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

% *Judgment Reserved On :February 23, 2016*
Judgment Delivered On : February 29, 2016

\+ **FAO (OS)669/2015**

PARUL GUPTA .....Appellant
Represented by: Mr.Sandeep Sethi, Mr.Ravi Gupta and Mr.Rajiv Mehra, Sr.Advocates instructed by Mr.Sunil Magon and Mr.Tanmay Mehta, Advocates

versus

SIDDHARTH SAREEN & ORS. .....Respondents
Represented by: Mr.Kapil Sibal and Mr.Rakesh Tiku, Sr.Advocates instructed by Mr.N.S.Bajwa, Mr.Anil Sharma, Mr.Nizam Pasha and Ms.Tinu Bajwa, Advocates for R-1, Mr.Pinaki Mishra and Mr.Kirti Uppal, Sr.Advocates, instructed by Mr.Pramod Saigal, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Late Sh.Sudhir Sareen held the fort in the public domain and was prosperous in business. He made billions in real estate and fertilizer business. At the domestic front his wife Sunita Sareen lived by the democratic principle of domestic harmony, and we have no doubt that her contributions at the domestic front was one reason, of the many others,

for Sh.Sudhir Sareen to prosper. The union between the two, with three flowers blooming in their garden, lasted for 40 years. The three flowers which bloomed in the garden are : (i) Siddhartha (son), (ii) Parul (daughter), and (iii) Shilpa (daughter). The soul mate departed company on February 21, 2003 : the date of death of Sudhir Sareen. The estate had to be inherited. A will dated January 14, 2010 was propounded by Siddhartha and Sunita. The estate referred to in the will is gargantuan and has been stated in the will as under:-

> *"A. MY ASSETS ABROAD:*
>
> *1. I am a NRI having a permanent address at L-20, Emirate Hills, Post Box No.73326, Dubai, UAE. I own a company known as Fairbridge Estate Ltd. (Offshore) Dubai, Jabal Ali Free Zone Company, JAFZA.*
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> *2. I own Westmed Holding Ltd., 8 Claridge House, London WIK 4 ND.*
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> *3. I am also the owner of Heroic Investments Ltd., 10 Upper Brook Street, London WIK 6 PB.*
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> *4. Besides the aforesaid, I also have 86298728 shares of Emaar MGF Lan Ltd. Kallarister Trading Ltd., a company registered in Cyprus and two holding companies under Kallarister Trading Ltd. i.e. Yulita Consultants Ltd. Holding 39,826,863 shares and Sneivor Holdings Ltd. Having 46,471,865 shares total 86298728 shares.*
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> *5. My Bank accounts abroad i.e. with (1) MashreqBank, DIC Branch, Dubai (UAE) US$ A/c. No.:0448718970 and AED A/c. No.:0496661558 + Portfolio Investments respectively (2) HSBC Private Bank.78. St.James' St., London (UK) US$ A/c. No.:218222-0001 and GBP A/c. No.:11015060 + Portfolio Investments respectively and (3) Bank of Baroda, Main Branch, Dubai (UAE). account No.:90010200009866.*
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> *B. IMMOVEABLE PROPERTY IN INDIA:*
>
> *1) LAND BUILDING PROPERTY No.B-101, GREATER KAILASH-1)*
>
> *2) AGRICULTURAL LAND U.P*

3) AGRICULTRUAL LAND & FARM HOUSE, KAPASHERA
The said agricultural land was purchased by me during the year 1994-95 and 1996-97 respectively for ₹30,86,9307/-. The land was situated at village Kapashera Teh. Mehrauli, New Delhi (Khasra No.8, 12, 13, 18 & 26). The total area of land is 5.21 Acre. I have built a farm house in the said property.

4) AGRICULTURAL LAND, RAJOKARI
The land was purchased by me in the year 1994-95. The land is situated at village Rajokari, The. Mehrauli, New Delhi (Khasra No.687, 692, 736, 752 & 785). The total area of land is 4.14 acre.

5) AGRICULTURAL LAND, MANDI
The land was purchased by me in the year 1994-95. The land is situated at village Mandi, The.Mehrauli, New Delhi (Khasra No.67 & 68). The total area of land is 3.21 acre.

6) AGRICULTURAL LAND, SOHNA
The land was purchased by me in the year 1995-96. The land is situated at village Sohna, Distt.Gurgaon (Hr.) (Mustatil No.87, 88 & 89). The total area of land is 113 Kanal & 18 Maria.

C. MOVABLE ASSETS:

INVESTMENT IN SHARES IN LIMITED COMPANIES AND MUTUAL FUNDS

1) I have made investments in shares of listed Companies/Mutual Funds in NRO Account with HSBC Securities and Capital Markets (India) Pvt. Ltd. with Client Code No.053-179438 and also NRE Account with client code No.053-195780 with HSBC Securities and Capital Markets (India) Pvt. The particulars of the same are as under:

HSBC Securities and Capital Markets (India) Pvt. Ltd.

Name	*Client Code*	*Trading & Unique Client*
Sh.Sudhir Sareen NRO	*053-179438*	*H01062*
Sh.Sudhir Sareen NRE	*053-195780*	*H01007*

II). DETAIL OF INVESTMENT MADE BY ME IN SHARES OF PRIVATE LIMITED COMPANIES

SR.NO. SCRIPTS QTY

1	*Amiable Estate Pvt. Ltd.*	*50*
2	*Ashvarya Estates Pvt. Ltd.*	*125*
3	*Caramel Estate Pvt. Ltd.*	*9500*
4	*Columbia Holdings Pvt. Ltd.*	*6919649*
5	*Compatible Estate Pvt. Ltd.*	*500*
6	*Conure Properties Pvt. Ltd.*	*500*
7	*Dhiraj Garmetns Pvt. Ltd.*	*1000*
8	*Electronics Ltd.*	*174552*
9	*Kanta Apparels Pvt. Ltd.*	*500*
10	*Kilrain Engineering Pvt. Ltd.*	*9000*
11	*Metroplex Construction Pvt. Ltd.*	*0*
12	*Midlam Agencies Pvt. Ltd.*	*4890*
13	*Moonlight Continental Pvt. Ltd.*	*77745*
14	*New Era Impex (India) Pvt. Ltd.*	*15100*
15	*Niryat Pvt. Ltd.*	*7080*
16	*Orpine Estate Pvt. Ltd.*	*500*
17	*Paris Resorts Pvt. Ltd.*	*7000*
18	*Raisin Estate Pvt. Ltd.*	*9500*
19	*Sareen Estates Pvt. Ltd.*	*32825090*
20	*Sugandhim Estate Pvt. Ltd.*	*9500*
		40071781

III). DETAIL OF SHARE APPLICATION MONEY

S.NO.	*SCRIPTS*	*AMOUNT*
1.	*Columbia Estates Pvt. Ltd.*	*64,200,000.00*
	(In this company in addition to the share application money I have invested an amount of ₹14,00,00,000/- towards the cost of the property built on the said plot of land belonging to the said company.	

IV) Utensils including Silver.

V) Jewellery

VI) Cash/Bank accounts. Details of my Bank accounts are as under:

Name of Bank	*Branch Address*	*Account No.*
The HSBC Ltd.	*F-43, South Extension-I, New Delhi*	*053-195780-006*
The HSBC Ltd.	*F-43, South Extension-I, New Delhi*	*053-179438-001*
The HSBC Ltd.	*Barakhamba Road New Delhi*	*051-304152-006*
Syndicate Bank	*Barakhamba Road New Delhi*	*9036-101-0000654*
Canara Bank	*F-19, Connaught Circus, New Delhi*	*0143201015153*
Canara Bank	*F-19, Connaught Circus, New Delhi*	*0143103051822*

ABN Amro Bank	*Hansalaya Building, Barakhamba Road New Delhi*	*7450605*
ABN Amro Bank	*Hansalaya Building, Barakhamba Road New Delhi*	*7450559*
Citibank	*GF, DLF Square, DLF City Ph.II Gurgaon*	*5-896760-248*

2. Claridge House owned by Westmed Holding Ltd. has been sold after the death of Sudhir for £3.2 million and as per Siddhartha, the money realized was used to square up the mortgage lien. The 3.21 acre agricultural land in village Mandi, Tehsil Mehraulli, has also been sold by Siddhartha on account of the same being under threat of encroachment due to a Mazhar inside the land. The 4.14 acre land in village Rajokari was disposed of by Sudhir during his life time. The remaining assets stated in the will remain.

3. Parul sued for partition of the estate on the plea that succession to the estate of Sudhir is intestate and the will propounded is shrouded with mystery. According to her, due to failing health Sudhir was physically weak and mentally vulnerable and the will was obtained either by coercion or when an opportunity came and the scheming minds of Siddhartha and Sunita encashed the same.

4. Sunita and Siddhartha affirmed the will.

5. No probate of the will being sought and hence the will not being probated, the issue : Whether the will dated July 14, 2010 is the last legal and valid testament executed by Sudhir, would obviously resolve the dispute. For, if the will is established as the last valid and legal testament executed by Sudhir, the suit for partition on plea of intestacy would fail and the estate would devolve as per the will. If the will fails, partition by intestate succession ensues.

6. Parul prayed for an interim injunction so that the estate of the deceased was available for partition, should the will fail. The legal

fulcrum of her case for an interim order was that the estate had to be preserved. The subject matter of the suit had to be preserved. Siddhartha and Sunita opposed the prayer and pleaded that so strong was the prima-facie evidence in their favour to support the will that the corollary thereof would be Parul having virtually no case and therefore she would not be entitled to any interim order in her favour.

7. The rival view points as projected, led the learned Single Judge to consider to documentary material place before him which ultimately would form the evidence relied upon by the parties. Using expressions which are virtually conclusive, vide impugned order dated October 20, 2015, the learned Single Judge has returned a finding that Parul has no case for grant of any ad-interim injunction to prevent Siddhartha from dealing with the estate bequeathed to him by his father.

8. In para 13 and 14 of the impugned order, the learned Single Judge has opined as under:-

> *"13. At this interlocutory stage the Court does not find anything on record which would show that Late Mr.Sudhir Sareen was mentally incapable or physically debilitated from executing the Will which was registered before the Sub-Registrar in the presence of two witnesses. There is nothing on record to show him being under the undue influence of defendant No.1, nor is there any document to suggest any history of his illness. His frequent travels outside India, on almost a fortnightly basis, would prima facie show that the Late Mr.Sudhir Sareen was in good health. His wife, i.e. defendant No.2, not only supports the Will but also states that her husband was in good health before he passed away suddenly. The financial and corporate transactions before registration of the Will, and consistently thereafter, would show that the Late Mr.Sudhir Sareen was in good health and was not suffering from any incapacitative medical infirmity. His correspondence with the Income Tax Department on 4th April, 2011, 2nd May, 2011, participation in the Board*

Meeting on 16th May 2011, 20th October, 2011, Shareholder Agreement dated 22nd February, 2012 as duly authorized representative of M/s.Columbia Holdings (Pvt.) Ltd., the payment of monies to the plaintiff through cheques in 2010, 2011, 2012 and managing of his fairly extensive business affairs would prove that he was in good health and in control of his affairs without being under any undue influence.

14. It is in connection with Wills, the execution of which are surrounded by suspicious circumstances, that the test of satisfaction of the judicial conscience has been evolved. The Court is of the view that, it being a registered Will, the onus would be on the party alleging undue influence or fraud to satisfy the judicial conscience of the court that the Will was not validly executed. "The general rule is that the onus probandi lies in every case upon the party propounding a Will and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator. ..... if a Will is rational on the face of it, and appears to be duly executed, it is presumed, in the absence of evidence to the contrary, to be valid."

9. In the next paragraph, the learned Single Judge has held that mere suspicion by a daughter of her father being under undue influence or there was a conspiracy is not enough to injunct the brother from dealing and managing with such part of the estate which has, as per the will, been bequeathed to him.

10. In forming the view as aforenoted, the learned Single Judge has noted that reasons have been disclosed in the will by Sudhir Sareen to exclude Parul from his estate. That he has provided for a life time financial and residential security to his wife that the will records the daughters being well-settled in their respective matrimonial homes and therefore the bequest being predominantly in favour of the son. The learned Single Judge has therefore opined that merely because daughters

were excluded as beneficiaries under the bequest, would be no ground to cast suspicion on the will. Proceeding on the fact that the will was registered with the Sub-Registrar, the learned Single Judge has inferred that the said fact was suggestive of Sudhir being mentally and physically alert, for otherwise he could not have presented himself before the Sub-Registrar when the will was registered. The learned Single Judge has noted 29 trips made abroad by Sudhir Sareen, between June 04, 2010 till March 19, 2011, to highlight, that the same was good evidence of Sudhir Sareen being physically and mentally fit. The will being dated July 14, 2010 has been highlighted. The reasoning is straight-line : If Sudhir Sareen could travel abroad so frequently (29 trips in 9 months) it was good extrinsic evidence to virtually conclusively prove Sudhir Sareen's physical and mental health being 100% on a scale of 0 to 100. The learned Single Judge has noted that during financial years 2010-11 and 2011-12 Sudhir Sareen had managed his businesses. Operation of the bank accounts has been highlighted. Participation in the board meetings, correspondence with the Income Tax Department and execution of important agreements with third parties during the period has also been highlighted by the learned Single Judge.

11. Learned senior counsel for the respondents conceded that the language used by the learned Single Judge, being suggestive as if the trial was over and the projected material having evidentiary value was converted into evidence, with determinative findings returned was obviously an over kill, but hastened to add that it was capable of conversion into taming the wild by inserting the expression '*prima-facie*' before every sentence where findings determinative in nature have been returned.

12. We commence our voyage by noting the principle of law : In a suit for partition the Court should ensure that the property is not dissipated for otherwise, nothing would remain to be partitioned if the suit succeeds.

13. But that would not mean that the exercise is mechanical. The body of law is full of exceptions to the rules and is akin to crevices in rocks. The climb is thus not only by looking at the rock but even the crevices.

14. It being settled law, and the reason is Section 57 and Section 212 of the Indian Succession Act, that other than the territories noted in clause (a) of Section 57 of the Indian Succession Act, Hindus do not require a will to be probated and thus right to a property can be claimed in a suit on the basis of a will, the correct approach to deal with an application seeking injunction in a suit for partition, where a will is propounded, is to be guided by the principles of administration of an estate of a deceased pending probate of a will.

15. The estate of the deceased, apparent from the will, apart from agricultural lands and a residential house in Greater Kailash Part I comprises shares held in companies, which companies in turn hold lands. Moneys in bank accounts, as we are informed is meager. The value of the estate is projected to be around ₹1600 crores.

16. The first and the foremost principle, in regard to cases where issue concerning preservation of a property pending litigation to decide the rights of the parties, is to see whether there is danger of the property being damaged or dissipated. Is there a scramble amongst those entitled, has also to be seen. Thus, it is necessary to allege and prima-facie establish some peril to the property. If the property is '*in medio*', in the enjoyment of no one, it would be in the common interest of all parties that the Court takes possession of the property. These kinds of cases present no problem. But where a plaintiff asserts a right to a property of

which the defendant is in enjoyment, the case presents a degree of difficulty because by injuncting, at the instance of the plaintiff, the person in possession of the property may cause a wrong to the defendant; in some cases an irreparable wrong. As observed in the decision reported as 1920 (1) Ch. 520 *Martial Vs. Charteris*, where the evidence on which the Court is to act is very clear in favour of the plaintiff, then the risk of eventual injury to the defendant is very small, and the Court does not hesitate to interfere. Where there is more of doubt, there is of course, more of difficulty.

17. The question therefore is one of degree. As held in the decision reported as 1853 (4) HLC 997 *Owen Vs. Roman*, it is impossible to lay down any precise or unvarying rule.

18. Thus, in the decision reported as 1899 (1) Ch. 16 *Cummins Vs. Perkings*, on being satisfied upon the material placed that the applicant had established a good prima-facie case and that the property which was the subject matter of the proceedings would be in danger, if pending the trial, left in the possession or under the control of the defendant, injunction ensued and in the decision reported as (1879) 27 WR 706 *Heal and Personal Advance Co. Vs. Macarthy*, there being no real danger to the property and no evidence showing necessity, the defendant was allowed the beneficial use of the property in its possession.

19. The principle ground on which Courts of equity grant their extraordinary aid, is when a real danger of a property being lost is shown and the plaintiff has a very strong prima-facie case i.e. has a very excellent chance of succeeding. De facto possessions are not lightly interfered with because that might cause irreparable wrong.

20. There are no pleadings by Parul that the estate is under threat of being dissipated except the sale of Claridge House in London and

agricultural land in village Mandi. But for the same, Siddhartha has a prima-facie valid explanation.

21. The learned Single Judge was therefore justified in considering the material placed before him, which upon proof would be converted into evidence, to find out where the strong prima-facie case was leaning. The findings returned may be worded in a language, being determinative, which was not warranted. But meaningfully read, what the learned Single Judge has held is that Siddhartha Sareen and Sunita had a very strong prima-facie case. And we agree keeping in view the overwhelming material placed by Siddhartha and Sunita to support the will concerning Sudhir's mental and physical capabilities when the will was executed.

22. Shares are held by the deceased in various companies detailed in Part C of the will at serial No.II thereof. The said companies hold either by themselves or in joint venture with others, lands which have to be developed and commercially exploited. Business activities cannot be stopped. The injunction prayed for would mean that nobody would be able to exercise the rights of a shareholder with respect to the shares owned by Sudhir Sareen, who had, in the records of the companies nominated his son Siddhartha as the nominee. Thus, as regards said companies it would be a valid discharge of the obligation to register Siddhartha as the owner of the shares. As a nominee, if the will fails, Siddhartha may be accountable to his sisters.

23. In relation to inheritance disputes concerning shares, the correct order should be to prevent sale of the shares but permit somebody to exercise the right as a shareholder, and especially when the shareholding is of the magnitude that the holder of the shares is the virtual master of the company and therefore the assets of the company.

24. Learned counsel for Siddhartha Sareen had made a statement at the bar that the shareholdings in the companies held by Sudhir would not be diluted either by way of sale of the shares or increase or reduction of the share capital. We bind Siddhartha Sareen to said statement.

25. The value of the estate left behind by the deceased was stated to be about ₹1600 crores, and for which learned senior counsel for Parul raised an issue of it being much more, but we bind Parul to her pleading wherein she claims that the value of her 1/4th share in the estate left behind by her father is ₹325 crores. There may be some merit in the argument of Parul that the real assets are the lands held by the companies, but surely while valuing the shares of her father she would have kept in mind the assets held by the companies. Learned counsel for Siddhartha and Sunita made a statement that the house at Greater Kailash Part I would not be sold or encumbered. Its conceded value is about ₹60 crores. There is also available a house at Jor Bagh, New Delhi which is held by Columbia Estates Pvt. Ltd. Its value is around ₹100 crores. The farmhouse at Kapashera has a value of around ₹100 crores. Adjoining farmhouse on another 5.21 acre land in Kapashera is in the name of Sunita. The total value of the four properties would be ₹360 crores. Learned counsel for Siddhartha and Sunita gave an undertaking not to sell or encumber said properties including the other 5.21 acre land in the name of Sunita in Kapashera where a farmhouse has been constructed, though said property is not the subject matter of dispute, but has been offered by Sunita as a security, should her daughter ultimately succeed in the suit. We bind the two to the statement made by their counsel and direct that they would file an undertaking before the learned Single Judge in terms of the statement made by them and accepted by us.

26. We maintain the impugned order but upon the condition that Siddhartha Sareen and Sunita Sareen would file undertakings in the suit in terms of the concessions made by their counsel and as recorded above. Siddhartha Sareen would not sell the shares inherited by him from his father in the various companies detailed in the will. The equity in the companies would not be diluted. He would be free to exercise right as a shareholder in the said companies. He would be free to deal with the lands in the State of Uttar Pradesh and Haryana, but would maintain an account of the proceeds thereof.

27. Affidavits shall be filed by Siddhartha and Sunita in the suit within four weeks.

28. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 29, 2016
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