

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

+ **CS(OS) No.41/2018**

% **31<sup>st</sup> January, 2018**

PRABHJOT SINGH KOHLI ..... Plaintiff

Through: Mr. Bhagat Singh, Advocate.

versus

RAGHBIR SINGH & ORS. .... Defendants

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**I.A. No.1432/2018 (exemption)**

1. Exemption allowed subject to just exceptions.

I.A. stands disposed of.

**CS(OS) No.41/2018 and I.A. Nos.1431/2018 (stay) & 1433/2018 (under Section 80 and 151 CPC)**

2. This suit for partition and injunction is filed by the plaintiff who is the son of Sh. Mohan Singh Kohli. Sh. Mohan Singh Kohli was the son of late Sh. Jagat Singh Kohli and whose three properties are subject matter of the present suit for partition. The plaintiff's father and defendant nos.1 to 8 in the suit are children of

late Sh. Jagat Singh Kohli. Plaintiff along with defendant nos.9 to 17 are the grandchildren and great grandchildren of Sh. Jagat Singh Kohli from the branch of the son Sh. Mohan Singh Kohli. As per the plaint, admittedly Sh. Jagat Singh Kohli died on 19.11.1996 and before his death he had executed two Wills. One Will is dated 2.1.1989 and the second Will is dated 5.6.1996. There were a total of five properties which were owned by late Sh. Jagat Singh Kohli at the time of his death and these properties are stated in para 3 of the plaint as under:-

- “a. Property No.31, Pusa Road, New Delhi, admeasuring 1500 sq. yds. Approximately (Land + Superstructure);
- b. Property No.10, Laj Building, New Rohtak Road, New Delhi, admeasuring 150 sq. yds. Approximately (Land + Superstructure); Earlier known as H. No.11281, Shidi Pur, Rohtak Road, New Delhi.
- c. Shop No.10, Gulabi Bagh, Delhi (Land + Superstructure);
- d. Plot No.CW-193, Sanjay Gandhi Transport Nagar, New Delhi, admeasuring 120 sq. mtrs. Approximately;
- e. Plot No.CW-227, Sanjay Gandhi Transport Nagar, New Delhi, admeasuring 120 sq. mtrs. approximately.”

3. In terms of the first Will of Sh. Jagat Singh Kohli dated 2.1.1989, the aforesaid five properties were divided between his children and grandchildren as stated in detail in the Will dated 2.1.1989. The second Will dated 5.6.1996 deals with two out of five properties being CW-227, Sanjay Gandhi Transport Nagar, New Delhi (120 sq. mtrs.) and CW-193, Sanjay Gandhi Transport Nagar, New

Delhi( 120 sq. mtrs.) and which were also the subject matter of bequest under the first Will dated 2.1.1989. This second Will dated 5.6.1996 of late Sh. Jagat Singh Kohli reads as under:-

“

WILL

THIS IS THE LAST WILL MADE BY SH. JAGAT SINGH KOHLI S/o Sh. Nidhan Singh Kohli, 31, Pusa Road, Karol Bagh, New Delhi, in favour of M.S. Kohli (son) Sh. Harbans Singh (Grand son)

Life is Short. God knows when it may come to an end. I am old man of 90 years. I am also suffering so many deceased so I hereby execute the said Will with my own consent without any pressure, undue influence from any corner.

I have Four sons, namely; 1. Mohan Singh 2. Raghbir Singh 3. Rambir Singh 4. Kulwant Singh and alongwith five daughters namely 1. Pritam Kaur 2. Tripat Kaur 3. Inder Kaur 4. Kulwant Kaur 5. Dhanwant Kaur.

During my life time I have given the share according to their equal ratio in my moveable or immoveable property to my aforesaid sons and my five daughters except my said son Shri M.S. Kohli.

I have not given any share in my moveable or immoveable property to my elder son Shri M.S. Kohli son of Shri Jagat Singh Kohli aged about 70 years.

I am the absolute owner of the plot no.CW-227, 120 Sq meter of Sanjay Gandhi Transport Nagar Delhi. The said plot is being allotted to me by the MCD Delhi. So, I hereby execute my said Will without any pressure, or any undue influence from any corner whatsoever may be that after my death my said son Sh. M.S. Kohli shall be only the absolute owner and beneficiary of the said plot only and my other legal heirs have no right/title or interest in regard to the said plot and have a right to execute the lease deed/mutation of the said plot in his namely alone.

I am also the owner of the plot no.CW-193, Sanjay Gandhi Transport Nagar, Delhi, Sanjay Gandhi Transport Nagar, New Delhi, 120 sq mtrs. I without pressure that after my death my Grandson Sh. Harbans Singh son of Shri M.S. Kohli resident of 10, Laj Building K.B. New Delhi working as a Manager of M/s Mohansons Auto Stores, 10, Gulabi Bagh, Delhi shall be only the absolute owner of the said plot and after my death my grandson have every right to transfer the said plot in his own namely the MCD and made correspondence of the said plot/before the MCD on my behalf.

I hereby execute the said Will with love and affection with my grandson namely Sh. Harbans Singh.

I put my signatures on this 5/6/1996

Sd/-  
EXECUTANT  
SH. JAGAT SINGH KOHLI

Witnesses

1. sd/-
2. sd/- "

4. In the plaint, the cause of action which is pleaded is that on account of late Sh. Jagat Singh Kohli having executed his second Will dated 5.6.1996, the earlier Will dated 2.1.1989 is automatically revoked. Effectively what the plaintiff pleads as per the plaint is that since a second Will is executed, and which though only deals with two out of five properties which were bequeathed under the first Will dated 2.1.1989, hence this second Will revokes the earlier Will dated 2.1.1989 even with respect to the first three properties as stated above though such three properties are not the subject matter of bequest under the second Will dated 5.6.1996.

5. I have already reproduced above the Will dated 5.6.1996 of late Sh. Jagat Singh Kohli. This Will in no way states that by execution of this Will dated 5.6.1996, late Sh. Jagat Singh Kohli has revoked the earlier Will dated 2.1.1989. All that this Will dated 5.6.1996 does is that it changes the bequest made by late Sh. Jagat Singh Kohli with respect to two out of five properties, which were

also the subject matter of the earlier Will dated 2.1.1989, and therefore in such a case, this second Will dated 5.6.1996 will revoke the earlier Will dated 2.1.1989 only with respect to two properties which are subject matter of the second Will dated 5.6.1996 and not for the three properties which are not the subject matter of the second Will dated 5.6.1996. There is no law that on execution of a later Will with respect to only some of the properties, an earlier Will which dealt with other properties is deemed to be revoked. Therefore, in my opinion, on the admitted facts as stated in the plaint no legal cause of action is made out that the earlier Will dated 2.1.1989 stands revoked and consequently the first three properties stated in para 3 of the plaint will be treated as available to the legal heirs of late Sh. Jagat Singh Kohli as if allegedly there was no Will with respect to first three properties.

6. In my opinion, it is legally incorrect for the plaintiff to contend that Sh. Jagat Singh Kohli died intestate with respect to three properties inasmuch as the first three properties stated in para 3 of the plaint are in fact the subject matter of bequest under the Will dated 2.1.1989 and the subsequent Will dated 5.6.1996 does not revoke the

bequest with respect to first three properties bequeathed in terms of the earlier Will dated 2.1.1989.

7.           Contention of the counsel for the plaintiff is misconceived by which it is sought to be urged that merely because in the second Will dated 5.6.1996 it is written as that this Will is the last Will will mean automatic revocation of the earlier Will dated 2.1.1989. The last Will only means that it is the last Will as regards the properties which are subject matter of bequest under that last Will. Obviously the expression 'last Will' therefore will only operate with respect to the subject matter of the bequest under that Will and not for any other subject matter which is not touched upon in the second/last Will dated 5.6.1996. Since the first three properties stated in para 3 of the plaint are not touched upon under the Will dated 5.6.1996 therefore these properties will be governed in terms of bequest made in the earlier Will dated 2.1.1989. This argument of the plaintiff is therefore rejected.

8.           In view of the above discussion, and applying the principles contained in Order XII Rule 6 CPC by taking the contents of the plaint as correct along with the documents filed, it is seen that

there is no legal cause of action for the plaintiff to seek rights with respect to the first three properties which are stated in para 3 of the plaint and only with respect to which properties reliefs are prayed in the suit.

9. Dismissed.

**JANUARY 31, 2018**

**VALMIKI J. MEHTA, J**

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