

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

+ **RSA No. 85/2017 & CM Nos.10241-44/2017**

% **2nd May, 2017**

GYAN WATI & ORS. Appellants

Through: Mr. Rakesh K. Sharma, Adv.
versus

PRAMOD & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) appellants/plaintiffs impugn the judgments of the courts below; of the Trial Court dated 9.11.2011 and the First Appellate Court dated 14.10.2015; by which the courts below have dismissed the suit for permanent and mandatory injunction filed by the appellants/plaintiffs and has decreed the counter-claim of the mother/Smt. Vidya Devi, and who was the original defendant no.1 in the suit. Appellants/plaintiffs are the widow and children of late Sh. Ranbir Singh and Smt. Vidya Devi was the mother of Sh. Ranbir Singh. The suit property is Flat No. 73, Pocket G-5, Sector-16, Rohini

2. It is an undisputed position emerging on record that late Sh. Ranbir Singh was the sole and exclusive owner of the suit property. Late Sh. Ranbir Singh also admittedly died intestate. Once a Hindu dies intestate, devolution of the estate of the Hindu will be in terms of the provisions of the Hindu Succession Act, 1956. As per the Hindu Succession Act besides the widow and children of the deceased Sh. Ranbir Singh, the mother of the deceased namely Smt. Vidya Devi/defendant no.1 is also a Class-I legal heir. Defendant no.1/Smt. Vidya Devi therefore being a Class-I legal heir, and consequently the suit of the appellants/plaintiffs claiming exclusive ownership rights in the suit property was rightly dismissed and the counter-claim of the mother of the respondent no.1/defendant no.2 was decreed by the trial court and partition was ordered of the suit property by giving one forth share in the suit property to each of the three appellants/plaintiffs, and one fourth share to the mother/defendant no.1 counter-claimant/Smt. Vidya Devi.

3. The first appellate court partly modified the judgment of the trial court dated 9.11.2011 inasmuch as the mother Smt. Vidya Devi had died intestate in the mean while, and consequently, the one fourth share of the mother devolved in equal shares upon appellant nos. 2 and 3 as also the respondent no.1/defendant no.2 who was the son of

defendant no.1/Smt. Vidya Devi and the brother of late Sh. Ranbir Singh. Accordingly, the first appellate court passed a preliminary decree ordering that appellants/plaintiffs would be entitled to their one fourth share each and that also the appellant nos. 2 and 3 will get their shares as a legal heirs of Smt. Vidya Devi who died intestate, inasmuch as Smt. Vidya Devi was the paternal grand-mother of the appellants nos. 2 and 3/plaintiff nos. 2 and 3.

4. I therefore do not find any illegality in the judgments of the courts below, much less arising of a substantial question of law under Section 100 CPC, for this second appeal to be entertained because once admittedly the property belonged exclusively to late Sh. Ranbir Singh then in addition to the appellants/plaintiffs, the mother Smt. Vidya Devi would be a Class-I legal heir, and therefore, entitled to succeed to the extent of one fourth share to the suit property.

5. Learned counsel for the appellants/plaintiffs sought to place reliance upon the Hindu Gains of Learning Act, 1930 to argue that the judgments which are passed would be against the spirit of this Act, however I really fail to understand this argument because succession to the property of a deceased Hindu who dies intestate has to be in accordance with the Hindu Succession Act, and, the Hindu Gains of Learning Act will have no application to succession of a

property of a deceased Hindu after passing of the Hindu Succession Act.

6. Dismissed.

MAY 02, 2017/ib

VALMIKI J. MEHTA, J

