

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

% **Date of decision: 3rd February, 2020.**

+ **CS(OS) 1515/2008 & IAs No.1488/2020 (of plaintiff u/O XXXIX R-1&2 CPC) & 8960/2019 (u/S 151 CPC) & CC No.17/2009**

PARMINDER KAUR KHURANA **Plaintiff**
Through: Mr. Ankur Sood and Ms. Romila
Mandal, Advs.

Versus

RAVINDER SINGH **Defendant**
Through: Mr. Lalit Gupta and Mr. Siddharth
Arora, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff, in this suit for partition and rendition of accounts against her brother (the mother, earlier defendant No.2, is stated to have since died), pending since the year 2008 and in which till date there is no interim relief in favour of the plaintiff, seeks interim order restraining the defendant from dealing with the following properties:

- “1. Kalupur (Sonepat) bearing Khasra Nos.813, 1020/822, 1020/821, 823, 827, 828, 829, 831, 832, 834, 835, 1818/1434/830, 1440/836, 837, 1445/838, 1459/1457/2.
2. Property at Kunjpura Road, Karnal adjacent to Commando Complex, Karnal.
3. Orchard located 1 to 2 kms. Away down on Chandigarh-Shimla Road.

4. Basement at A/8, Pusa Road, New Delhi.
5. Flat No.128/A-15, Sr. Citizens Home Complex opposite NRI Colony, Greater Noida (UP).
6. 106/1, Kishangarh, near Vasant Kunj, New Delhi.
7. Site No.22, Near Gita Mandir Behind Fire Station, Rajendra Nagar, New Delhi.
8. Flat No.1230/D-1, Vasant Kunj, New Delhi.
9. Movable properties including jewellery, bank deposits, securities, National Saving Certificates and other investments in the name of defendant No.2.
10. Land near Sonapat on Rai-Delhi Road.”

2. The counsel for the defendant appears on advance notice and counsels have been heard.

3. The counsel for the defendant, with respect to the properties aforesaid has stated, (i) that the land at Kalupur (Sonapat) was developed by the father of the parties as a colony known as Sujan Singh Park and 164 plots thereon were carved out and sold; that the land was about 17 acres and at the time of demise of the father of the parties, only about 2 to 3 acres remained in the name of the father and is still held by the defendant; (ii) that property at Kunjpura Road, Karnal, Haryana was received by the mother of the parties in partition with her brother and is now held by the defendant; (iii) that the Orchard at Chandigarh Shimla Road and Site No.22, Rajendra Nagar, are in the name of the defendant and the title documents thereof are in the name of

the defendant and have already been placed on record; (iv) that the title of the basement at Pusa Road and the property at Kishangarh near Vasant Kunj, are in the name of Rajendra Overseas Pvt. Ltd. and Sujan Singh International Pvt. Ltd. respectively, which are not parties to the present suit; documents in this regard also have been placed on record; (v) that the flat at Sr. Citizens Home Complex was applied for by the father and possession thereof is with the defendant; (vi) the flat at Vasant Kunj was in the name of the father and under the Will of the father has been given to the plaintiff and is being held by the defendant and is in possession of the tenant who is not paying any rent; (vii) that no particulars of moveable properties have been given; and, (viii) that the land near Sonapat on Rai-Delhi Road does not exist and if the plaintiff knows about the same, can take it exclusively and the defendant has no objection thereto.

4. The counsel for the plaintiff states that the Orchard at Chandigarh-Shimla Road and Site No.22, Rajendra Nagar, though held in the name of the defendant but were acquired by the defendant with the funds provided by the father.

5. I have however enquired from the counsel for the plaintiff, whether the plaintiff has sought any declaration to the said effect in the suit.

6. The answer is in the negative.

7. Thus, the Orchard located 1 to 2 kms. away down on Chandigarh-Shimla Road and Site No.22, near Gita Mandir behind Fire Station, Rajendra Nagar, New Delhi are deleted from the list of properties subject matter of the present suit.

8. The counsel for the plaintiff also agrees that the title of basement at A/8, Pusa Road, New Delhi and property No.106/1, Kishangarh, near Vasant Kunj, New Delhi are in the name of Rajendra Overseas Pvt. Ltd. and Sujjan Singh International Pvt. Ltd., who are not parties to this suit.

9. Thus, the said properties i.e. basement at A/8, Pusa Road, New Delhi and property No.106/1, Kishangarh, near Vasant Kunj, New Delhi are also deleted from the list of properties of which partition is sought.

10. The plaintiff in spite of pendency of the suit for the last 12 years, has not found the particulars of the land near Sonapat on Rai-Delhi Road and thus the said property is also deleted from the list of properties subject matter of this suit for partition.

11. That leaves only, (a) the land at Kalupur (Sonapat), (b) property at Kunjpura Road, Karnal, (c) Flat No.128/A-15, Sr. Citizens Home Complex, NRI Colony, Greater Noida, and (d) Flat No.1230/D-1, Vasant Kunj, for partition.

12. According to the counsel for the defendant, under the Wills of the father and mother, Flat No.1230/D-1, Vasant Kunj has been bequeathed to the plaintiff and (i) the land at Kalupur (Sonapat), (ii) the property at Kunjpura Road, Karnal, and, (iii) the flat at Sr. Citizens Home Complex, Greater Noida, Uttar Pradesh, have been bequeathed in favour of the defendant.

13. It is further the contention of the counsel for the defendant that the plaintiff is the signatory to the Wills of the father as well as mother.

14. At this stage, it is informed that both the parties are present in the Court today itself.

15. The statement on oath of the plaintiff has been recorded separately with respect to her purported signatures on the Wills of the father and mother, as claimed by the defendant as well as with respect to a Sale Deed claimed by the defendant to have been executed by the plaintiff.

16. It being the contention of the counsel for the defendant, that the Flat No.1230/D-1, Vasant Kunj, under the Will of the father has been bequeathed exclusively to the plaintiff, I have enquired from the counsel for the defendant, whether the defendant is willing to disclaim all rights therein and to admit that the same, on demise of the father, to have vested absolutely in the plaintiff.

17. The counsel for the defendant states that it will be so finally decided.

18. I have however enquired from counsel for the defendant, why the defendant, even at this stage, be not bound by his admission, including the aforesaid, of the said flat belonging to the plaintiff.

19. The counsel for the defendant, under instructions from the defendant and his wife present in Court, states that (a) the defendant disclaims all rights in Flat No.1230/D-1, Vasant Kunj, New Delhi, as heir of father and even otherwise and admits absolute title thereof of the plaintiff under the Will of the father; (b) that the defendant will hereafter not do anything to interfere with plaintiff exercising all rights with respect to the said flat and will cooperate with the plaintiff in removing the person in possession thereof and having the same mutated/transferred in her name and dealing

with the same as exclusive owner thereof; and, (c) the defendant, at cost of plaintiff, will execute all deeds and do all acts in this respect.

20. The aforesaid statement of defendant is accepted by the Court and the defendant ordered to be bound therewith and informed of consequences of violation/breach thereof.

21. With the aforesaid, the flat at Vasanj Kunj, New Delhi is also not for partition in this suit.

22. Once according to the counsel for the defendant, Flat No.1230/D-1, Vasant Kunj is not for partition, none of the other properties are at Delhi, this Court would not have territorial jurisdiction to entertain the suit for partition of the land at Kalupur (Sonapat) and the property at Kunjpura Road, Karnal and the flat at Sr. Citizens Home Complex, Greater Noida, UP.

23. At this stage, it is stated that the defendant has also filed Counter-Claim, for declaration that the properties, titles whereof are in the name of the plaintiff, but were funded by the father, form an asset of the father and are liable to be partitioned and claiming partition thereof. It is stated that the Counter-Claim is with respect to the properties at Delhi also and would thus survive the disposal of the suit.

24. The plaintiff, in her statement recorded today, has denied her signatures on the Wills claimed by the defendant. However, the relevance of the said signatures being with respect to the land at Kalupur (Sonapat) and the property at Kunjpura Road, Karnal and the flat at Greater Noida, all of which are beyond the territorial jurisdiction of this Court, the suit with respect to the said three properties cannot be entertained in Delhi. The suit

was being entertained in Delhi, perhaps for the reason of other properties which have today been deleted. The question of the plaintiff maintaining a suit for partition, of properties outside Delhi, in this Court, does not arise.

25. The suit for partition of (a) Kalupur (Sonepat) bearing Khasra Nos.813, 1020/822, 1020/821, 823, 827, 828, 829, 831, 832, 834, 835, 1818/1434/830, 1440/836, 837, 1445/838, 1459/1457/2; (b) property at Kunjpura Road, Karnal adjacent to Commando Complex, Karnal; and, (c) Flat No.128/A-15, Sr. Citizens Home Complex, NRI Colony, Greater Noida, (UP) is thus disposed of with liberty to the plaintiff to sue in the Court of appropriate jurisdiction.

26. That leaves the Counter-Claim No.17/2009 of the defendant.

27. I have gone through the Will of the father, propounded by the defendant and disputed by the plaintiff, bequeathing the properties aforesaid to the defendant and enquired from the counsel for the defendant/counter-claimant, whether not his Counter-Claim negates the Will set up by him. The father, in the said Will has justified bequest to the defendant of the properties aforesaid, for the reason of having, in his lifetime, funded the purchase of properties in name of plaintiff. Once the defendant propounds the said Will, he is bound by contents thereof and cannot make a Counter-Claim contrary thereto. Recently, in *Ponnayal Vs. Karuppannan* (2019) 11 SCC 800 it was held, that the plaintiff, having sued for division of suit properties on the basis of registered partition deed, cannot be permitted to contend that the plaintiff is not bound by the said partition deed, when the foundation for the claim of plaintiff is said partition deed.

28. The counsel for the defendant, under instructions of the defendant present in Court, states that the defendant, in view of above, withdraws the Counter-Claim.

29. The Counter-Claim is dismissed as withdrawn.

30. The date of 19th February, 2020 before the Joint Registrar is cancelled.

No costs.

FEBRUARY 03, 2020
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RAJIV SAHAI ENDLAW, J.

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