

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

+ **CS(OS) No. 2944/1996**

% **10th January, 2018**

SEEMA SURI Plaintiff

Through: Mr. Neeraj Pandey, Advocate
with plaintiff in person.

versus

SURINDER DEWAN (DECEASED) THROUGH LR's & ORS.

..... Defendants

Through: Mr. Rajat Aneja, Ms. Chandrika
Gupta and Ms. Nisha Sharma,
Advocates for D-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a suit filed seeking reliefs of partition, possession, rendition of accounts and injunction. The suit property with respect to which partition is claimed is 12/2 Mile Stone, Main Najafgarh Road, Delhi. The suit property was belonging to the father of the plaintiff late Sh. Nand Kumar Dewan. The total area of the suit land is 15 bhigas and 4 biswas i.e approximately 15200 sq. yards. Plaintiff is the daughter of late Sh. Nand Kumar Dewan and the sister of defendant

nos. 1 to 4 in the suit. Defendant nos. 1 to 4 are the sons of late Sh. Nand Kumar Dewan and defendant nos. 5 to 10 are the daughters of late Sh. Nand Kumar Dewan. Defendant no. 11 is the widow of late Sh. Nand Kumar Dewan. I may note that two sons being defendant nos. 1 and 2 expired during the pendency of the suit and they are now represented through their legal heirs. Reference to the defendants in this judgment will be therefore reference to the sons and daughters of late Sh. Nand Kumar Dewan other than the plaintiff who is one of the daughters of late Sh. Nand Kumar Dewan. Whenever reference will be required to be made to the defendant no. 11 in the suit being the mother of the parties and widow of late Sh. Nand Kumar Dewan this defendant no. 11 will be referred to as Smt. Vidyawati Dewan/defendant no. 11/mother/widow of late Sh. Nand Kumar Dewan. I may also state that the suit is only pressed with respect to the relief of this property situated at Najafgarh at Delhi although in the suit plaint there was a reference to a property owned by late Sh. Nand Kumar Dewan at Village Tamnoli, District Ambala, but with respect to which no relief has been claimed in the suit.

2. Plaintiff's case is simple. Plaintiff/daughter says that her father late Sh. Nand Kumar Dewan, who owned the suit property, expired intestate on 8.11.1986 at New Delhi. Since the father late Sh. Nand Kumar Dewan died intestate and leaving behind eleven children, four sons and seven daughters, as also widow, plaintiff has the 1/12th share in the suit property.

3. This suit is contested by three defendants being defendant nos. 1, 3 and 11 who have filed their separate written statements i.e by defendant nos. 1 and 3 being the sons of late Sh. Nand Kumar Dewan and the brothers of the plaintiff and the defendant no. 11 being the mother of the plaintiff and defendant nos. 1 to 10. The other daughters of late Sh. Nand Kumar Dewan being the sisters of the plaintiff and defendant nos. 1 to 4 have not appeared and not contested the suit. They have not filed any written statement and nor have appeared in the suit.

4. The main contest to the suit is by defendant nos. 3 and 11 who have relied upon a Will dated 22.11.1985 executed by late Sh. Nand Kumar Dewan. This Will is a registered Will. As per this Will the seven daughters of late Sh. Nand Kumar Dewan were disinherited

by him and the suit property was bequeathed by him to his four sons being the defendant nos. 1 to 4 in the present suit and his widow being the defendant no. 11 in the suit. Since the suit land comprises of Khasra nos. 508-511 of Village Najafgrah, in terms of the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan, land in Khasra Nos. 508 and 509 were given to two sons Sh. Surinder Kumar Dewan and Sh. Prem Kumar Dewan (being the defendant nos. 1 and 3 in the suit) along with the defendant no. 11/Smt. Vidyawati Dewan/mother and the land in the remaining two Khasra Nos. 510 and 511 were bequeathed to the two sons Sh. Krishan Kumar Dewan and Sh. Rajinder Kumar Dewan (defendant nos. 2 and 4 in the suit) along with the mother/Smt. Vidyawati Dewan. It may also be noted that the movable properties including back accounts and cash were bequeathed by late Sh. Nand Kumar Dewan in favour of his widow Smt. Vidyawati Dewan, mother of the plaintiff and defendant nos. 1 to 10. Accordingly, defendant nos. 3 and 11 have prayed that the suit be dismissed because the suit property was bequeathed to defendant nos. 1 to 4 and defendant no. 11 in terms of the Will dated 22.11.1985.

5. Defendant no. 1 filed his written statement contesting the suit but defendant no. 1 did not rely upon any Will of the father late Sh. Nand Kumar Dewan, defendant no. 1 only pleaded for the suit to be dismissed on the ground that the suit land was an agricultural land covered under the Delhi Land Reforms Act, 1954 and to the land covered under the Delhi Land Reforms Act owned by a male member/father, female members including daughter, such as the plaintiff, do not have a right.

6. After pleadings were complete, the following issues were framed on 10.10.2006:-

- “1. Whether the present suit is barred under Section 185 of the Delhi Land Reforms Act? OPD
2. Whether the plaintiff who is not a *bhumidhar* has no locus-standi to file the present suit? OPP
3. Whether the plaintiff has no right of succession under the Delhi Land Reforms Act? OPP
4. Whether the present suit is barred by Section 10 of the Code of Civil Procedure? OPP
5. Whether the plaintiff is entitled to any share in the suit property? OPP
6. Relief.”

7. Since the suit is now contested only by defendant no. 3 by placing reliance upon the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan, counsel for defendant no. 3 does not press for any decision on issue nos. 1 to 4. Accordingly, this Court will have to

decide the sole issue being the issue no. 5 framed in the suit and which will be on the basis as to whether late Sh. Nand Kumar Dewan died intestate or died leaving behind his registered Will dated 22.11.1985.

8. It is settled law that a Will has to be proved like any other document. A Will has to be proved by showing that the signatures on the Will are of the executor and the Will is duly attested by two attesting witnesses. In addition a person who disputes a Will can also show that the Will is an unnatural Will and therefore could never have been executed by the deceased testator.

9. In order to prove the Will of late Sh. Nand Kumar Dewan dated 22.11.1985 defendant no. 3 has led the evidence of the two sons of the two attesting witnesses of the Will. The two attesting witnesses of the Will were Sh. Om Prakash Sobti and Sh. Vidya Sagar Vohra who had expired. The son of Sh. Vidya Sagar Vohra, namely, Sh. Jai Kishan Vohra has deposed as DW-4 and filed his affidavit by way of evidence Ex.DW4/1 and son of Sh. Om Prakash Sobti is Sh. Kuldeep Sobti who has deposed as DW-3 and has tendered his affidavit by way of evidence as Ex.DW3/A. The affidavit filed by way of evidence as examination in chief by Sh. Kuldeep Sobti and Sh. Jai Kishan Vohra

are on the same lines of these witnesses deposing that their fathers have died and death certificate of Sh. Om Prakash Sobti having been proved as Ex.D3D2/1 and the death certificate of Sh. Vidya Sagar Vohra proved as Ex.D3W3/1. Both these witnesses Sh. Kuldeep Sobti and Sh. Jai Kishan Vohra have identified and proved the signatures of their fathers on the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan. Sh. Vidya Sagar Vohra had signed as witness no. 1 and his signatures were identified at portion mark C by his son Sh. Jai Kishan Vohra and the signature of Sh. Om Prakash Sobti was identified and marked at portion D during the evidence of Sh. Kuldeep Sobti. In law, by virtue of Section 68 of the Indian Evidence Act, 1872 ordinarily a Will is proved through the deposition of at least one attesting witness. However, there would be situations where one or both attesting witnesses may not be available but the same would not mean that the Will still cannot be proved because how such Will has to be proved where both the attesting witnesses are not found/dead is found in Section 69 of the Evidence Act and which Section 69 of the Evidence Act reads as under:-

“69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting

witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

10. Section 69 of the Evidence Act provides that where there is no attesting witness who is found so as to prove the Will in view of Section 68 of the Evidence Act which requires at least one attesting witness for proving of the Will, the Will should be proved by the Will shown as bearing the signatures of the attesting witnesses and the executant of the Will. In the present case the signatures of the two attesting witnesses Sh. Vidya Sagar Vohra and Sh. Om Prakash Sobti who have signed as witness nos. 1 and 2 to the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan have been proved through the sons of these witnesses Sh. Jai Kishan Vohra and Sh. Kuldeep Sobti. Therefore in my opinion the defendant no. 3 has succeeded in proving the Will and which has been exhibited as Ex.DW3/1 so far as the requirement of proving of the signatures of the attesting witnesses of the Will is concerned.

11. I may note that Sh. Kuldeep Sobti who appeared as DW-3 has also deposed that he was personally present when the Will dated 22.11.1985 was executed by late Sh. Nand Kumar Dewan. This

witness, as also defendant no. 3 who has deposed as DW-1, have proved and identified the signatures of Sh. Nand Kumar Dewan on the Will dated 22.11.1985. The Will Ex.DW3/1 in my opinion therefore has been held to be proved as required by law and subject however to the further discussion given hereinafter.

12. On behalf of the plaintiff the Will of the father late Sh. Nand Kumar Dewan is denied. The Will is alleged to be a forged and fabricated document. It is also pleaded on behalf of the plaintiff that the sons namely defendant nos. 1 to 4 did not take any care of the father late Sh. Nand Kumar Dewan. It is also argued that the Will is not a valid document and which becomes clear from two very important facts. The first important fact is that defendant no. 1 himself in his written statement filed in this suit in the year 1997 does not claim inheritance to the property of his father who died on 8.11.1986 on account of the Will dated 22.11.1985. The second ground which is urged on behalf of the plaintiff for rejecting of the Will Ex.DW3/1 of late Sh. Nand Kumar Dewan is that the defendant no. 3 is said to have given a statement before the Revenue Authorities for mutation of the suit land in the name of four brothers being defendant nos. 1 to 4 by

stating that the father had died without leaving a Will for the suit property to be mutated in the name of the four sons of late Sh. Nand Kumar Dewan, i.e the four brothers being defendant nos. 1 to 4.

13. Learned counsel for the defendant no. 3 has in order to counter the argument urged on behalf of the plaintiff for disbelieving the Will Ex. DW3/1 has argued that the mother/defendant no. 11/Smt. Vidyawati Dewan on the basis of the Will Ex. DW3/1 dated 22.11.1985 had filed proceedings for a succession certificate in view of the fact that under the subject Will all the movable assets of late Sh. Nand Kumar Dewan, deceased husband of defendant no. 11/ Smt. Vidyawati Dewan, including bank deposits, were bequeathed in favour of defendant no.11/Smt. Vidyawati Dewan. Defendant no. 11/ Smt. Vidyawati Dewan in the succession certificate case claimed ownership of the movable properties on the basis of the subject Will dated 22.11.1985 of late Sh. Nand Kumar Dewan. It is argued that in this succession certificate case citation was issued and all the children of the deceased Sh. Nand Kumar Dewan were arrayed as respondents being the four sons and seven daughters, and these four sons and seven daughters have filed their no objection in the form of written

statement for not opposing the grant of the succession certificate case filed by the mother/defendant no. 11/Smt. Vidyawati Dewan. This written statement was sought to be proved in the evidence of defendant no. 1 but since the written statement/no objection was only a photocopy the same could not be proved and was marked as A. I may also note that the record of the succession certificate case has admittedly been burnt in the fire which took place in the Tis Hazari Courts and therefore though the defendant no. 3 had made endeavors to get the original file or certified copy of the file, but since the file had been burnt in fire the subject file could not be summoned in the present suit. The judgment of the succession certificate case however has been proved and exhibited as Ex.DW1/D1. This judgment of the succession certificate case being judgment dated 8.5.1987 in petition No. 1126/1986 titled as Smt. Vidyawati Vs. State was put to the defendant no. 3/DW-1 in the cross-examination of defendant no. 3/DW-1 on 20.4.2010 by the defendant no.4 and LR's of defendant no.1. Since defendant no. 3/DW-1 admitted this document, hence this judgment of the succession certificate case was held to be validly proved and therefore exhibited as Ex.DW1/D1. It is extremely

relevant to note at this stage that plaintiff was given opportunity for rebuttal evidence after the defendant no. 3/DW-1 led evidence to prove the subject Will, however, in the affidavit by way of evidence filed by the plaintiff dated 20.4.2011/12.4.2011 plaintiff has nowhere deposed that the judgment dated 8.5.1987 proved as Ex.DW1/D1 is a forged and fabricated document. Therefore, the succession certificate case judgment dated 8.5.1987 has to be taken as proved and this judgment shows that the defendant no. 11/Smt. Vidyawati Dewan herein had filed succession certificate case pleading the existence of the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan. This Will of Sh. Nand Kumar Dewan was proved as Ex.PW2/1 in the succession certificate case. Accordingly, on account of the written statement filed by defendant no. 11/mother Smt. Vidyawati affirming the Will of Sh. Nand Kumar Dewan dated 22.11.1985 as also the judgment of the succession certificate case dated 8.5.1987 Ex.DW1/D1, it has to be held that the plaintiff had in fact given her no objection to the succession certificate case for the succession certificate to be granted to her mother/defendant no. 11/Smt. Vidyawati on the basis of the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan. In fact though

the case of the plaintiff is that she had never given no objection by filing the written statement in the succession certificate case, but if that is so then there was no reason why the plaintiff has from 1987, till date in 2018 and especially after when the written statement was filed by defendant no. 11 in this suit way back in October, 1997, relying upon and mentioning the judgment dated 8.5.1987 have not filed any proceeding for setting aside the judgment in the succession certificate case dated 8.5.1987. In my opinion, in view of the fact of the finality of the succession certificate case judgment, this is one reason why this Court has to uphold the due execution and validity of the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan.

14. No doubt, plaintiff has sought to place reliance upon the application filed and statement made by defendant no. 3 before the Revenue Authorities proved as Ex.PW1/AR-1 and Ex.PW1/AR-2 and Ex.PW1/BR, showing that defendant no. 3 herein before the Revenue Authorities took up a case in November, 1986 that there was no Will of late Sh. Nand Kumar Dewan, however in my opinion learned counsel for defendant no. 3 is justified in explaining away this admission by reference to the fact that in terms of the application

made before the Revenue Authorities as also the supporting statement, the endeavor was to get mutation of the suit property in the name of the four brothers being the defendant nos. 1 to 4 and which effectively was also the position in terms of Will to be taken with the events that the mother/defendant no.11 had also subsequently acted upon the Will by transferring to the sons or their family member(s) her rights in the suit property whereby effectively the four sons/family member(s) became the owners of the suit property. Essentially, therefore what was sought to be got done was to get ownership in the name of the four brothers leaving out the seven sisters including the plaintiff, and which could be taken as a way not to complicate the matters by filing the Will before the Revenue Authorities and in which circumstances Will would have to be proved by leading evidence before the Revenue Authorities.

15. Therefore though the defendant no.3 has taken up a case in November, 1986 before the Revenue Authorities of there not being a Will of late Sh. Nand Kumar Dewan, however since the Will has otherwise been proved and established in this suit as also in the succession certificate case filed by the defendant no.11/Smt.

Vidyawati Dewan/mother, with the further fact that plaintiff would have given no objection for the succession certificate case filed on the basis of the Will of late Sh. Nand Kumar Dewan dated 22.11.1985 inasmuch as no proceedings have been initiated by the plaintiff till date for recalling or setting aside the judgment in the succession certificate case dated 8.5.1987, and that a civil case to be decided on balance of probabilities and evidence of both the parties being taken as a whole, therefore in my opinion only on the basis of the fact that defendant no.3 stated before the Revenue Authorities that the father Sh. Nand Kumar Dewan died not leaving behind a Will it cannot be held that father Sh. Nand Kumar Dewan did not die in fact after leaving the Will which has been proved as Ex.DW3/1 in the present case. The self-same reason would also equally apply to the written statement filed by the defendant no.1 in the suit inasmuch as defendant no.1 has once again claimed joint ownership of four brothers of the suit land on account of the provisions of the Delhi Land Reforms Act, and which Delhi Land Reforms Act was in issue when the defendant no.3 had applied before the Revenue Authorities under the Delhi Land Reforms Act for mutation of the suit land in the name of the four

brothers being the defendant nos.1 to 4 in the present suit i.e the four sons of late Sh. Nand Kumar Dewan.

16. In my opinion there is another very strong reason why this Court has to accept the Will Ex.DW3/1 as proved to be of late Sh. Nand Kumar Dewan inasmuch as out of the twelve legal heirs of late Sh. Nand Kumar Dewan being four sons, seven daughters and widow only one daughter being the plaintiff is disputing the validity of this Will of late Sh. Nand Kumar Dewan dated 22.11.1985. The six other daughters who have been sued as defendant nos. 5 to 10 in the suit have not supported the plaintiff as no written statements have been filed by these five defendants nor these defendant nos. 5 to 10/other daughters of Sh. Nand Kumar Dewan, sisters of the plaintiff, have appeared in the suit and given a statement in favour of the plaintiff that their father died intestate and that the father/Sh. Nand Kumar Dewan did not leave behind any Will dated 22.11.1985 Ex.DW3/1. Really therefore the present is a case of one out of the twelve legal heirs only disputing the validity of the Will dated 22.11.1985 of the deceased testator Sh. Nand Kumar Dewan. This in my opinion is another reason why this Court is inclined to hold the subject Will of

late Sh. Nand Kumar Dewan as validly proved for the defendant nos.1 to 4 and defendant no.11 to become the beneficiaries under the subject Will.

17.(i) Counsel for the plaintiff argued that even if we look at the unproved written statement filed by the children of late Sh. Nand Kumar Dewan in the succession certificate case, it is seen that the name of the petitioner in the written statement has been written not as Smt. Seema Suri but as Smt. Veena Suri. It is argued on behalf of the plaintiff that name of the plaintiff is Seema and not Veena, and therefore, clearly the written statement of no objection was not signed by the plaintiff in the succession certificate case.

(ii) To this argument in my opinion counsel for the defendant no.3 has rightly referred to the cross-examination of the plaintiff conducted on 9.12.2015 that actually the name of the plaintiff before marriage was Veena but after her marriage she was called as Seema. In support of his argument, counsel for the defendant no.3 has further placed reliance upon the cross-examination of the plaintiff as PW-1 on 7.7.2008 and which cross-examination was conducted after a direction was issued by the Joint Registrar of this Court on 4.1.2008 that

plaintiff will bring the necessary documents being her education certificate in the original so that the actual name of the plaintiff can be known. However during the cross-examination of the plaintiff as PW-1 on 7.7.2008 it is seen that plaintiff admits that she has brought the documents but in response to the question on behalf of defendant no.3, it is stated that the documents are not produced as the documents would be self incriminating i.e against the plaintiff. Clearly therefore the plaintiff was guilty of concealment of documents which she had brought to the Court and did not file in spite of directions to file the same in terms of the order of the Joint Registrar dated 4.1.2008.

(iii) Counsel for the plaintiff in response to this argument of the counsel for the defendant no.3 has argued that in fact during the evidence in rebuttal of the plaintiff, this educational certificate being the CBSE certificate of the year 1969 HSC examination has been filed by the plaintiff and proved as Ex.PW1/AR3, however it is seen that this certificate is in the name of one Smt. Parveen Kumari, daughter of Sh. Nand Kumar and this certificate is not in the name of Smt. Veena Dewan and which would be the name of the plaintiff when she was unmarried and had appeared for the HSC examination for the year

1969. I therefore would not like to place any reliance upon the school certificate of CBSE of HSC examination 1969 proved by the plaintiff as Ex.PW1/AR3.

18.(i) The sequitur of the aforesaid discussion is that the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan has been proved through the depositions of the sons of the attesting witnesses who have come and deposed as DW-3 and DW-4 and both proved signatures of their fathers who are the attesting witnesses on the Will dated 22.11.1985 of late Sh. Nand Kumar Dewan. In fact there is no cross-examination by the plaintiff of DW-3 and DW-4 that the signatures on the Will Ex.DW3/1 being not of the attesting witnesses or Sh. Nand Kumar Dewan and consequently the signatures of the attesting witnesses on the Will Ex.DW3/1 and of Sh. Nand Kumar Dewan are admitted and not disputed. The aforesaid aspects will have to be taken with the fact that DW-3 in his cross examination clearly stated that he was present when the Will Ex.DW3/1 was executed and in this regard also there is no cross examination of the DW-3 by the plaintiff. Hence the Will Ex.DW3/1 stands proved as required by law.

(ii) Besides proving the signatures being those of the attesting witnesses, and in terms of Section 69 of the Evidence Act, the Will has also to be taken as proved because the Will was relied upon by the mother in the succession certificate case and which succession certificate case was allowed in terms of the judgment dated 8.5.1987, Ex.DW3/D1 and plaintiff has till date not questioned the finality of the said judgment including for the reason that plaintiff allegedly did not give her no objection by filing her joint written statement with ten other legal heirs of late Sh. Nand Kumar Dewan being the four sons and six other daughters.

(iii) The mother/Smt. Vidyawati Dewan, widow of late Sh. Nand Kumar Dewan who filed the succession certificate case resulting in the judgment of the succession certificate case dated 8.5.1987 has filed the written statement in this Court in support of the Will dated 22.11.1985 and also the judgment obtained in the succession certificate case dated 8.5.1987. This is one more reason why the Will Ex.DW3/1 of late Sh. Nand Kumar Dewan has to be held to be proved as a valid Will of late Sh. Nand Kumar Dewan. The statements made by the defendant no.3 before the Revenue Authorities of father late Sh. Nand Kumar Dewan died without leaving a Will as also the written statement filed by the defendant no.1 is sufficiently explained as required in a civil case to be

decided on balance of probabilities that ultimately the effect of the statement before the Revenue Authorities or the written statement of the defendant no.1 is having the effect that the four brothers being the four sons of late Sh. Nand Kumar Dewan became owners of the suit property and which is also the position in terms of the subject Will of late Sh. Nand Kumar Dewan whereby four brothers take the suit property along with the mother being the defendant no.11.

19. In view of the aforesaid discussion, it is held that the Will dated 22.11.1985 of the late Sh. Nand Kumar Dewan has been proved as Ex.DW3/1 and consequently the suit for partition etc filed by the plaintiff has to be dismissed inasmuch as late Sh. Nand Kumar Dewan has not died intestate as is the case which is set up in the plaint for seeking the relief of partition etc.

20. Suit is accordingly dismissed, leaving the parties to bear their own costs. Decree sheet be prepared.

21. Since the present suit is dismissed, all pending I.As. are also disposed of accordingly.

JANUARY 10, 2018

AK/Ne/Godara

VALMIKI J. MEHTA, J