

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

% **Date of decision: 6th May, 2019**

+ **CS(OS) 242/2019**

SHABNAM SIKAND

..... Plaintiff

Through: Dr. Surat Singh and Ms. Vandana
Kumari, Advs.

Versus

GEETA SIKAND & ANR.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.6552/2019 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(OS) 242/2019 & IAs No.6550/2019 (u/O XI R-1 CPC) & 6551/2019 (u/O XXXIX R-1&2 CPC)

3. The plaintiff has instituted this suit for (i) partition of property No.8, Kasturba Gandhi Marg, New Delhi, claiming 1/4th share therein; (ii) declaration as null and void of the Relinquishment Deed dated 6th October, 2015 executed by Vikram Sikand, husband of the plaintiff, of his share in the property; (iii) permanent injunction restraining the defendants from creating any third party right or parting with physical possession of the property; and, (iv) mandatory injunction directing the defendants to restore the possession of the plaintiff of her share in the property.
4. The suit is listed subject to office objection as to valuation and court fees.

5. Be that as it may, the plaintiff on the averments in the plaint, is not found to be entitled to the reliefs claimed and it has been enquired so from the counsel for the plaintiff.

6. The plaintiff has instituted this suit, pleading that (a) Rai Bahadur Durgadas Sikand owned properties No.96 & 98, Sunder Nagar, New Delhi, property No.8, Kasturba Gandhi Marg, New Delhi and property No.7, Barakhambha Road, New Delhi; (b) an informal family arrangement was reached between the four branches of legal heirs of Rai Bahadur Durgadas Sikand, with one branch of the legal heirs choosing property bearing No.98, Sunder Nagar, New Delhi, second branch choosing property bearing No.96, Sunder Nagar, New Delhi, third branch choosing property bearing No.7, Barakhamba Road, New Delhi and the fourth branch headed by Anil Sikand choosing property bearing No.8, Kasturba Gandhi Marg, New Delhi; (c) Anil Sikand was the owner of one half of property No.8, Kasturba Gandhi Marg, New Delhi; (d) Anil Sikand died intestate in the year 26th August, 2013 leaving behind defendant no.1 as his widow, a son Vikram Sikand, a granddaughter Rhea Sikand and a daughter i.e. the defendant no.2 Indira Sikand; (e) Vikram Sikand son of Anil Sikand died on 19th January, 2016 leaving behind the plaintiff as his wife and a daughter Rhea Sikand; (f) thus the plaintiff, with her daughter Rhea Sikand and the defendants no.1 and 2 have equal 1/4th share each in half of property bearing No.8, Kasturba Gandhi Marg, New Delhi owned by Anil Sikand; (g) the plaintiff was having access to the said property along with her husband Vikram Sikand and her daughter Rhea Sikand till the demise of her husband Vikram Sikand who was also keeping a room locked in the property; (h) the Voter ID Card

of the plaintiff is also at the address of the suit property; (i) the water and electricity bills of the said property are being paid by Sikand & Company, a partnership firm in which the plaintiff is a 50% shareholder; (j) the plaintiff along with her husband Vikram Sikand resided in property bearing No.8, Kasturba Gandhi Marg, New Delhi for two years after marriage on 14th November, 1996; (k) now the defendants no.1 and 2 are residing in the half portion, admeasuring one acre, of the property bearing No.8, Kasturba Gandhi Marg, New Delhi owned by Anil Sikand; (l) “the plaintiff and her daughter Rhea Sikand are entitled to 1/4th share each in the part A of the undivided 8, KG Marg property i.e. 1/8th of one acre of undivided 8, KG Marg, New Delhi as per the Hindu Succession Act as amended in 2009 and hence, has filed the present suit for declaration of their title in the said property.”; (m) the plaintiff wanted to amicably settle with the defendants and filed for pre-litigation mediation; in pre-litigation mediation hearing on 11th July, 2017, the defendant no.2 told the plaintiff that the husband of the plaintiff had executed a Relinquishment Deed dated 6th October, 2015 relinquishing his share in the property in favour of the defendants; (n) the plaintiff came to know about the Relinquishment Deed only on 11th July, 2017 and the claim of the plaintiff is thus within time; and, (o) the grounds for challenge of Relinquishment Deed pleaded in para 12 of the plaint are as follows:

“A. The plaintiff is also entitled to the property of Late Vikram Sikand as a class I heir. Neither plaintiff nor the daughter Rhea Sikand were ever consulted by Late Vikram Sikand before he executed the alleged relinquishment deed

dated 06.10.2015. Thus the alleged relinquishment deed is violative of the lawful rights of the plaintiff.

B. That the defendants have illegally deprived the plaintiff of their lawful right in the ancestral property of her late husband i.e. 8, KG Marg. The defendants cannot be allowed to benefit from their own wrongs.

C. That in 1996, a house in Palam Vihar, New Delhi admeasuring 1100 yards was given to Mr. Vikram Sikand and the plaintiff as a marriage gift and should be treated as Stridhan of the plaintiff. The ownership of the same has remained with defendant no.1 till date. The said property forms a part of the ancestral properties for the purpose of the present suit. However it is pertinent to point out that the property in Palam Vihar is only worth Rs.5 crores in value whereas the share of the plaintiff and her daughter together in the undivided ancestral property situated at 8 KG Marg is worth Rs.50 crores and the value of shares of the plaintiff individually is 25 crores.

D. That plaintiff and the daughter Rhea Sikand never relinquished their rights in ancestral properties including the property situated at 8, KG Marg, New Delhi.

E. That there was no legal necessity for Late Vikram Sikand to relinquish his share in the property and those of the Plaintiff and the daughter Rhea Sikand.

F. That the neither the plaintiff nor her daughter Rhea Sikand were ever consulted, let alone taking their consent when Late Vikram Sikand allegedly executed the alleged relinquishment deed. He was unduly influenced by defendant no.1&2 in getting the alleged relinquishment deed signed to the prejudice of the rights of the plaintiff and her daughter in the ancestral property.

G. That the relinquishment deed of 2015 was illegally executed in total disregard of the Hindu Succession Act, 1956 as amended in the year 2009 and it should be declared as null and void and of no legal effect by this Hon'ble Court.

H. That as a consequential relief once the above relinquishment deed of 06th October, 2015 is declared null and void, Plaintiff should be declared owner of 1/4th share in 1/2 (half) of 8 K.G. Marg of one acre area and defendants should be directed to handover the peaceful and physical possession of the respective shares of the Plaintiff.

I. That the Plaintiff has a reasonable apprehension that the Defendants are about to sell the suit property or create third party interest in the property because several potential buyers are visiting the property for inspection before the purchase which was the case even in the month of March and April, 2019. Hence, permanent injunction against the Defendants from creating any third party interest in 8 K.G. Marg, New Delhi shall be granted.”

7. The plaintiff has impleaded one Deepak Sikand as defendant no.3 to the suit but there is no explanation whatsoever in any of the paragraphs of the plaint for his impleadment and rather he finds no mention in the plaint.

8. The plaintiff though claims her daughter Rhea Sikand also to be having a share in the property but has not impleaded her as a party. This suit for partition, without impleading Rhea Sikand who according to the plaintiff also has a share in the property of which partition is sought, is bad for non-joinder of necessary parties. I may in this context record that the plaintiff along with her documents has filed a 'Surviving Members Certificate' dated 28th November, 2016 with respect to Vikram Sikand in which Rhea Sikand is shown to be 18 years of age.

9. The plaintiff, along with her documents has also filed a photocopy of the registered Relinquishment Deed referred to in the plaint, and declaration as null and void whereof is claimed in the suit, and a perusal thereof shows (i) the same to have been executed on 6th October, 2015, besides by Vikram Sikand, also by defendant no.2 Indira Sikand, in favour of defendant no.1 Gita Sikand; (ii) the date of demise of Rai Bahadur Durgadas Sikand as 16th May, 1975; (iii) Harnam Dass Sikand, father of Anil Sikand to have become owner under a partition decree dated 17th September, 2004 in Civil Suit bearing no.126/2003 and M61/2004 of 1/6th share in property bearing No.8, Kasturba Gandhi Marg, New Delhi and of property bearing No.7, Barakhambha Road, New Delhi; (iv) Harnam Dass Sikand, father of Anil Sikand to have died on 12th March, 2009 leaving besides Anil Sikand, two other sons, each of whom inherited 1/18th share each out of 1/6th share of Harnam Dass Sikand in property bearing No.8, Kasturba Gandhi Marg,

New Delhi; (v) on demise of Anil Sikand on 26th August, 2013, defendant no.1, defendant no.2 and Vikram Sikand having inherited 1/54th share each out of his 1/18th share in the property; and, (vi) Vikram Sikand and defendant no.2 Indira Sikand to have released all their right, title, share and interest in property No.8, Kasturba Gandhi Marg, New Delhi in favour of their mother, defendant no.1 Geeta Sikand and having been left with no right, title, share or interest in the said property.

10. Thus, the claim of the plaintiff in the plaint of Anil Sikand being the owner of half of property No.8, Kasturba Gandhi Marg, New Delhi is not borne out from the copy of the Relinquishment Deed filed by the plaintiff himself along with the plaint. As per the said Relinquishment Deed, the share of Anil Sikand in property No.8, Kasturba Gandhi Marg, New Delhi was only 1/18th. However the said aspect is not relevant for present purpose.

11. Be that as it may, the plaintiff in para no.4 of the plaint though claims that “Anil Sikand died intestate on 26.08.2013, so his property will devolve on his legal heirs as per the Hindu Succession Act, 1956” but further claims that 50% share of Anil Sikand in property No.8, Kasturba Gandhi Marg, New Delhi will devolve upon the plaintiff, her daughter Rhea Sikand and defendants no.1 and 2 with each having 1/4th share each. Under the Hindu Succession Act, 1956, on a male Hindu dying intestate, his heirs are his wife, sons and daughters only and neither the daughter-in-law nor a granddaughter whose husband / father is alive, has a share. Vikram Sikand, son of Anil Sikand and husband of plaintiff is pleaded to be alive on the date of demise of Anil Sikand and thus on demise of Anil Sikand, his estate would be inherited by the said Vikram Sikand and the defendants no.1 and

2 with each having $1/3^{\text{rd}}$ share and the question of the plaintiff or her daughter Rhea Sikand inheriting any share does not arise.

12. Similarly, under the Hindu Succession Act, on the demise of Vikram Sikand his $1/3^{\text{rd}}$ share in half of the property, as per averments in the plaint, would devolve equally on plaintiff, being his wife, Rhea Sikand, being his daughter and the defendant no.1, being his mother, with each getting $1/3^{\text{rd}}$ out of his $1/3^{\text{rd}}$ share in the property.

13. The computation of shares pleaded by the plaintiff, though claimed to be in accordance with the Hindu Succession Act, is thus contrary to the Hindu Succession Act.

14. Be that as it may, the plaintiff admits that her husband Vikram Sikand relinquished his share in the property inherited from his father Anil Sikand in favour of the defendant no.1. Once the husband of the plaintiff had so relinquished his share in the property, the question of the plaintiff inheriting any share in the property on the demise of her husband would not arise.

15. The plaintiff, conscious of the same, besides the relief of partition has also sought the relief of declaration as null and void of the said Relinquishment Deed. Without the plaintiff being entitled to the relief of declaration as null and void of the Relinquishment Deed, the question of the plaintiff being entitled to the relief of partition, permanent and mandatory injunction does not arise.

16. None of the several grounds reproduced hereinabove, pleaded by the plaintiff for declaration of Relinquishment Deed as null and void, are found

to be constituting a ground for declaration as null and void of a registered document with respect to immovable property.

17. I now proceed to deal separately with each of the grounds set out in para no.12 of the plaint:

Re: A

There is no need in law for a male Hindu to consult his Class I heirs before executing a Relinquishment Deed of his share in a property. Neither the plaintiff nor her daughter Rhea Sikand, during the lifetime of her husband / father respectively had any lawful right share in the property inherited by the said Vikram Sikand from his father Anil Sikand. Though it is generally pleaded that the “Relinquishment Deed is violative of lawful rights of plaintiff” but without specifying the right of the plaintiff which is claimed to have been violated.

Re: B

Once the plaintiff has not pleaded any right in the property during the lifetime of her husband, the question of the plaintiff being illegally deprived of the said right which the husband of the plaintiff divested himself of in his lifetime, does not arise.

Re: C

The house in Palam Vihar, New Delhi is pleaded to have been given to the husband of the plaintiff and the plaintiff. The plaintiff claims the same to be her *streedhan*. The Relinquishment Deed is found to have been executed by Vikram Sikand in consideration of his natural

love and affection for his mother defendant no.1 and without any monetary consideration. Plea that the house at Palam Vihar is incomparable in value to the value of the share in property bearing No.8, Kasturba Gandhi Mark, New Delhi which was relinquished, is thus of no avail. Not only is the said plea contrary to the contents of a registered document and thus cannot be seen but mention may also be made of Section 25 of the Indian Contract Act, 1872, though declaring an agreement made without consideration to be void but making the same inapplicable as between a donor and a donee and also providing that an agreement to which consent of the promisor is freely given is not void merely because the consideration is inadequate. Thus the same cannot also constitute a ground in law for declaration of the Relinquishment Deed as void.

Re: D

There is no plea of the plaintiff and her daughter Rhea Sikand, in their own right inheriting any share in the property. The plea is only of the plaintiff and her daughter Rhea Sikand inheriting the property on the demise of Anil Sikand. Anil Sikand, being the predecessor of the plaintiff and Rhea Sikand, in his lifetime having relinquished his share, the plaintiff and her daughter Rhea Sikand at no point of time acquired any share in the property, for the question whether the plaintiff and her daughter Rhea Sikand relinquished their share in the property to arise.

Re: E

As aforesaid, there is no plea of the plaintiff and her daughter having any share in the property or of the relinquishment by their husband / father being on their behalf. The concept of 'legal necessity' is a concept of coparcenary under the ancient Hindu law and there are no pleadings of any coparcenary, for the plea of relinquishment being not for legal necessity to arise. Even under the ancient Hindu Law of coparcenary, the plea of legal necessity was not attracted to in case of Relinquishment Deed.

Re: F

As aforesaid, there was no requirement in law for Vikram Sikand to consult his wife i.e. the plaintiff and / or his daughter before relinquishing his share in the property. The plea of, Vikram Sikand being unduly influenced by defendants no.1 and 2 to execute the Relinquishment Deed is vague and does not constitute a plea in law. Order VI Rule 4 of CPC requires particulars with dates and items to be stated in the pleading when the party relies on undue influence. Also, plea of 'rights of plaintiff and her daughter in the ancestral property' is without any plea disclosing any right.

Re: G

There was no amendment to the Hindu Succession Act, 1956 in the year 2009, as pleaded.

Re: H&I

These do not constitute grounds for declaration as null and void of the Relinquishment Deed and are consequential pleadings.

18. Thus, the plaint does not plead any cause of action for declaration as null and void of the Relinquishment Deed and without which the plaintiff is not entitled to any of the other reliefs.

19. Upon the aforesaid being put to the counsel for the plaintiff, he vaguely states that under the amended law the daughters also have a share.

20. Though the counsel for the plaintiff has pleaded amendment to the Hindu Succession Act of the year 2009 but the last amendment thereto is of the year 2005, with effect from 9th September, 2005 vide the Hindu Succession Amendment Act, 2005. The same *inter alia* amended Section 6 thereof providing for devolution of interest in coparcenary property. However, the said amendment also is of no avail to the plaintiff inasmuch as there is no plea in the plaint of any coparcenary property. On the contrary, the property is pleaded to have been derived from Rai Bahadur Durgadas Sikand who as per the Relinquishment Deed, died on 16th May, 1975 i.e. after the coming into force of the Hindu Succession Act, 1956 and it has been held in ***Commissioner of Wealth Tax, Kanpur Vs. Chander Sen*** (1986) 3 SCC 567, ***Yudhishter Vs. Ashok Kumar*** (1987) 1 SCC 204, ***Makhan Singh Vs. Kulwant Singh*** (2007) 10 SCC 602, ***Harvinder Singh Chadha Vs. Saran Kaur Chadha*** 2014 SCC OnLine Del 3413 (DB), ***Sunny (minor) Vs. Raj Singh*** 2015 SCC OnLine Del 13446, ***Surender Kumar Vs. Dhani Ram*** 2016 SCC OnLine Del 333 & ***Mukesh Kumar Vs. Pavitra*** 2016 SCC OnLine Del 4907 that a property inherited by a male Hindu from his father dying after the coming into force of the Hindu

Succession Act is held by him as his personal property and his sons have no share therein. The change which was made by the amendment of the year 2005 in the Hindu Succession Act was to place the daughters of a male Hindu, who was a member of a coparcenary Hindu Undivided Family (HUF), in the same position as a son. However for the same to apply, there has to be coparcenary / HUF and of which there is no plea.

21. The plea is thus found to suffer from a confusion between the law as prevailing prior to the coming into force of the Hindu Succession Act and as prevailing now for the last over sixty years. However as held in ***Neelam Vs. Sada Ram*** 2013 SCC OnLine Del 384, there is a wide scale of misconception not only amongst the members of the public but also amongst legal fraternity as noted repeatedly by this Court in ***Chander Mohan Sharma Vs. Jagdish Prasad Sharma*** 2016 SCC OnLine Del 984, ***Jai Narain Mathur Vs. Jai Prakash Mathur*** 2016 SCC OnLine Del 986, ***Satyawati Vs. Suraj Bhan*** 2017 SCC OnLine Del 1961 and ***Yoginder Singh Vs. Sumit Gahlot*** 2018 SCC OnLine Del 9315.

22. The counsel for the plaintiff states that he be permitted to study the judgments.

23. This Court having spent time on studying the file, if every time puts a question to an advocate is required to adjourn the hearing to enable the advocate to answer, will never be able to deal with the cases listed before it. The counsel for the plaintiff is expected, when appearing for admission of the suit, to come prepared and no adjournments can be granted.

24. The plea, on the averments therein, does not disclose any cause of action for the reliefs claimed and is rejected.

25. I find court fees paper of Rs.24,42,544/- in the plaint. Since the plaint is being rejected, option is given to the plaintiff to, if not wanting to challenge this order, take refund of the court fees paid less Rs.1,00,000/-. In the event of the plaintiff so applying for refund of court fees, a Certificate entitling the plaintiff to refund of court fees paid less Rs.1,00,000/- be issued and handed over to the counsel for the plaintiff.

MAY 06, 2019

‘bs/gsr’..

(corrected & released on 17th May, 2019)

RAJIV SAHAI ENDLAW, J.