

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

+ **RFA No.723/2017**

% **11th August, 2017**

KRISHNA DEVI Appellant

Through: Mr. Rajeev Ranjan Pandey,
Advocate.

versus

REETU PAL & ANR. Respondents

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

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.29033-35/2017 (exemption)

1. Exemption allowed subject to just exceptions.
C.M.s stand disposed of.

RFA No.723/2017 and C.M. No.29032/2017 (stay)

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit which was filed by the respondents/plaintiffs for partition of the suit property bearing No.B-271, Qutub Vihar, Golya Dairy, New Delhi. The property is situated on a plot of 50 sq. yds. The

respondents/plaintiffs are the widow and the minor child of the deceased Sh. Arun Kumar who was the son of Sh. Amarnath. By the impugned judgment dated 5.4.2017, the suit for partition has been decreed by applying the provision of Order XII Rule 6 CPC.

3. As per the suit plaint filed by the respondents/plaintiffs, it is stated that the suit property was owned by Sh. Amarnath i.e husband of the appellant and who was the father of deceased Sh. Arun Kumar being the husband and father of the respondents/plaintiffs. In the written statement filed by the appellant/defendant it was not disputed that the suit property did in fact belong to late Sh. Amarnath. In the plaint, it was stated that late Sh. Amarnath died intestate and this is also not disputed by the appellant/defendant in the written statement that Sh. Amarnath died intestate. Trial court therefore has decreed the suit for partition observing that if the suit property belonged to Sh. Amarnath, then, on the death of Sh. Amarnath who has died without leaving behind the Will, the suit property will have to be divided in two parts with half part falling to the appellant/defendant and the other half part falling to the respondents/plaintiffs who are the legal heirs

being the widow and the minor daughter of the son Sh. Arun Kumar of late Sh. Amarnath.

4. In my opinion, the trial court has rightly decreed the suit on account of the admitted position which emerged on record.

5. Learned counsel for the appellant/defendant argued that suit could not have been decreed under Order XII Rule 6 CPC, inasmuch as, in the reply to the application under Order XII Rule 6 CPC, appellant/defendant had pleaded that the suit property has been gifted by her husband late Sh. Amarnath to someone and therefore partition cannot be granted. Trial court, in my opinion, has rightly rejected this argument by observing that this was not the defence in the written statement of the appellant/defendant and also that even the reply to the application under Order XII Rule 6 CPC does not mention that who is the person to whom late Sh. Amarnath gifted the property. I may also note that this argument of the appellant/defendant goes against the appellant/defendant because why would the appellant/defendant have any difficulty in decreeing the suit for partition if someone else and not she is the owner of the suit property. This argument of the appellant/defendant is rejected.

6(i) Learned counsel for the appellant/defendant then argued that the respondent no. 2/plaintiff no.2/minor daughter was not the child of Sh. Arun Kumar because it is pleaded that respondent no. 2/plaintiff no.2 is the illegitimate child of respondent no. 1/plaintiff no. 1 on account of her illicit cohabitation with some other person, and accordingly, the suit could not have been decreed under Order XII Rule 6 CPC.

(ii) In my opinion, even this argument is misconceived because in any case respondent no. 1/plaintiff no. 1 being the widow of late Sh. Arun Kumar would be the legal heir of late Sh. Amarnath as per Class 1 of the Schedule of the Hindu Succession Act, 1956 with the other legal heir of Sh. Amarnath being the appellant/defendant/widow of Sh. Amarnath. Therefore even assuming for the sake of argument that respondent no. 2/plaintiff no. 2 had no right in the suit property, it cannot be disputed that the respondent no. 1/ plaintiff no. 1 being the daughter-in-law of late Sh. Amarnath and the wife of Sh. Arun Kumar son of Sh. Amarnath, she would have half ownership interest as the legal heir of late Sh. Amarnath as regards the suit property. In fact, the argument of illegitimacy of respondent no.2/plaintiff no.2 is also

legally incorrect because Section 112 of the Indian Evidence Act, 1872 states that when a child is born during the marriage, it is a conclusive proof of the child being the legitimate child and it is an undisputed position appearing on record that it is not pleaded by the appellant/defendant that there was any divorce decree between the respondent no. 1/plaintiff no. 1 and her husband Sh. Arun Kumar, son of late Sh. Amarnath.

7. In view of the above discussion, I do not find any merit in the appeal and the same is hereby dismissed.

AUGUST 11, 2017
Ne/AK

VALMIKI J. MEHTA, J

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