

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

% *Judgment Reserved on: January 30, 2017*
Judgment Delivered on: February 13, 2017

+ **RSA 2/2016**

KAUSHALYA DEVI Appellant
Through: Ms.Vandana Sharma & Mr.Abhay
S.Kushwaha, Advocates

versus

RAM MEHAR RAJPUT & ORS. Respondents
Through: Mr.Lokeshwar Sharma & Mr.Vivek
Sharma, Advocates for R-1 & R-2

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

RSA 2/2016

1. This Regular Second Appeal under Section 100 of CPC is filed by the appellant/plaintiff impugning the concurrent judgment of the Courts below i.e. of the learned Trial Court dated 13th September, 2013 and of the First Appellate Court dated 29th November, 2014 by which prayers of the appellant/plaintiff for declaration and permanent injunction in respect of 0-17 biswas of land forming part of agricultural land/killla No.116 and 117 Khatauni No.13/13 and 105/95 total land measuring 7 bigha 0-17 biswas situated in Revenue Estate of Village Ghoga, Delhi, have been declined.

2. Ms.Vandana Sharma, Advocate for the appellant has submitted that the appellant, who is a widow lady, has to lookafter her three daughters. She had also taken care of her father-in-law late Sh.Dhan Singh till his death. As the financial condition of the appellant/plaintiff is not good and in view of

responsibilities on her of her daughters, late Sh.Dhan Singh - her father-in-law bequeathed 0-17 biswas of land falling in his share in her favour by way of will Ex.PW1/F. He was competent to execute the Will in view of the provisions of Section 48 of Land Records Act as well under Hindu Succession Act. Learned counsel for the appellant has also contended that substantial share of the property owned by late Sh.Dhan Singh had already been bequeathed to his sons and grandsons by virtue of Will dated 16th November, 1994 Ex.PW1/E. None of the other legal heirs had any share in the 0-17 biswas of land owned by late Sh.Dhan Singh. Since the respondents have already taken over the property bequeathed to them by late Sh.Dhan Singh, they cannot claim any right in the property bequeathed to the appellant/plaintiff in recognition of her share in the ancestral property as the share of her husband late Sh.Sat Narayan. The appellant had a valid title in the property given to her by father-in-law by virtue of Will dated 13th January, 2003 Ex.PW1/F. Hence, the judgments passed by both the Courts below being suffering from perversity may be set aside.

3. Mr.Lokeshwar Sharma, learned counsel for respondents No.1 and 2 has contended that by virtue of Will Ex.PW1/E dated 16th November, 1994 the share of husband of appellant/plaintiff has already been inherited by her two sons namely Rakesh and Deepak (respondents No.3 and 4 herein), who were impleaded as defendants No.3 and 4 in the civil suit and preferred not to contest the same. It has been further contended that despite the fact that the share of her husband in ancestral property has been inherited by her two sons, still with a view to settle her claim in 0-17 biswas of land, a compromise deed dated 19th November, 2004 Ex.DW1/2 was executed in the presence of witnesses. In terms of the said compromise, the appellant/plaintiff had been given ₹2 lacs in cash and also 1/3rd share in 0-17

biswas of land. In terms of the said compromise, it was agreed that this 0-17 biswas of land shall be mutated in the name of all the three i.e. the appellant, respondent No.1 and respondent No.2. They have also applied for mutation in respect of the said land but thereafter she had become greedy and filed this case though all her claims have already been settled and share of her husband vested in her sons.

4. After hearing learned counsel for the parties, the following substantial question of law was formulated on 30th January, 2017:-

“Whether the findings of the First Appellate Court are contrary to the evidence led by the appellant/plaintiff before learned trial Court and suffer from perversity?”

5. The facts as pleaded by the appellant/plaintiff in Civil Suit No.719/08 are that:-

(i) Respondents No.1 and 2 (defendants No.1 and 2 in Civil Suit No.719/08) are brothers of her husband late Sh.Sat Narayan and respondents No.3 and 4 (defendants No.3 and 4 in Civil Suit No.719/08) are her sons.

(ii) Her father-in-law Sh.Dhan Singh owned property measuring 300 sq. yds. situated in Revenue Estate of Village Ghoga, Delhi and the half share in Agriculture land measuring 21 Bigha, out of Khatauni No.503/425, Khasra No.8/12 (4-16) 19/2 (3-5) 20/2 (3-12), 21(4-16) & 22 (4-16) i.e. total 21-5, situated in the Revenue Estate of Village Bawana, Delhi, in respect of which he executed Will dated 16th November, 1994 in favour of his sons namely Sh.Ram Mehar Rajput and Sh.Raje Ram and her two sons namely Sh.Rakesh and Sh.Deepak.

(iii) Sh.Dhan Singh executed another will dated 13th January, 2003 whereby he gave his share to the appellant/plaintiff out of agricultural land/killi No.116 and 117 Khatauni No.13/13 and 105/95 total land

measuring 7 bigha 0-17 biswas situated in Revenue Estate of Village Ghoga, Delhi in which the deceased's share was 0-17 biswas. This share was given by her father-in-law by executing Will in her favour as she had received nothing out of the share of her late husband in the estate.

(iv) She is entitled to the share of her husband in the ancestral property and despite the respondents being given adequate share, they want to grab her share as well.

6. The suit was contested by respondent Nos.1 and 2. Her two sons impleaded as defendant Nos.3 and 4 preferred not to contest and proceeded ex-parte.

7. The plea taken by respondent Nos.1 and 2 in the written statement was that the matter stands compromised vide Compromise Deed dated 19th November, 2004 and in terms of the compromise, in lieu of 0-17 biswas of land willed in her favour, she was given 1/3rd share in the said land as well ₹2 lacs in cash after getting the value of the land assessed. The share of late Sh.Sat Narayan – husband of the appellant has already been inherited by her two sons and she can claim her share as widow of late Sh.Sat Narayan, from her sons. The property being ancestral and late Sh.Dhan Singh being one of the bhumidar, could not have executed any will in favour of the appellant/plaintiff.

8. On the pleadings of the parties, learned Trial Court settled the following issues on 19th August, 2010:-

(i) *Whether the plaintiff has no locus standi to file the present suit in regard of the Compromise Deed dated 19.11.2004? OPD*

(ii) *Whether the present suit has not been properly valued for the purpose of Court fees?OPD*

(iii) Whether the plaintiff is entitled for the relief of declaration, as prayed? OPP

(iv) Whether the plaintiff is entitled for the relief of permanent injunction, as prayed? OPP'

9. After considering the evidence learned Trial Court held that as per the Khatuni exhibit PW-1/B & PW-1/C Sh.Dhan Singh was recorded as one of the Bhumidhar and not the exclusive or absolute owner of the property which was admittedly an ancestral property. Hence, he had no right to bequeath the same. The whole case of the appellant/plaintiff being based on the Will Ex.PW-1/F failed as the executor of the Will was not having the capacity to bequeath the said property. Rejecting her plea that she was otherwise entitled to share the property, learned Trial Court held that the remedy was to seek partition in respect of her share.

10. The First Appellate Court concurred with the findings of learned Trial Court and re-examined the issue as to whether Sh.Dhan Singh was capable to bequeath his share by virtue of Will Ex.PW1/F. The First Appellate Court held that late Sh.Dhan Singh was only one of the Bhumidhar of undivided unspecified share. Had his share been divided, he could have executed a Will under Section 48 of the Land Reforms Act, as well under Hindu Succession Act. The appellant/plaintiff was not held to be entitled to any relief as prayed in the suit.

11. Perusal of the Trial Court Record reveals that before his death on 15th October, 2003, late Sh.Dhan Singh - father-in-law of the appellant/plaintiff had executed three Wills. First Will is dated 16th November, 1994 Ex.PW1/E. Second Will is dated 13th November, 2002 and third Will is dated 13th January, 2003 Ex.PW1/F. Whereas the Wills dated 16th

November, 1994 and dated 13th January, 2003 are registered, the Will dated 13th November, 2002 is notarised.

12. Under the Will dated 16th November, 1994 share of Sh.Sat Narayan, late husband of the appellant/plaintiff has been inherited by his two sons namely Sh.Rakesh and Sh.Deepak.

13. The Will dated 16th November, 1994 Ex.PW1/E has been executed by Sh.Dhan Singh son of Sh. Dillu Ram resident of V & P.O. Ghoga, Delhi-39 in favour of Sh.Raje Ram son of Sh.Dhan Singh and Rakesh & Deepak both sons of late Sh.Satparkash all residents of village and post office Ghoga, Delhi-39 in respect of a constructed pucca house measuring 300 sq. Yds. Situated in the revenue estate of village Ghoga, Delhi-39 and of the agricultural land, measuring 21 Bighas 5 Biswas out of Khatauni No.503/425 Khasra No.8/12 (4-16), 19/2 (3-5), 20/2 (3-12), 21(4-16), 22(4-16) = Total (21-5), ½ share situated in the revenue estate of village Ghoga, Delhi-39 by bequeathing as under:-

'I hereby bequeath that after my death Sh.Raje Ram son of Shri Dhan Singh (Son) and Rakesh and Deepak both sons of late Sh.Sat Parkash, (Grandsons) all residents of village and post office Ghoga, Delhi-39, shall become the equal owners i.e. half constructed house in the name of my son Sh.Raj Kumar and half portion owner are my grandsons and half portion of the agricultural land shall be in the name of Sh.Raj Kumar and half shall be in the names of my Grand sons Rakesh and Deepak.'

14. **The second Will dated 13th November, 2002 has also been executed by Sh.Dhan Singh declaring that this was his first and last Will.** In this Will it is recorded that property Killa No.116 and 117 Khatoni No.13/13 and 105/95 total measuring 7 bighas 0-17 biswas out of which his share is 1 bigha, bequeathed the same in favour of Smt.Kaushalya wife of Late Satya

Narayan to the exclusion of his other legal heirs. This Will is notarized and though filed by the appellant/plaintiff and not exhibited, is not disputed by the respondents No.1 and 2.

15. The third Will Ex.PW1/F has been executed on 13th January, 2003 on the basis of which the appellant/plaintiff is staking her claim is also in respect of the same property pertaining to which Will was executed on 13th November, 2002 i.e. property Killa No.116 and 117 Khatoni No.13/13 and 105/95 total measuring 7 bighas 0-17 biswas situated at Village Ghoga, Delhi. After describing the above said property, the Will reads as under:-

‘And whereas the testator with his own accord and free will without any force of coercion from any corner has executed this Will in favour of Smt.Kaushalya w/o late Satyanarain r/o 274, Village Ghoga, Delhi who will become the sole owner of the above land after the death of the testator.’

16. The appellant/plaintiff filed the civil suit claiming her title on the basis of third Will dated 13th January, 2003 Ex.PW1/F though the Will dated 13th November, 2002 pertained to the same land wherein the deceased Sh.Dhan Singh had his share claiming to the extent of about 1 bigha and was bequeathed to the appellant/plaintiff. Surprisingly, in the second Will dated 13th November, 2002 he has mentioned the same to be his first and the last Will though it has been preceded by Will dated 16th November, 1994 and succeeded by the Will dated 13th January, 2003. In the Will dated 13th January, 2003, there is no mention of earlier two Wills.

17. However, in the second appeal, this Court need not enter into this controversy for the reason that the parties have admitted that late Sh.Dhan Singh had executed three Wills.

18. This Court need not go into the aspect of capability of late Sh.Dhan Singh to execute the Will in favour of the appellant/plaintiff as neither the

execution of the Will is disputed by the parties nor the fact that vide Will Ex.PW1/F 0-17 biswas of land was bequeathed in favour of Smt.Kaushalya Devi, W/o late Sh.Sat Narayan. What is pleaded and proved by the respondents No.1 and 2 is that the issue of 0-17 biswas of land bequeathed to Smt/Kaushalya Devi was settled through compromise deed dated 19th November, 2004 Ex.DW1/2.

19. Both the Courts below have not dealt with on the issue of family settlement vide compromise deed dated 19th November, 2004 Ex.DW1/2.

20. This Court is entitled to give additional reasoning for discussing the suit in view of Order XLI Rule 24 CPC and the ratio of a recent judgment of the Supreme Court in the case of Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782.

21. The appellant/plaintiff has examined herself as PW-1 and filed her affidavit Ex.PW1/1 giving description of the properties owned by her father-in-law late Sh.Dhan Singh in paras 1 to 3. Para 4 onwards the affidavit of the appellant/plaintiff is extracted hereunder:-

4. That Sh.Dhan Singh, had executed a Will Deed on 16th November, 1994, which was duly registered before the S.R. Delhi, and distributed his residential house and agricultural land (mentioned in paragraph No.3(1)(a) & 3(1)(b) in favour of the following persons:-

- | | |
|---------------------------------|-----------------|
| <i>1. Raje Ram</i> | <i>Son</i> |
| <i>2. Rakesh S/o Sat Narain</i> | <i>Grandson</i> |
| <i>3. Deepak S/o Sat Narain</i> | <i>Grandson</i> |

Exhibited PW-1/E is the Will dated 16th November, 1994

5. That my father-in-law Sh.Dhan Singh, had executed another Will Deed on 13-1-2003, which was duly registered before the

S.R.Delhi, in my favour, during his lifetime. Vide this Will of Agriculture land/Killa No.116 and 117, Khatoni No.13/13, and 105/95, total land measuring 7 bigha 0-17 bishwa, situated in the Revenue Estate of Village: Ghoga, Delhi out of which the deceased had a share of 0-17 biswa, the deceased bequeathed to me Exhibited PW-1F is the Will dated 13-1-2003.

6. That this share was willed to me as I, had received nothing else out of the share of my late husband in the estate. Moreover, I had looked after my father-in-law while the deceased was neglected and abused by the defendants in his old age.

7. That I am also entitled to the property being the share of my late husband in the ancestral property.

8. That I am also entitled to receive maintenance from the defendants and also for my daughters.

9. That the defendants have been adequately given their share of the property and are now greedy to further usurp my share.

10. That this is my true and correct statement.

Deponent

Verification

Verified at Delhi, by above named deponent on 8th November, 2010 that the contents of the above said Evidence affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Deponent'

22. The appellant/plaintiff has produced her son-in-law Sh.Ishwar Singh as PW-2. His statement is to the effect that the appellant/plaintiff sought his assistance in getting the property mutated on the strength of Will dated 13th January, 2003 Ex.PW1/F.

23. PW-3 Smt.Premwati is sister-in-law of the appellant/plaintiff who deposed that the Will dated 13th January, 2003 Ex.PW1/F was executed by Sh.Dhan Singh.

24. So far as the statement of appellant/plaintiff is concerned, a bare perusal of her affidavit shows that she has not uttered even a single word in respect of the compromise deed Ex.DW1/2 despite the fact that in the written statement the respondents No.1 and 2 (defendants No.1 and 2) had taken the plea about the settlement between the appellant and respondents No.1 and 2 vide this compromise deed, which reads as under:-

'This compromise deed is executed at Delhi on this 19th day of November, Two thousand four, between the following persons:-

- (i) Smt.Kaushaliya w/o Late Sh.Satya Narain R/o V & PO Ghoga, Delhi-39*
- (ii) Ram Mehar Rajpur S/o Late Sh.Dhan Singh R/o House No.41, Adarsh Nagar, Delhi-33*
- (iii) Raje Ram Rajput S/o Late Shri Dhan Singh R/o V & PO Ghoga, Delhi-39*

Whereas Late Shri Dhan Singh son of Shri Dillu R/o V & PO Ghoga Delhi-39 was recorded Bhumidhar of Agriculture land measuring (0-17) Biswas out of Killa No.116 & 117 Khatoni No.13/13 & 105/95 situated within the Revenue record and abadi of village Ghoga, Delhi-110039.

That Late Shri Dhan Singh had executed a Will on dated 13th January, 2003 (Regd.) whereby he desired to mutate Smt.Kaushalya as owner/Bhumidhar of above said agricultural land (0-17) Biswas in favour of his widow daughter-in-law Smt.Kaushlya wife of Late Sh.Satya Narain R/o V & PO Ghoga, Delhi-39 after the death of above said Sh. Dhan Singh son of Sh. Dillu, and Sh.Dhan Singh expired on 15th October, 2003.

That after the death of Sh.Dhan Singh above mentioned Executants

- Smt.Kaushlya widow of Sh.Satya Narain*
- Ram Mehar s/o Late Sh.Dhan Singh*

- Raje Ram Rajput son of Late Sh.Dhan Singh

in the presence of some undersigned witnesses made settlement regarding the above mentioned WILL as under:-

That all the executants have settled the cost/total value of the said agriculture land ₹3,00,000/- (₹Three lacs only), Sh.Ram Mehar son of Late Sh.Dhan Singh and Sh.Raje Ram Rajput son of late Sh.Dhan Singh have paid ₹1,00,000/- each (Total ₹2,00,000/-) cash to Smt.Kaushlya widow of Sh.Satya Narain.

Smt.Kaushlya has agreed and received ₹2,00,000/- and has been agreed to mutate the said agriculture land on the name of above mentioned three executants in equal share

- Smt.Kaushlya
- Ram Mehar
- Raje Ram

After today, the said agricultural land will be possessed/owned by above mentioned three executants in equal share. And the said Will shall not have any effect in future regarding the said agricultural land.

Witnesses:-

1. Sh.Mahender Singh
S/o Harswari, Village Ghoga
2. Sh.Rajvir Singh
S/o Sh.Tika Ram,
Village Rajapur,
Sector-9 Rohini.'

Executants:-

1. Kaushalya
2. Ram Mehar Rajput
3. Raje Ram Rajput

25. It is relevant to mention here that while the appellant/plaintiff had preferred to remain silent on the compromise deed, the respondents No.1 and 2 had examined Sh.Rajvir Singh who was witness to the compromise deed. As per DW-1 Sh.Raj Ram Rajput (Respondent No.2), another witness to the compromise deed namely Sh.Mahender Singh has already expired.

26. The plea of compromise dated 19th November, 2004 arrived at between the parties was taken as early as filing the written statement. Though in replication and in her statement, the appellant/plaintiff had denied any compromise but the fact remains that she never sought cancellation of the compromise dated 19th November, 2004 Ex.DW1/2 which is stated to have been executed by the parties in the presence of Sh.Mahender Singh and Sh.Rajvir Singh.

27. The compromise deed is of the year 2004 and the civil suit has been instituted in the year 2008. The mere fact that as per compromise deed Ex.DW1/2 not only ₹2 lacs in cash but also 1/3rd share in the suit property (0-17 biswas) was given to her. The compromise deed was proved during statement of DW-1 Sh.Raje Ram Rajput but there was no cross examination on the execution of the compromise deed by the appellant/plaintiff. It was not even suggested that the signatures on the compromise deed are not that of her or that no such compromise had taken place in the presence of persons who have signed as witnesses and also bearing the signature of the appellant and respondents No.1 and 2.

28. When the family members enter into an arrangement which is fair in the circumstances of a particular case, the Courts lean in favour of such arrangement. In the decision reported as Kale & Ors. vs. Deputy Director of Consolidation & Ors. (1976) 3 SCR 202 the Supreme Court has examined the effect and value of family arrangements and observed as under:-

'Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to

sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise "Kerr on Fraud" at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus;

"The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to that their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administering of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successions so that future disputes are sealed for ever and

the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.....'

29. Both the Courts below have appreciated the oral evidence in the light of entries in the Revenue Record as per which late Sh.Dhan Singh was not the exclusive owner of the property. Despite the fact that as per revenue record their father was one of Bhumidar, both the brothers (respondents No.1 and 2) of her husband late Sh.Sat Narayan had entered into a compromise which had the effect of not only providing financial assistance to her by getting ₹2 lacs but also 1/3rd share in 0-17 biswas of land bequeathed in her favour. The compromise deed is not proved to be forged or fabricated.

30. The findings of the Courts below cannot be termed as perverse. The substantial question of law is answered against the appellant/plaintiff.

31. The Regular Second Appeal is dismissed.

32. No costs.

33. LCR be sent back alongwith copy of this order.

CM No.22/2016 (Stay)

Dismissed as infructuous.

**PRATIBHA RANI
(JUDGE)**

FEBRUARY 13, 2017/ 'pg'