

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

+ **RFA No.236/2018**

% **9th March, 2018**

JASPAL SINGH

..... Appellant

Through: Mr. Kushbir Singh, Advocate.

versus

MOHINDER SINGH & ANR.

..... Respondents

Through: Mr. M.K. Sharma, Advocate for
R 1 and 2.

Mr. Pradeep Kumar, Advocate
for R-3 & 5 Advocate for
caveator.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No. 192/2018

Counsel appears for the caveator. Caveat accordingly stands
discharged.

CM No. 8956/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 8957/2018 (delay of 11 days in re-filing)

For the reasons stated in the application, delay in re-filing is
condoned.

CM stands disposed of.

RFA No.236/1018 & CM No. 8955/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.3 in the suit impugning the judgment of the trial court dated 23.12.2017 by which the trial court has decreed the suit filed by the respondents/plaintiffs with respect to partition etc of the property belonging to the parents of the parties. To each of the children of the deceased Smt. Sunder Kaur 1/7th share has been allotted. The suit property is a plot of land admeasuring 166.23 sq. yards bearing no. 148 in Block B, Mohalla Guru Nanakpura of Fateh Nagar, falling in Khasra No. 586, R.E. Village Tihar, New Delhi (now known as B-148, Fateh Nagar, New Delhi).

2. The case of the respondents/plaintiffs was that the suit property was purchased by the parents of the parties Sh. Santokh Singh and Smt. Sunder Kaur in terms of the registered sale deed dated 11.4.1957. A single storey construction was thereafter raised on the subject plot. Sh. Santokh Singh died intestate on 2.9.1965 and the children in order to honour their mother executed a relinquishment

deed dated 1.11.1972 making Smt. Sunder Kaur as the sole owner of the suit property. It was pleaded by the respondents/plaintiffs that Smt. Sunder Kaur was suffering from paralysis for many years before her death and she died intestate on 24.10.1994. Accordingly, it was stated that the suit property devolved upon the six sons of Smt. Sunder Kaur and though there were seven children with one daughter, but each of the son would have 1/6th share each in the suit property because as per the custom in the family the daughter did not get a share.

3. Suit was contested on behalf of appellant/defendant no. 3 and it was admitted that the suit property originally belonged to both the parents of the parties and thereafter mother Smt. Sunder Kaur had become owner of the suit property by virtue of relinquishment deed dated 1.11.1972. Appellant/defendant no. 3 pleaded that mother late Smt. Sunder Kaur had executed a Will dated 4.1.1993 in his favour bequeathing the suit property to him and therefore the suit was prayed to be dismissed.

4. After pleadings were complete issues were framed and parties led evidence and which aspects are recorded in paras 13 to 16 of the impugned judgment and which paras read as under:-

“13. Vide order dated 24.03.2006, following issues were framed by the Hon’ble High Court of Delhi, where the suit was then pending as:-

- (i) Whether the Plaintiffs are in possession of the suit property bearing No.B-48, Fateh Nagar, New Delhi? OPP
- (ii) Whether the plaintiffs have not paid the appropriate court fee on the plaint, and if so whether the plaint is liable to be rejected? OPD
- (iii) Whether the Will dated 4th January, 1993 left by deceased Smt. Sunder Kaur is a genuine Will and can be acted upon? OPD
- (iv) If the above issue is answered in the affirmative, whether defendant no.3 has become the exclusive owner of the suit property by virtue of the Will dated 04.01.1993? OPD
- (v) Whether the suit property is joint family property? OPP
- (vi) Whether the plaintiffs are entitled to partition of the suit property bearing No.B-48, Fateh Nagar, New Delhi and if so, in what share? OPP
- (vii) Whether the plaintiffs are entitled to rendition of accounts in respect of the suit property? OPP
- (viii) Whether the plaintiffs are entitled to any damages pendente lite? OPP
- (ix) Whether the plaintiffs are entitled to a decree of permanent injunction, as prayed for? OPP
- (x) Relief.

14. Plaintiffs in order to prove their case have examined Sh. Mohinder Singh, plaintiff no.1 as PW-1; Sh. Jasbir Singh Kalra, S/o late Sardar Tirath Singh as PW-2; Sh. Naresh Sharma from Income Tax Department SDMC as PW-3; Sh. Suresh Kumar, Head Clerk from Delhi Jal Board as PW-4 and Sh. P.K. Kamalasanan, Delhi Zonal Revenue Officer as PW-5.

15. On the other hand, defendants nos.1 & 4 in order to prove their case have examined Dr. V.C. Mishra, Forensic Handwriting & Fingerprint Expert as D1W2.

16. However, the defendant no.3 in order to prove his case has examined himself as D3W1; Sh. Amarjeet Singh as DW-2 and Sh. Satinder Pal Singh as DW-3.”

5. The main issue to be decided was issue no. 3 as to whether the mother Smt. Sunder Kaur died leaving behind her Will

dated 4.1.1993 in favour of the appellant/defendant no.3 and which is the only issue which is argued before this Court. Trial court in this regard has held that appellant/defendant no. 3 has failed to prove the Will because both the attesting witnesses have denied the due execution and attestation of the Will, and which witnesses were summoned by appellant/defendant no. 3 himself and who deposed as DW-2 and DW-3. This aspect has been dealt with by the trial court in paras 29 and 30 of the impugned judgment and these paras read as under:-

“29. DW-2 deposed that signatures on the Will, Mark A at point A appear to be of him but he cannot say with certainty. He further deposed that he cannot tell as to who has signed at point B & C on Mark-A. He also could not identify the signatures of Smt. Sunder Kaur, executant of the Will at point C. He further could not depose that signatures at point B are of Sh. Satinder Pal Singh. During his cross examination by counsel for the defendant no.3, he could not say whether Mark A is the Will executed by Smt. Sunder Kaur in favour of Sh. Jaspal Singh. He could not say whether Smt. Sunder Kaur had signed on Will, Mark-A in his presence and in the presence of Sh. Satinder Pal Singh. He admitted that defendant nos.1 & 4 had filed criminal case against him, Sh. Satinder Pal Singh and Sh. Jaspal Singh on the basis of same Will which is more or less like Mark-A. He could not say since when the said case is pending against him. He deposed that he has not given any written application to the criminal court that he had not signed on any Will. He denied the suggestion that brothers of the defendant no.3 have created pressure on him to depose falsely. He denied knowledge whether Smt. Sunder Kaur had executed Will in favour of Sh. Jaspal Singh.

30. Defendant no.3 also examined Sh. Satinder Pal Singh, another witness to the Will, Mark-A as DW-3. He admitted his signatures at point B on Will, Mark-A. He could not say whether signatures at point A on the Will, Mark-A is of Sh. Amarjeet Singh. After reading the contents of the Will, Mark-A, he admitted that the same has been executed by Smt. Sunder Kaur in favour of Sh. Jaspal Singh. He further admitted that at

point C on Will, Mark A, Smt. Sunder Kaur has been written, however, he could not say whether Smt. Sunder Kaur had signed at point C as she had not signed in his presence at point C on Will, Mark-A. He further deposed that he had not signed at point B on Will, Mark-A in the presence of Smt. Sunder Kaur. He deposed that he had signed it later and Sh. Amarjeet Singh would have signed after him at point A. During cross examination by counsel for the defendant no.3, DW-3 admitted filing of criminal case with respect to Will in question. He admitted that he has been appearing in the criminal court and the same is pending since last 7-8 years. He admitted that he has not given any application to the criminal court with respect to the present Will, Mark A.” (underlining added)

6. In my opinion in view of the clear cut findings of the trial court based upon the depositions of the two attesting witnesses, the appellant/defendant no.3 has been rightly held to have failed to prove due execution and attestation of the Will dated 4.1.1993 allegedly executed by the mother in his favour.

7. Learned counsel for the appellant/defendant no.3 argued that one witness Sh. Satinder Pal Singh who deposed as DW-3 admitted his signatures at point B on the Will, however, merely because one attesting witness admits his signatures does not mean that the Will is proved because Will is proved by showing that the signatures of the executant was put in the presence of the attesting witnesses and the attesting witnesses signed the Will in the presence of the executant. This aspect is denied by Sh. Satinder Pal Singh and

which is an aspect discussed by the trial court in para 30 of the impugned judgment which has been reproduced above.

8. I would also like to note that before the trial court defendant nos.1 and 4 led evidence of the handwriting expert Dr. V.C. Mishra as D1W2 and who filed his report Ex.DW1/W2/F that the subject Will did not bear the signatures of Smt. Sunder Kaur because the signatures which appear on the subject Will are almost identical to the signatures which were made 23 years earlier and in the disputed signatures on the Will of Smt. Sunder Kaur there is no variation due to long gap and in fact symptoms of forgery are found which are found from the last line quality defect etc on the Will besides the fact that there are no tremors of old age in the signatures which would be found if the signatures were made by Smt. Sunder Kaur on 4.1.1993. It may also be noted that it was the case of the respondents/plaintiffs and defendant nos.1 and 4, and which is an indubitable aspect appearing on record, that the mother Smt. Sunder Kaur was in fact suffering from paralysis.

9. In view of the aforesaid discussion, I do not find any illegality in the impugned judgment which holds that

appellant/defendant no.3 failed to prove the Will dated 4.1.1993 relied upon by the appellant/defendant no.3. It had therefore to be held that the mother Smt. Sunder Kaur died intestate and each of seven children would receive 1/7th share in the suit property and with respect to which impugned judgment has passed the preliminary decree. Appeal is accordingly dismissed, leaving the parties to bear their own costs.

MARCH 09, 2018
Ne/ib

VALMIKI J. MEHTA, J