

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

+ **RFA No. 788/2017 & CM Nos. 33659-61/2017**

% **15th September, 2017**

BHUPINDER KAUR & ORS. Appellants

Through: Mr. Akash Nagar, Adv.

versus

DAVINDER KAUR & ORS. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.33661/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.33660/2017 (condonation of delay)

2. This application is allowed and the delay of 582 days is
condoned.

C.M. stands disposed of.

RFA No. 788/2017 & C.M. No. 33659/2017 (stay)

3. This first appeal under Section 96 of the Code of Civil
Procedure, 1908 (CPC) impugns the preliminary decree dated

26.10.2015 and the final decree dated 28.9.2016 passed by the trial court. The effect of the two decrees is that the respondent no.1/plaintiff has been declared to be 1/4th owner of the suit property bearing No.F-2, Mansarovar Garden, New Delhi and the appellants have been declared as 3/4th owners of the suit property. By the final decree dated 28.9.2016 it has been held that the property is incapable of partition, and therefore the same has to be sold and the monetary value of the share of each party as available from the net auction sale proceeds have to be given to the parties.

4. At the outset I put it to counsel for the appellants that one appeal does not lie against the preliminary decree as also the final decree, as these are separate decrees, and to which counsel for the appellants states that this appeal be considered as a challenge only to the preliminary decree dated 26.10.2015. Statement of the counsel for the appellants accordingly is taken on record and this appeal is taken as an appeal against the judgment dated 26.10.2015 passing a preliminary decree.

5. The facts of the case are that the respondent no.1/plaintiff filed the subject suit for partition and injunction with respect to the

suit property. Original defendant in the suit was Smt. Inderjeet Kaur, mother-in-law of the respondent no.1/plaintiff. Appellants are now the legal heirs of the original defendant Smt. Inderjeet Kaur. The suit property admittedly was purchased as per a registered sale deed dated 3.7.1971. This sale deed is an admitted document between the parties. As per this sale deed, husband of the respondent no.1/plaintiff i.e the son of the original defendant Smt. Inderjeet Kaur was the half owner of the suit property and the other half owner of the suit property was the defendant Smt. Inderjeet Kaur. The husband of the respondent no.1/plaintiff, i.e son of the original defendant Smt. Inderjeet Kaur, expired on 15.5.2006 leaving behind his widow/respondent no.1/plaintiff as the only legal heir, and who therefore filed the subject suit for partition claiming that she was 50% owner of the suit property and which 50% had belonged to her husband late Sh. Parvinder Singh, the joint vendee in the sale deed dated 3.7.1971.

6. The suit was contested by the appellants/defendants and it was pleaded that the suit property was purchased out of the stridhan of the original defendant. It was also pleaded that the husband of the respondent no.1/plaintiff was only 7 years when the contract of the

sale deed dated 3.7.1971 was entered into, and therefore, no title passed to Sh. Parvinder Singh, the husband of the respondent no.1/plaintiff. Since the original defendant died during the pendency of the suit on 22.9.2008, the present appellants being her three daughters were impleaded as defendants.

7. After pleadings were complete, the trial court framed the issues and parties led evidence and which aspects are referred to in paras 6 to 8 of the judgment of the trial court and which paras read as under:-

“6. On dated 01.08.2013 following issues were framed by the Ld. Predecessor of this court:-

(1) Whether the suit is liable to be dismissed on the ground that contract by minor is void? OPD

(2) Whether the husband of the plaintiff was minor at the time of execution of the sale deed of the suit property? If so, its effect? OPD

(3) Whether the plaintiff is entitled for 50% of the share in the suit property and hence for a preliminary decree? OPP

(4) Whether the property in partition can be partitioned by mets and bound? OPP

(5) Whether the plaintiff is entitled for decree of permanent injunction in her favour and against the defendant? OPP

(6) Relief.

7. In order to prove her case, plaintiff examined herself as PW-1 and tendered her affidavit as Ex.PW1/A. She has proved the site plan Ex.PW 1/1, copy of registered sale deed Mark A, copy of death certificate Ex.PW1/2, application dated 24.03.2007 Mark B.

8. LR of the defendant No.1 examined herself as DW-1 and tendered her affidavit as Ex.DWA. She has relied upon the certified copy of the sale deed as Mark A and Will dated 10.07.2008 Mark ‘B’.”

8. The relevant issues were issues nos.3 and 4 as to entitlement of the respondent no.1/plaintiff to the suit property and the trial court has dealt with this aspect in paras 11 to 13 of the impugned judgment and which paras read as under:-

ISSUES NO.3 AND 4

“11. The onus to prove these issues is on the plaintiff. Plaintiff appeared as PW-1 and re-iterated the contents of the plaintiff and interalia, testified that the suit property was jointly purchased by the deceased his mother in law, Inderjeet Kaur and Parvinder Singh, her husband. Thereafter her husband died leaving behind her as the only legal heir. Therefore, plaintiff is entitled to $\frac{1}{2}$ share in the suit property.

12. The DW-1 admitted that suit property was purchased jointly in the name of her mother and her brother. The will propounded by defendant has not been proved. Therefore, it cannot be taken into consideration. Therefore, plaintiff is entitled to $\frac{1}{2}$ share is the portion of the suit property of her husband as after the death of Sh. Parvinder Singh, the plaintiff and her mother-in-law were the only class-I legal heirs of the husband of the plaintiff. As such, plaintiff and her mother in law are entitled for $\frac{1}{4}^{\text{th}}$ each share in the portion of suit property belonging to the husband of the plaintiff.

13. It may be noted that after the death of the defendant, Smt. Inderjeet Kaur, her share is to be disbursed amongst her legal heirs. The defendant has left her daughters namely, Mrs. Bhupinder Kaur, Ms. Kanwaljeet Kaur and Ms. Manjit Kaur, defendants no.1,2 and 3 respectively as class-I legal heirs as the plaintiff is not included as a heir of the deceased Smt. Inderjeet Kaur u/s 15 (1) (a) of the Hindu Succession Act. Therefore, the the defendants no. 1 to 3 are entitled to $\frac{1}{3}^{\text{rd}}$ share in the portion of the suit property belonging to the deceased Smt. Inderjeet Kaur. As such, the share of the defendants came to $\frac{1}{3}^{\text{rd}}$ ($\frac{1}{2} + \frac{1}{4}$) = $\frac{1}{4}^{\text{th}}$ each of the share of Smt. Inderjeet Kaur (deceased) in the suit property. Therefore, the share of the plaintiff in the suit property comes to $\frac{1}{4}$. The plaintiff has successfully established her case. Therefore, plaintiff is entitled to a preliminary decree of partition. As such, these issues are decided in favour of the plaintiff and against the defendants.”

(underlining added)

9. A reading of the aforesaid paras show that the appellants had propounded a Will of the original defendant/Smt. Inderjeet Kaur

but which Will of the defendant Smt. Inderjeet Kaur was not proved. In any case however not proving of the Will will not make any difference because as per Sections 15 and 16 of the Hindu Succession Act, 1956 the property of a mother will fall firstly upon her sons and daughters including the children of pre-deceased son or daughter and the husband with those heirs specified in the prior entry will take precedence over the heirs specified in the subsequent entry. The widow of a son falls in the second entry being Sub Sub-Section (b) of Sub-Section 1 of Section 15 of the Hindu Succession Act whereas the sons and daughters fall under Sub Sub-Section (a) of Sub-Section 1 of Section 15 of the Hindu Succession Act. The three appellants therefore who are the three daughters of the deceased defendant Smt. Inderjeet Kaur would therefore inherit the $\frac{3}{4}$ th share of Smt. Inderjeet Kaur (original share of Smt. Inderjeet Kaur $\frac{1}{2}$ plus half of half share of Sh. Parvinder Singh). It may be noted that the half share of Sh. Parvinder Singh, husband of the respondent no.1/plaintiff will devolve in two equal parts upon two persons as per the schedule of the Hindu Succession Act i.e upon his widow and his mother. Since Sh. Parvinder Singh died issueless, the half share of the 50% ownership of

Sh. Parvinder Singh in the suit property would devolve upon his mother/defendant/Smt. Inderjeet Kaur and the half of half share of Sh. Parvinder Singh will devolve upon the respondent no.1/plaintiff/widow i.e the respondent no.1/plaintiff/widow and mother/defendant will succeed in equal shares. Resultantly, the 50% share of Smt. Inderjeet Kaur in the suit property in terms of the sale deed dated 3.7.1971 will get enhanced to 75% share as she would inherit the half of the half share of Sh. Parvinder Singh i.e $\frac{1}{4}^{\text{th}}$ share in the whole property. Accordingly, the trial court has rightly passed a preliminary decree giving the appellants/defendants $\frac{1}{3}^{\text{rd}}$ share each in the 75% or $\frac{3}{4}^{\text{th}}$ share in the suit property belonging to the original defendant Smt. Inderjeet Kaur and the respondent no.1/plaintiff has been given $\frac{1}{4}^{\text{th}}$ share in the suit property.

10. Learned counsel for the appellants/defendants argued that when the sale deed dated 3.7.1971 was executed in favour of the original defendant/mother and Sh. Parvinder Singh/husband of respondent no.1/plaintiff, at that time Sh. Parvinder Singh was a minor, however, admittedly no documentary evidence whatsoever has been led on behalf of the appellants/defendants to show that Sh.

Parvinder Singh was a minor when the sale deed dated 3.7.1971 was executed. Sale Deed dated 3.7.1971 does not show Sh. Parvinder Singh as a minor. Oral self-serving statements made on behalf of the appellants/defendants cannot be taken as discharge of onus of proof with respect to Sh. Parvinder Singh being a minor when the sale deed dated 3.7.1971 was executed. I therefore hold that Sh. Parvinder Singh was not a minor when the sale deed was executed in his favour along with the mother/defendant/Smt. Inderjeet Kaur on 3.7.1971.

11. Learned counsel for the appellants/defendants sought to place reliance upon the judgment of the Supreme Court in the case of ***Mathai Mathai Vs. Joseph Mary Alias Marykkutty Joseph and Others (2015) 5 SCC 622*** to argue that Sh. Parvinder Singh being a minor could not have been beneficiary under the sale deed dated 3.7.1971. The argument urged on behalf of the appellants by placing reliance upon the judgment in ***Mathai Mathai's*** case (*supra*) is misconceived for two reasons. Firstly and as already stated above, there is no evidence which is led, and therefore, it cannot be held as proved that Sh. Parvinder Singh was a minor when the sale deed was executed in his favour for half share in the suit property on 3.7.1971.

The second reason for rejecting the argument urged on behalf of the appellants/defendants is that it is settled law that no doubt a minor cannot enter into a contract since the object is not to fasten any liability upon a minor, however it is equally well settled law that minor can be conferred benefits of a contract. One such example of conferring benefits on minors under a contract is Section 30 of the Partnership Act, 1932 whereby a minor can be admitted to benefits of partnership. The judgment in *Mathai Mathai's* case (*supra*) nowhere lays down the proposition that minor cannot be beneficiary of a contract.

12. There is no merit in the appeal. Dismissed.

SEPTEMBER 15, 2017/ib

VALMIKI J. MEHTA, J