

IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 3014/2011 & IA No.6749/2017 (u/O XX R-18 r/w O-XII R-6
CPC)

MIRA VACHANI & ORS Plaintiffs
Through: Mr. S. Santanam Swaminadhan and
Ms. Nishtha Khurana, Advs.
Versus
SHANTA WADHWANI & ORS Defendants
Through: Mr. Manish Sangwan, Adv. for D-2.
Ms. Renuka Singh and Ms. Shreya
Dusey, Advs. for D-3&4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
19.12.2017

1. In this suit for partition of the estate comprising of moveable and immoveable properties of late Sh. Laxmi D. Hingorani, no issues even have been framed till date, though the suit is pending for the last six years.
2. The counsel for the plaintiffs, the counsel for the defendant No.2 Nisha Wadhwani and the counsel for the defendants No.3&4 Malika Wadhwani and Shonali Wadhwani today also seek adjournment to settle the matter.
3. Suits cannot be kept pending in this fashion.
4. None appears for defendants No.1 & 5 to 7.
5. The counsel for the defendant No.2 states that the defendant No.1 Shanta Wadhwani has expired.
6. On enquiry, whether the legal heirs of defendant No.1 Shanta Wadhwani have been substituted, the counsels state that on 3rd March, 2014, the defendants No.2 to 4 namely Nisha Wadhwani, Malika Wadhwani and Shonali Wadhwani being the only legal representatives (LRs) of the

deceased defendant No.1 Shanta Wadhwani were impleaded as her heirs as well.

7. The amended memorandum of parties dated 17th December, 2013 be transposed from pages 218 to 220 of Part IIA Volume I, to Part I file at the appropriate place.

8. The counsel for the defendants No.3&4 states that the defendant No.5 Tikam Wadhwani was the father of the defendants No.2 to 4 namely Nisha Wadhwani, Malika Wadhwani and Shonali Wadhwani and has also died and the defendants No.2 to 4 have been substituted as his LR's as well.

9. The counsel for the plaintiffs, on enquiry, about the service of defendants No.6&7 Sanjay Jaisinghani and Savita Changrani states that he drops defendants No.6&7 Sanjay Jaisinghani and Savita Changrani and does not want to proceed against them.

10. Allowed.

11. An endorsement to the said effect be made by the Court Master, under his signature in today's date, on the amended memorandum of parties dated 17th December, 2013.

12. I have asked the counsels to explain the controversy, to gauge whether any issue arises for consideration.

13. As per the plaint, the deceased Laxmi D. Hingorani was the owner of the following two immoveable properties:

- (I) Property No.44, Vasant Marg, New Delhi; and,
- (II) Half share of property No.14, Kemp Road, Bangalore, Karnataka.

and the following moveable assets:

- (A) Locker No.70, State Bank of Mysore, Main Branch, Bangalore;

- (B) Shares debentures in companies and investments in Mutual Funds, Govt. of India Relief Bonds, Senior Citizen's Saving Scheme, Fixed Deposits, jointly with children and grand children;
- (C) Saving Bank Account at Standard Chartered Bank (Account No.528-1-002377-2) jointly with Smt. Mira Vachani, Plaintiff No.1;
- (D) Saving Bank Account at Central Bank of India (Account No.750) jointly with Smt. Shanta Wadhwani, defendant No.1;
- (E) Saving Bank Account at Royal Bank of Scotland (Account No.1188134) jointly with Sh. Gope D. Hingorani, Plaintiff No.2;
- (F) Pension Account No.01190092513 in State Bank of India, R.K. Puram, Delhi;
- (G) Fixed Deposits with the State Bank of India, R.K. Puram, Delhi;
- (H) Personal jewellery, cash and other valuables.

14. The counsel for the plaintiffs states that though the plaintiffs in the plaint have pleaded a document dated 7th September, 2005 to be the Will of the deceased Laxmi D. Hingorani but it is the case of the appearing defendants that the plaintiffs have made alterations to and tampered with the Will dated 7th September, 2005 and the appearing defendants have filed their copy of the said Will dated 7th September, 2005. The counsel for the plaintiffs further states that the plaintiffs are willing to accept the document dated 7th September, 2005 as filed by the appearing defendants to be the

validly executed last Will of the deceased Laxmi D. Hingorani and to partition of the properties as mentioned in the said document.

15. Even the defendants' copy of the Will dated 7th September, 2005 of the deceased Laxmi D. Hingorani is not immediately available on the Court file and the counsels having not paginated their files as per Court file, are unable to tell the location thereof.

16. The counsels for the appearing defendants have handed over their copy of the Will dated 7th September, 2005 of the deceased Laxmi D. Hingorani and which is taken on record and on which, for purpose of identification, in today's date, Ex.C-1 has been put. The same be taken on record and be kept in Part I file.

17. The counsel for the plaintiffs states that as per Ex.C-1, the plaintiff No.1 Mira Vachani, deceased defendant No.1 Shanta Wadhwani and the deceased plaintiff No.2 Gope D. Hingorani have 1/3rd share each in property No.44, Vasant Marg, New Delhi. On further enquiry, it is stated that Vasant Marg property is lying vacant and locked under the keys, jointly of the appearing parties.

18. The counsel for the appearing defendants confirms.

19. I have enquired from the counsel for the plaintiffs the need for impleadment of plaintiffs No.3 to 7 namely Nand Kumar Vachani, Nilita Vachani, Lalit Vachani, Sheila Hingorani and Neila Hingorani.

20. The counsel for the plaintiffs states that the plaintiffs No.3 to 5 Nand Kumar Vachani, Nilita Vachani and Lalit Vachani are the husband and children of plaintiff No.1 Mira Vachani and the plaintiffs No.6&7 namely Sheila Hingorani and Neila Hingorani are the children of the plaintiff No.2 Gope D. Hingorani and who on the demise of the plaintiff No.2 Gope D.

Hingorani have also been substituted as her LRs. It is stated that since under the Will, the share bequeathed to plaintiffs No.1&2 and defendant No.1 was to be jointly held by their respective husbands and children also, they have been impleaded as parties.

21. The appearing counsels state that in property No.44, Vasant Marg, New Delhi, the shares would be as under:

- (I) Plaintiff No.1 Mira Vachani and
plaintiffs No.3 to 5 Nand Kumar Vachani,
Nilita Vachani and Lalit Vachani together : 1/3rd
- (II) Plaintiff No.2 Gope D. Hingorani and
her LRs Sheila Hingorani and Neila
Hingorani together : 1/3rd
- (III) Shanta Wadhwani and her LRs Nisha
Wadhwani, Malika Wadhwani and Shonali
Wadhwani together : 1/3rd

22. The counsels state that a preliminary decree for partition of property No.44, Vasant Marg, New Delhi be passed declaring the shares as aforesaid.

23. The counsel for the plaintiffs states that he gives up the claim for partition of half share of the deceased Laxmi D. Hingorani in property No.14, Kemp Road, Bangalore because that the said property has been encroached upon and the parties have lost the same. It is further stated that the defendants No.6&7 Sanjay Jaisinghani and Savita Changrani, though have been deleted from the array of parties, were the owners of another half share in property No.14, Kemp Road, Bangalore.

24. In this view of the matter, there is no need to pass a preliminary decree for partition with respect to property No.14, Kemp Road, Bangalore.

The appearing defendants, if so desire, can seek partition of the said property by taking appropriate proceedings therefor.

25. That brings me to the moveable assets of the deceased Laxmi D. Hingorani.

26. The counsels for the appearing defendants state that the moveable assets, besides as disclosed by the plaintiffs, also comprise of Locker No.70 in State Bank of Mysore, Bangalore and investments held by the deceased Laxmi D. Hingorani in Mutual Funds, Govt. of India Relief Bonds, Senior Citizen's Saving Scheme, Fixed Deposits as well as monies in Account No.528-1-002377-2 with the Standard Chartered Bank and Account No.750 with Central Bank of India, ABN Amro Bank and State Bank of India as detailed in paras 3 to 5 of Ex.C-1.

27. The counsel for the plaintiffs states that the list as was to be prepared of the assets has not been prepared and the defendants have also not prepared the list.

28. The counsels are otherwise *ad idem* that whatever are the moveable assets of the deceased Laxmi D. Hingorani, the share of the respective parties i.e. the shares of plaintiff No.1, plaintiff No.2 and the defendant No.1 are 1/3rd each. For the sake of clarity, it is stated that the shares in the moveable assets of deceased Laxmi D. Hingorani as detailed in the plaint and as detailed in Ex.C-1 are as under:

- | | | | |
|-------|--|---|-------------------|
| (I) | Mira Vachani | : | 1/3 rd |
| (II) | Sheila Hingorani and Neila Hingorani together | : | 1/3 rd |
| (III) | Nisha Wadhwani, Malika Wadhwani
and Shonali Wadhwani together | : | 1/3 rd |

29. There is some controversy about the withdrawals made by the joint holders of the accounts, of the monies therein, after the demise of Laxmi D. Hingorani. However the same is to be resolved pursuant to a decree for accounts to be passed and evidence with respect thereto is not to be led in the suit.

30. Though there can be no proof of a document claimed to be a Will on the basis of admissions but since the parties have *de hors* the Will agreed to the shares to the respective parties, it is felt that no evidence is required for a preliminary decree for partition to be passed.

31. A preliminary decree for partition is accordingly passed, declaring the shares of the respective parties as detailed above to be as mentioned against their respective names in paras 21 and 28 above.

32. Decree sheet be drawn up.

33. A decree is also passed of accounts to be gone into with respect to the moveable assets as detailed above of the deceased Laxmi D. Hingorani.

34. Decree sheet be drawn up.

35. I have next enquired from the counsels, whether property No.44, Vasant Marg, New Delhi can be partitioned by metes and bounds.

36. The counsels are not prepared on the said aspect and state that they will have to obtain instructions.

37. Considering the number of shareholders of the property and the limitation of the number of residential units which can be created in the property, it is felt that no purpose will be served in appointing a commissioner to consider the feasibility of partition by metes and bounds of property No.44, Vasant Marg, New Delhi; a final decree for partition with respect thereto can be also passed.

38. Accordingly, a final decree for partition of property No.44, Vasant Marg, New Delhi is passed, of sale of the property and distribution of the sale proceeds in accordance with the shares of the respective parties declared in the preliminary decree for partition. It is further directed that the parties, if so desire, before seeking sale of the property through the process of the Court, will be entitled to make inter se bids, with the party making the highest bid, purchasing the share of the others by payment of the sale consideration of the share of the others and by being put in vacant, peaceful and physical possession of the entire property.

39. A final decree for partition of property No.44, Vasant Marg, New Delhi be also drawn up.

40. Instead of appointing a commissioner, to go into accounts, in this proceeding, it is deemed appropriate to grant liberty to the parties to, in execution of the decree for accounts seek appointment of a Commissioner to go into the accounts with respect to the moveable assets.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 19, 2017

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(Corrected & released on 30th January, 2018)