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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(OS) 394/2007
MANJIT SINGH TIKKA & ANR. Plaintiffs
Through: Mr. Shivankar Shukla, Adv.
versus
RAJBANS KAUR & ORS. Defendants
Through: Mr. L.S. Solanki, Adv. for LR's of
D-2.
AND
+ CS(OS) 80/2009
PRAKASH KAUR Plaintiff
Through: None.
versus
MANJEET SINGH TIKKA AND OTHERS Defendants
Through: Mr. Shivankar Shukla, Adv. for D-1.
Mr. L.S. Solanki, Adv. for LR's of
D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.02.2018**

1. CS(OS) No.80/2009 was filed for (i) partition of property no.D-202, Anand Vihar, Delhi – 110 092; (ii) declaration of the alleged Wills dated 6th September, 2002 and 23rd February, 2004 of the deceased Satwant Kaur Tikka propounded by the defendants as null and void; (iii) declaration that the mutation letters dated 5th November, 1982 in favour of the deceased Smt. Satwant Kaur Tikka and mutation letter dated 19th October, 2005 in favour of defendant no.2 Rajbans Kaur, issued by the Delhi Development Authority (DDA) in respect of property no.D-202, Anand Vihar, Delhi are null and void; (iv) declaration that the Conveyance Deed dated 12th December, 2005 of freehold rights in the land underneath the property no.D-202, Anand

Vihar, Delhi executed by the DDA in favour of the defendant no.2 Rajbans Kaur as null and void; and, (v) permanent injunction restraining the three defendants namely (a) Manjeet Singh Tikka; (b) Rajbans Kaur; and, (c) Harjeet Kaur from dealing with property no.D-202, Anand Vihar, Delhi.

2. On 25th November, 2009 the following issues were framed in CS(OS) No.80/2009:-

- “1. Whether the suit is barred by limitation? OPD*
- 2. Whether the suit is bad for non-joinder of parties i.e., DDA and MCD? OPD*
- 3. Whether the Plaintiff has a right, title and interest in the suit property No. D-202, Anand Vihar, Delhi? OPD*
- 4. Whether late Smt. Satwant Kaur Tikka had the legal capacity to bequeath the suit property by executing a Will? OPD*
- 5. Whether Smt. Satwant Kaur Tikka executed her Will dated 6-9-2002 and/or Will dated 23-2-2004? If so, to what effect? OPD*
- 6. Whether the alleged Wills dated 6-9-2002 and 23-2-2004, propounded by the Defendants are null and void and are liable to be cancelled? OPP*
- 7. What are the consequence of mutation of the suit property firstly, in favour of Smt. Satwant Kaur and subsequently in favour of the Defendant no.2? OPP*
- 8. Whether the mutation dated 5-12-1982 in favour of Smt. Satwant Kaur Tikka and/or mutation dated 19-10-2005 in favour of Defendant no.2 are liable to be declared null and void? OPP*

9. *Whether conveyance deed of the suit property in favour of the Defendant No.2 is liable to be declared null and void? OPP*
10. *What right, title and share, if any, the Plaintiff has in the suit property? OPP*
11. *Whether the Plaintiff is entitled to get the suit property partitioned by metes and bounds and have possession of her share? OPP*
12. *Whether the Plaintiff is entitled to a decree of permanent injunction? OPP*
13. *Reliefs.”*

3. The order dated 25th November, 2009 also makes absolute the earlier interim order in the suit directing *status quo* to be maintained with respect to title and possession of property no.D-202, Anand Vihar, Delhi.

4. The defendant no.2 Rajbans Kaur died and vide order dated 5th October, 2010, Gurdeep Singh, Tejpal Singh, Sarabjeet Singh, Sanmukh Singh and Neena Kaur being the husband, sons and daughter respectively were substituted in her place. However no amended memo of parties is found to have been filed.

5. The plaintiff commenced her evidence in the suit. However the order dated 24th March, 2011 records that the evidence in this suit was to be recorded along with CS(OS) No.394/2007.

6. The plaintiff filed IA No.4632/2012 under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) which came up first before the Court on 21st May, 2013; though the said application was kept pending but recording of evidence was not interdicted with. However no evidence is

found to have been thereafter recorded in the suit.

7. On 26th March, 2015, the following order was passed in the suit:-

“IA No.4632/2013

The learned counsel for the defendants state, upon instructions, that the plaintiff, like defendant Nos.1 to 4 has equal share in the property, i.e. 1/5th each bearing No.D-202, Anand Vihar (Village Karkardooma), Delhi. Mr. Rungta, the learned Senior Advocate for defendant No.1 suggests that the property could either be disposed off by way of an auction or defendant Nos. 2 and 4, who are in occupation of the property could buy out the interest of other parties after the property being valued by an approved valuer.

In view of the aforesaid submissions let a preliminary decree be drawn up declaring 20% share each, in the suit property to the plaintiff and defendant Nos.1, 2, 3 and their mother Mrs. Satwant Kaur Tikka.

At the request of the learned counsel for the parties, M/s. Kaushal & Associates (Government Approved), B-5/4483, Vasant Kunj, New Delhi (Mobile No.9811153104) is appointed as the valuer to assess the value of the property. The valuer shall submit its valuation report within two (2) weeks from today. The fee of the valuer is fixed at Rs.15,000/- to be shared equally by the parties, i.e. the plaintiff and defendant Nos.1 to 3.

The learned Senior Advocate for defendant No.1 states that during the pendency of the suit, the mother passed away. Competing Wills have been set up by defendant No.1 on the one hand and defendant Nos.2 & 3 on the other. This inter se dispute would not have an effect on the division of shares of the other parties. Therefore, all that would need to be done is that the share falling to the deceased mother when liquidated, shall be deposited in the

Court and its appropriation would be determined in CS (OS) No.394/2007.

List on 9.7.2015 before the Joint Registrar.

Dasti under the signature of the Court Master.”

8. Today none appears for the plaintiff Prakash Kaur and only the counsel for the defendant no.1 Manjeet Singh Tikka and the counsel for Gurdeep Singh, Sarabjeet Singh and Sanmukh Singh, legal representatives of defendant no.2 Rajbans Kaur appear. None appears for the other legal representatives of the defendant no.2 Rajbans Kaur and none appears for the defendant no.3 Harjeet Kaur.

9. In spite of the order dated 26th March, 2015 supra no final decree for partition has been passed as yet because vide order dated 21st December, 2015, the suit, on enhancement of minimum pecuniary jurisdiction of this Court, was transferred to the District Court. The learned Additional District Judge to whom the suit was assigned on transfer, finding that the Government valuer who was directed vide order dated 26th March, 2015 to value the property had valued the property at Rs.8,33,00,000/-, directed the file to be sent back to this Court and since then the suit is again pending before this Court.

10. Vide order dated 28th November, 2017, the Joint Registrar raised an issue of payment of appropriate court fees on the enhanced valuation and the Registry has reported deficient court fees of Rs.1,78,835/-.

11. The counsel for the three legal heirs of the defendant no.2 Rajbans Kaur states that the deficient court fees has not been paid.

12. As aforesaid, none appears for the plaintiff.

13. However this being a suit for partition, in which all parties enjoy the same status, it is not deemed appropriate to dismiss the suit in default.

14. I may also mention that the question of the plaintiff being liable to pay any deficient court fees now does not arise since the suit was valued at Rs.8,33,00,000/- in pursuance to the valuation done under a preliminary decree for partition and the plaintiff cannot be made liable for payment of any additional court fees. Moreover, once the parties have made a statement that the property cannot be divided by metes and bounds and has to be sold, final decree for partition by sale of the property and distribution of sale proceeds as per the shares declared in the preliminary decree for partition has to be passed.

15. On enquiry, it is informed by the counsel for three legal representatives of the defendant no.2 Rajbans Kaur that Satwant Kaur Tikka is survived by her natural heirs Prakash Kaur, Manjeet Singh Tikka, Rajbans Kaur and Harjeet Kaur and since Rajbans Kaur as aforesaid has died, her share in the estate of Satwant Kaur Tikka would go to the heirs of Rajbans Kaur.

16. Accordingly, the preliminary decree for partition passed on 26th March, 2015 is modified by declaring the shares in property no.D-202, Anand Vihar, Delhi as under:-

Prakash Kaur	—	1/4 th or 25%
Manjeet Singh Tikka	-	1/4 th or 25%
Legal heirs of Rajbans Kaur	-	1/4 th or 25%
Harjeet Kaur	-	1/4 th or 25%

17. A final decree for partition is passed, of sale of property no.D-202, Anand Vihar, Delhi and of distribution of sale proceeds amongst Prakash Kaur, Manjeet Singh Tikka, legal heirs of Rajbans Kaur and Harjeet Kaur as declared in the preliminary decree for partition aforesaid.

18. It is further clarified, that as recorded in the preliminary decree for partition dated 26th March, 2015, the parties in possession of the property or any of the other parties shall be entitled to make *inter se* bids for the property with the party bidding the highest acquiring shares of the others.

19. In view of aforesaid, the need to grant any of the other reliefs claimed in CS(OS) No.80/2009 is not felt since the title will be governed by the final decree for partition and mutation be carried out accordingly. All parties are however directed to maintain *status quo* qua title, possession and construction of property no. D-202, Anand Vihar, Delhi till execution of final decree for partition or till parties together mutually act.

20. The parties are left to bear their own costs.

21. Decree sheet be drawn up.

22. CS(OS) No.394/2007 is found to have been filed by Manjeet Singh Tikka and Bikramjit Singh Tikka against Rajbans Kaur, Harjeet Kaur, Prakash Kaur, Gurdeep Singh, Sharan Kaur and Municipal Corporation of Delhi for (i) possession of 1st and 2nd floors of property no.D-202, Anand Vihar, Delhi; (ii) mandatory injunction directing the defendants to make payment of Property Tax of property no.D-202, Anand Vihar, Delhi; (iii) perpetual injunction restraining the defendants from dealing with the property no.D-202, Anand Vihar, Delhi; and (iv) recovery of damages for use and occupation. On demise of Rajbans Kaur her heirs are found to have been substituted in her place in this suit as well.

23. I may mention that the plaintiff no.2 Bikramjit Singh Tikka is the son of Manjit Singh Tikka.

24. On 25th November, 2009, the following issues were framed in this suit:-

- “1. Whether Late Smt Satwant Kaur Tikka executed a valid and legal will on 6th September, 2002? OPD*
- 2. Whether Late Smt. Satwant Kaur Tikka executed a valid and legal will on 23rd February 2004? If so its effect? OPP*
- 3. Whether the Plaintiffs are entitled to injunction(s) as prayed for? If so, against which of the Defendants? OPP*
- 4. Whether the Plaintiffs are entitled to possession of the suit premises? If so, from which of the Defendants? OPP*

5. *Whether the Plaintiffs are entitled to any damages, if so, from which of the Defendants and for what period? OPP*

6. *Relief”*

and with the consent of the counsels the said suit directed to be tried along with CS(OS) No.80/2009.

25. Since the property involved in CS(OS) No.394/2007 is the same as the property in CS(OS) No.80/2009 in which a final decree for partition has been passed, this suit has become infructuous and is disposed of.

26. The parties are left to bear their own costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 01, 2018

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