

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

+ **CS(OS) No.2612/2012**

% **19th April, 2016**

CAPT. TEJ KISHAN RAINA Plaintiff

Through: Mr. Vinod Tyagi, Advocate.

versus

DR. NIRMAL RAINA & ORS. Defendants

Through: Ms. Jyoti Mendiratta, Advocate with
Mr. S. Santanam Swaminandhan,
Advocate and Ms. Nishtha Khurana,
Advocate for defendant Nos.12 and
13.
Mr. Vineet Jhanji, Advocate with Mr.
Imran Moulaey, Advocate for
defendant Nos.14 and 15.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The present suit is a suit seeking partition of the property no.B-452, New Friends Colony, New Delhi. Though the plaint is long and unwinding and goes on to 47 paras talking of existence of HUF and various properties of HUF including at Srinagar (Jammu and Kashmir), counsel for

the plaintiff today concedes that the suit property should not be taken as an HUF property but a property owned personally by the plaintiff's step-mother Smt. Shanta Raina and the cause of action as per the plaint is confined to the fact that Smt. Shanta Raina died intestate before the death of her husband Mr. Sri Kant Raina, and that plaintiff though is only a step-son of Smt. Shanta Raina, since however the husband of Smt. Shanta Raina, and the father of the plaintiff namely Mr. Sri Kant Raina inherited the share in the suit property i.e in the theoretical third floor and above (property being constructed upto second floor only) and the right in the land in the suit property on the death of Smt. Shanta Raina, hence the plaintiff as the natural son of Mr. Sri Kant Raina inherits the property out of the share in the property which fell to Mr. Sri Kant Raina. The main contention of the plaintiff, as argued today on behalf of the plaintiff by his counsel, is that the only and the real cause of action in the plaint which is pressed is as per para 41 of the plaint and which para 41 of the plaint reads as under:-

“41. That under the said Will dated 04.11.1996 purported to have been executed by Mrs. Shanta Raina, the land underneath the said property and its top terrace floor had not been dealt with and the said copy of that Will itself indicated that the same is invalid under the law and is not genuine and may have been forged/malafidely created just to deprive the Plaintiff and the Defendant No.1 to 11 of their due share in the aforesaid House No.B-452, New Friends Colony, New Delhi. It is thus, significant that the entire House No.B-452, New Friends Colony, New Delhi has not been disposed of by the said Will, in any case, the land underneath as well as the terrace

thereof are still open for partition and the arrangements made in the alleged Will is actually opened for partition.”

2. It is therefore seen that though there may be some ambiguity and alternative pleas in the plaint with the plaintiff claiming right also as a coparcener of an HUF, before this Court now it is conceded that the suit property should be taken to be exclusively owned property of late Smt. Shanta Raina, step-mother of the plaintiff, and that the plaintiff has a right in the suit property because Smt. Shanta Raina died intestate before her husband Mr. Sri Kant Raina (father of plaintiff) and thus the plaintiff inherits the share from the share inherited by Mr. Sri Kant Raina from Smt. Shanta Raina.

3. Counsel for the plaintiff also concedes before this Court during the course of arguments as to the existence and the validity of the Will dated 4.11.1996 executed by Smt. Shanta Raina and it is argued that in terms of this Will, since no provision was made for the third floor and above of the suit property and also the rights in the land on which the property is constructed, such portion not bequeathed stood inherited in part under the law of Hindu Succession by the husband of Smt. Shanta Raina i.e Mr. Sri Kant Raina and the plaintiff being the son and one of the legal heirs of Mr.

Sri Kant Raina who has died intestate, hence the plaintiff has 1/5th right out of the share of the suit property which fell to the share of Mr. Sri Kant Raina. 1/5th share is claimed on account of the fact that Sh. Sri Kant Raina left behind five legal heirs, being, three sons from the first wife of Mr. Sri Kant Raina namely Smt. Sona Batni Raina i.e the plaintiff Sh. Tej Kishan Raina, another son from the first wife Dr. Puran Raina and the third son from the first wife Mr. Chand Raina. From the second marriage of Mr. Sri Kant Raina with Smt. Shanta Raina, two sons were born namely Mr. Vikram Raina and Mr. Arvind Raina. The branch of Mr. Vikram Raina since deceased is represented by defendant nos.12 and 13 in the suit and the branch of Mr. Arvind Raina since deceased is represented by defendant nos.14 and 15 in the suit.

4. Since the decision on the issue at hand turns upon the interpretation of the Will dated 4.11.1996 of Smt. Shanta Raina, let me reproduce the Will in its entirety as under:-

“

WILL OF DR. SHANTA RAINA

I, Dr. Shanta Raina wife of S.K. Raina, Resident of B-452, New Friends Colony, New Delhi, do hereby make this as my last Will and testament. This Will be operative from the date of my death. I hereby revoke all Wills and of my condicils, if any, by me heretofore made.

1. I am the sole and exclusive owner of the house situate at B-452, New Friends Colony, New Delhi comprising of three floors, of which the top floor is occupied by my late son Arvind's wife and his daughter Angelique.

The first floor is occupied by my husband and myself. The ground floor is occupied by my elder son Vikram, his wife and his son Vir.

I also own various bank deposits exclusively and solely.

2. My elder son, Vikram has made substantial contributions towards the construction of the house at New Friends Colony, so that three independent floors could be constructed so as to enable each family to have one separate floor.

3. I would like my property to be divided amongst my family members, after my death, in the following manner:-

a/ The top floor of the house I give, leave and bequeath absolutely to Angelique, the daughter of my predeceased son Arvind.

b/ That if I were to predecease my husband then my husband would have only right to live in the first floor of the property during his life time and after his death the property shall exclusively vest in Vikram, my elder son or his heirs in case Vikram were to predecease my husband also. Accordingly, the sons of my husband's first wife shall have no right into the property after the death of my husband.

c/ The ground floor, I leave, give and bequeath absolutely to my son Vikram.

d/ The bank deposits owned by me, should be divided equally between Vikram and Angelique.

4. I hereby appoint my elder son Vikram son of S.K. Raina, Resident of B-452, New Friends Colony, New Delhi, the executor of this Will and also the guardian of the person and property of my grand daughter Angelique aged 07 years daughter of late Arvind Raina till the time she attains majority.

5. Dated 4th November, 1996 at New Delhi, without being under any pressure from anyone or without any coercion and in my full sense, in the presence of the below named two witnesses.

In witness, I, Dr. Raina, have thereto set and subscribe my hand and signature on the 4th day of November month of 1996.

Sd-/

TESTATOR

Signed by the within named testator as her last Will and testament in our presence, all being present at the same time. Thereafter, at her request and in her presence and in the presence of another, we subscribe our respective names.

Signature of Witnesses:

1. Sd/-
2. Sd/-” (underlining added)

5. Counsel for the plaintiff has very vehemently argued that the Will only bequeaths the ground floor, first floor and top floor/second floor of the property and the Will does not in any manner bequeath the theoretical third floor portion and above of the suit property or the land on which the suit property is constructed, and that therefore this not bequeathed portion would go to all the legal heirs of late Smt. Shanta Raina including her husband Mr. Sri Kant Raina and therefore plaintiff as the 1/5th legal heir of the share which fell to Mr. Sri Kant Raina, he will therefore have 1/5th right in the third floor and above of the suit property and the land on which the suit property is constructed.

6. Ordinarily, there would have been some issue as to the interpretation of the Will as to whether the top floor of the house which is given to Angelique Raina/defendant no.15 would or would not include the portion above this top floor which is the second floor of the suit property and

further as to whether the issue of giving a floor would or would not include proportionate rights in the land on which the suit property is constructed, however, this Court need not detain itself on this aspect in view of the last line of para 3(b) of the Will dated 4.11.1996 of Smt. Shanta Raina which is reproduced above. This last line specifically disinherits the sons of Mr. Sri Kant Raina from his first wife of any rights whatsoever in the suit property. Plaintiff is the son from the first wife Smt. Sona Batni Raina, and therefore once there is a specific disinheritance clause disinheriting the children of the first wife Smt. Sona Batni Raina and which will include the plaintiff, plaintiff thus would have no rights in the suit property. Once plaintiff would have no legal rights in the suit property on account of specific disinheritance of the three sons from the first wife of Mr. Sri Kant Raina being Dr. Puran Raina, Mr. Tej Kishan Raina (plaintiff) and Mr. Chand Raina, the plaintiff hence would have no *locus standi* to claim any ownership interest in the suit property.

7. In view of the above discussion whereby it is clear from the reading of the last line of para 3(b) of the Will of Smt. Shanta Raina that the children of Mr. Sri Kant Raina from the first wife Smt. Sona Batni Raina are specifically disinherited with respect to the suit property and therefore the

plaintiff as the second son of Mr. Sri Kant Raina through the first wife Smt. Sona Batni Raina would have no right in the suit property, thus the plaintiff would have no right to seek partition of the suit property.

8. In view of the above, since the plaintiff has no legal right in the suit property on account of his being disinherited by the Will dated 4.11.1996 of late Smt. Shanta Raina, the suit is accordingly dismissed, leaving the parties to bear their own costs.

9. Since the suit is disposed of, all pending applications would stand disposed of accordingly.

APRIL 19, 2016
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VALMIKI J. MEHTA, J