mukerjee Nagar, Delhi.

This property has been lying rented to one institute and as on this date approximately Rs.17,500/- per month is being realized as rent.”

6. With regard to property at serial No.(ii), i.e. House No.101, Bilkeshwar Colony, the said property was owned by Sh N.L. Sehgal and the respondent No.1 equally i.e. Sh N.L. Sehgal only had a 50% share in the said property. Accordingly, the learned Single Judge held that 50% share of Sh N.L. Sehgal is to be divided equally between the three parties.

7. Insofar as the property No.(v) is concerned, the learned single Judge has noted that even as per the appellant, the property stood in the name of the respondent No.1 and the same is so stated in the plaint. With regard to property No.(vi) at Mukherjee Nagar, the learned Single Judge has noted that the appellant admitted that the said property stood in the name of the respondent No.1. The

admission is recorded in order dated 18.10.2012. With regard to the immovable properties standing admittedly in the name of the respondent No.1, the learned Single Judge has held that the claim of the same would be hit by the Benami Transactions (Prohibitions) Act, 1988. A similar finding has been returned with regard to the properties held solely in the name of the appellant which were sought to be claimed by the respondents in their suit i.e. CS(OS) 587/2011.

8. With regard to the amounts lying in the bank accounts of late Sh N.L. Sehgal on the date of this death, the learned Single Judge has found that all the accounts stated in the plaint except an account in the HDFC Bank were in the joint name of late Sh N.L. Sehgal and his wife, the respondent No.1. The learned Single Judge held that the appellant would be entitled to only $\frac{1}{3}^{\text{rd}}$ share of the 50% of the amount in the joint accounts and $\frac{1}{3}^{\text{rd}}$ share in the sole account of late Sh N.L. Sehgal. However, the learned Single Judge held that prior to any order being passed in respect of the recovery of the monies in favour of the appellant, the appellant would have to pay the requisite court fees on the amounts the appellant is entitled to. By the impugned order, the appellant has been directed to pay the court fees in respect of the said amounts.

9. The learned counsel for the appellant before us strenuously contended that the respondents had siphoned off monies from the

accounts of late Sh N.L. Sehgal after his death. Claim was laid to the amounts that had been withdrawn from the account of late Sh N.L. Sehgal. It was further contended that a substantial amount of money amounting to approximately Rs.80-90 lakhs were also siphoned off by the respondent No.1 and transferred abroad.

10. The learned counsel for the respondents very clearly, at the outset, contended that the respondents had no objection to the appellant receiving her $\frac{1}{3}^{\text{rd}}$ of the amount left behind by late Sh N.L. Sehgal, subject to the appellant complying with the condition of payment of court fees, as directed.

11. To avoid any controversy and to settle the disputes raised by the appellant that a substantial amount of money was left behind by late Sh N.L. Sehgal, the learned counsel for the respondents volunteered to file certificates from the various banks certifying the balances left behind as on the date of death of Sh N.L. Sehgal i.e. on 27.09.2010.

12. An affidavit alongwith the certificates of various banks was filed. Even this did not satisfy the counsel for the appellant, who disputed the certificates. However, apart from orally disputing the correctness of the certificates, nothing was filed to contradict the certificates. The respondents thereafter filed the bank statements obtained from various banks to show the balance in the various accounts, that was available as on the death of late Sh N.L. Sehgal.

Even this did not satisfy the counsel for the appellant, who continued to contend that a huge amount of money had been siphoned off from the account of late Sh N.L. Sehgal. Once again apart from orally disputing the certificates, nothing was produced to contradict the bank statements. Nothing has been produced to show that any amount more than what has been certified by the banks and shown in the bank statements was available as on the death of late Sh N.L. Sehgal.

13. As regard the allegation, that the respondents had siphoned off Rs.80 to 90 lakhs and transferred the same out of the country, apart from mere oral assertions, the appellant has been unable to produce anything to substantiate the allegation that any money belonging to Late Sh. N.L. Sehgal was available or used by the respondents.

14. There is no dispute that late Sh N.L. Sehgal died intestate. There is also no dispute that the parties are the only legal heirs of late Sh N.L. Sehgal and thus entitled to his estate in equal shares. With regard to the properties that were admittedly in the name of Sh N.L. Sehgal, the learned Single Judge has, by the impugned order, passed a preliminary decree determining the share of the parties as $\frac{1}{3}$ rd each. As regards the properties standing in the name of the respondent No.1, the learned Single Judge has held that the claim of the same is barred by the Benami Transactions (Prohibitions) Act, 1988. We are in agreement with the said finding of the learned Single Judge.

15. Insofar as the balances available in the bank accounts of late Sh N.L. Sehgal are concerned, the learned Single Judge has held that the appellant would be entitled to $\frac{1}{3}^{\text{rd}}$ of the same on payment of the requisite court fees. Insofar as the joint accounts are concerned, the appellant has been held to be entitled to $\frac{1}{3}^{\text{rd}}$ of the 50% of the amount standing in the joint accounts, subject to the payment of the requisite court fees. We find no infirmity or error in the view taken by the learned Single Judge.

16. Insofar as the allegation with regard to the respondents siphoning out huge funds is concerned, the appellant has not been able to substantiate the same or show any material that any such amount belonging to Late Shr. N. L. Sehgal was available on his death and the same has been appropriated by the respondents.

17. We find no infirmity the in the view taken by the learned Single Judge. There is no merit in the appeal. The appeal is, accordingly, dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

May 30, 2016/st