

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

% **Date of decision: 19th February, 2020**

+ **CS(OS) 263/2018 & IA No.7445/2018 (u/O XXXIX R-1&2
CPC)**

CHITTA RANJAN DAS & ORS **..... Plaintiffs**

Through: Mr. Nishant Das, Mr. Atul
Kumar & Mr. Aayushi Jain,
Advs.

Versus

JYOTSNA DAS & ORS **..... Defendants**

Through: Mr. Rahul Sarkar, Adv. for D-1
to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The six plaintiffs, viz. (i) Chitta Ranjan Das, (ii) Hari Sadhan Das, (iii) Usha Barman, (iv) Prabha Malo, (v) Pratima Roy and (vi) Kalpana Mondal, being siblings have sued the wife and daughters, namely Jyotsna Das, Sushmita Nandi and Arpita Das, impleaded as defendants no.1 to 3, of their deceased sibling namely Subhash Chandra Das and another sibling viz. Bimal Chandra Das impleaded as defendant no.4, for partition of property No.K-2139, Chittaranjan Park, New Delhi.

2. The suit was entertained and summons thereof ordered to be issued.

3. The defendants no.1 to 3 have filed a joint written statement and are contesting the claim of the plaintiffs, of each of the six plaintiffs, defendants no.1 to 3 together and defendant no.4 having one eighth share each in the property.

4. The defendant no.4 did not appear and was vide order dated 29th November, 2019 proceeded against *ex parte*.

5. On 29th November, 2019 when the suit came up for framing of issues, the following order was passed:

“1. The counsel for the plaintiffs has argued, (i) that this suit is for partition of property No.K-2139, Chitranjan Park, New Delhi which belonged to Sh. Subal Chandra Das, who died leaving four sons and four daughters; (ii) Sh. Subal Chandra Das left a Will, whereunder he put the responsibility of re-development of the property on the four sons and on such re-development not happening, provided for sale of the property and distribution of sale proceeds amongst all the eight children equally; (iii) that though for the purposes of re-development, the four sons got the property mutated in their name but after that there has been a deadlock and re-development has not been possible; and, (iv) the plaintiffs are thus seeking sale of the property.

2. The counsel for the defendants no. 1 to 3 states that once the sisters have given the NOC for mutation, they cannot claim any share in the property. However on enquiry, how NOC for mutation can deprive the sisters of the share which has vested in them by inheritance, the counsel seeks adjournment and on further enquiry states that he will pay costs for the adjournment.

3. The counsel for the defendant no.4 states that the defendant no.4 is not in touch with her and she seeks discharge.

4. Ms. Arushi Arora, Advocate for the defendant no.4 is discharged from appearing for defendant no.4.

5. None has appeared for the defendant no.4, who is proceeded against ex parte.

6. Subject to the defendants no. 1 to 3 paying costs of Rs.20,000/- to the counsel for the plaintiffs, list on 19th February, 2020.”

6. The counsel for the defendants no.1 to 3 has referred to ***Mohinder Kaur Vs. Sardar Sarwan Singh Banda*** 2008 SCC OnLine Del 1165 and on enquiry states that no appeal was preferred thereagainst. It is his argument, that (i) the property was owned by Subal Chandra Das, father of the six plaintiffs and defendant no.4 and who was father-in-law of defendant no.1 and grandfather of defendants no.2 and 3; (ii) the said Subal Chandra Das died leaving a registered Will dated 25th December, 1994; (iii) the plaintiffs no.3 to 6, being the four daughters of Subal Chandra Das, gave a No Objection Certificate (NOC) for mutation of leasehold rights in the land underneath the property in favour of the four brothers i.e. the plaintiffs no.1 and 2, the predecessor of the defendants no.1 to 3 and the defendant no.4 and in pursuance whereof the leasehold rights in the land underneath the property were mutated in the name of four sons of Subal Chandra Das and not in the name of four daughters; and, (iv) thus, the daughters of Subal Chandra Das, after having given a NOC for mutation of leasehold rights in the name of the brothers only, have no share in the property and only the plaintiffs no.1 and 2 and defendant no.4 have one-fourth share each in the property and the remaining one-fourth share belongs to the defendants no.1 to 3 together. It is contended that it has been held in ***Mohinder Kaur*** supra that on furnishing of such NOC, the person furnishing the NOC is left with no share in the property.

7. In ***Mohinder Kaur*** supra, as recorded in paragraphs no.21 and 22 thereof, under the Will, the daughters were not entitled to any share in the property and had written to the Land & Development Office

(L&DO) giving no objection to the mutation of the property in the name of the brothers, affirming that under the Will they did not have any share in the property and thus had no objection to the mutation in the name of the sons only of the deceased. This Court, in paragraph 24 of the judgment, to which also attention is drawn, invoked the principle of estoppel by representation, to hold that the daughters of the deceased in that case having made such a representation, were estopped from subsequently claiming a share in the property. In paragraph 28 of the judgment to which also attention is drawn, the argument, of mutation not conferring any title, was dealt with by holding that the daughters were estopped from claiming contrary to their representation and that since the matter related to the family, the understanding as recorded in the NOC given, was binding.

8. As distinct therefrom, the Will of Subal Chandra Das in the present case *inter alia* provides as under:

“This is in respect of my immovable property of K-2139, Chittaranjan Park, New Delhi-110 019. I, S.C. Das, Son of Late Shri Harish Chandra Das, am making this deed in the capacity of the sole owner of the property as the land mentioned above of 172 Sq. Yards allotted to me by th Department of Rehabilitation.

I constructed 4 rooms (including drawing dining) one kitchen, one toilet, one bath room, one toilet-bathroom combined in the year of 1975-76 in the ground floor. The approximate covered area of my single storeyed house is around 916 Sq. Feet.

I am making this WILL in the following manner contained in the following paragraph:-

a) *That during my life time, I shall remain sole owner of the property.*

- b) *In case I pre-decease, my wife Smt. Urmila Bala Das shall be the sole owner of the property, with absolute power / right to mortgage / to execute power of attorney/ raise loan / dispose off the property in any manner she likes. However, in the event of sale of property by her, the total proceeds shall be equally distributed among my four sons and four daughter including herself.*
- c) *After the demise of both of us, the right of occupation will be enjoyed by :*
- I i) *Shri Bimal Chandra Das (eldest son)*
- ii) *Shri Hari Sadhan Das (Second Son)*
- iii) *Shri Subhash Chandra Das (Third Son)*
- iv) *Shri Chittaranjan Das (Fourth Son)*

My sons are at their liberty to construct 1st floor, 2nd floor and above of 2nd floor as per provision at their own. They may stay together in one floor and may acquire financial loan to do the construction.

- II. *In the event of any dispute amongs the sons and in the no compromising situation, the above property should be disposed off and amount should divided in eight equal shares i.e. 4 sons and 4 daughters.*

I may add here that I am making this WILL in full senses, wisdom and sound health without any influence or pressure from anybody.”

(emphasis added)

9. As would be evident from the aforesaid, Subal Chandra Das, under his Will, admitted by all the parties, bequeathed the property absolutely to his wife and expressly vested in her the power of sale and distribution of sale proceeds equally between the four sons and four daughters and herself. In the event of demise of both i.e. Subal Chandra Das and his wife, only “occupation rights” were given to the

four sons and not the title of the property and the sons were also granted liberty to reconstruct the property. The Will further provides that if there were to be any disputes and no compromise situation emerged, the property should be disposed of and the sale proceeds divided, again equally between the four sons and four daughters. Thus, as distinct from the Will subject matter of ***Mohinder Kaur*** supra where the daughters under the Will were not bequeathed any share and in confirmation which Will NOC was issued by the daughters, in the present case the daughters have been conferred a share in the sale proceeds of the property, equal to that of the sons.

10. Not only so, the affidavit by way of 'No Objection' of plaintiff no.6 Kalpana Mondal, to which attention is drawn by the counsel for the defendants, is as under:

- “1. That Subal Chandra Das was my father and he died on 12.11.1996.*
- 2. That the deceased was lessee of property No.K-2139, C.R. Park, New Delhi-110019.*
- 3. That the lease in respect of the said property was registered as No.8297 in Additional Book No. 1 Volume No.2793 on pages No.114 to 119 dated 30.12.1971.*
- 4. That the deceased has left behind the following heirs/ (widow / widower / mother / sons / daughter / widow of predeceased son / children of predeceased daughter / children of predeceased son etc.) including myself under Hindu Succession Act, and their names along with their relationship with deceased, their ages and their address are given below:-*

S.No.	Name	Age (Yrs.)	Relationship with deceased	Address
1.	Mr. Bimal Chandra Das	66	Son	K-2139, C.R. Park, New Delhi
2.	Mr. Hari Sadhan Das	60	Son	- do -
3.	Mr. Subhash Chandra Das	52	Son	- do -
4.	Mr. Chitta Ranjan Das	43	Son	- do -
5.	Smt. Usha Barman	56	Daughter	- do -
6.	Smt. Prabha Malo	54	Daughter	- do -
7.	Smt. Pratima Roy	47	Daughter	- do -
8.	Smt. Kalpana Mandal	44	Daughter	- do -

5. *That the deceased did not leave behind any other heirs, except those whose name are given above.*
6. *That the deceased has left behind a Will dated 26.07.1995 bequeathing the aforesaid property in favour of S/ShriBimal Chandra Das, HariSadhan Das, Subhash Chandra Das and ChittaRanjan Das which is registered one. The Will is genuine and I have no objection if the same is acted upon."*

11. The aforesaid affidavit also is with reference to the Will and though a statement is made therein that under the Will the property has been bequeathed in favour of the brothers, but if on the reading of the Will the said statement is found to be incorrect then in my view the intention as sought to be imputed and as found in **Mohinder Kaur** supra to hold that the daughters were estopped from claiming any share in the property, is not attracted in the present case. Here, reading of the NOC in the context of the Will, and to acting upon of which Will the issuer of the NOC gave no objection, clearly shows

that if the sons of Subal Chandra Das, to whom alone right of occupation and reconstruction had been given under the Will, were unable to mutually occupy the property and the property were to be sold, the sons and daughters of Subal Chandra Das had equal share therein. The sons of Subal Chandra Das are unable to mutually occupy / reconstruct the property and have sued for partition. In the event of partition by sale, the daughters of Subal Chandra Das will also have a share in the sale proceeds.

12. The counsel for the defendants no.1 to 3 has also contended that NOC for mutation of the property in the name of the brothers only was granted before any dispute had arisen within the meaning of clause II to the said effect in the Will aforesaid and the sisters were to get a share only if a dispute arose. It is contended that since the sisters, before any dispute had arisen, consented to the mutation of the leasehold rights in favour of the brothers, the subsequent dispute even if between the brothers would not vest the sisters with any share.

13. I am unable to agree.

14. The intention of the testator that in the event of sale of the property, his sons and daughters get an equal share in the sale proceeds is clear not only from the clause providing for sale pursuant to dispute but also from the clause providing for sale by his wife in her lifetime.

15. I have also enquired from the counsels, whether the wife of Subal Chandra Das pre-deceased him. Both counsels answer in the negative and state that she died after about one year of the demise of Subal Chandra Das.

16. Looked at from the aforesaid aspect also, on the demise of Subal Chandra Das, his wife became the absolute owner of the property and the property, after her demise, would not be governed by the Will of Subal Chandra Das as claimed by the parties. Thus, in accordance with Section 15 of the Hindu Succession Act 1956, on demise of wife of Subal Chandra Das, all the sons and daughters would have an equal share in the property and the defendants no.1 to 3, being the successors of one of the sons, cannot for this reason also contend that the daughters do not have any share.

17. Thus, there is nothing in the defence of the defendants no.1 to 3, requiring trial and there is no impediment to a preliminary decree for partition of property No.K-2139, Chittaranjan Park, New Delhi being passed.

18. Accordingly, a preliminary decree for partition of property No.K-2139, Chittaranjan Park, New Delhi is passed, declaring the plaintiffs no.1 to 6 and defendant no.4 to be having one-eighth undivided share each therein and further declaring the defendants no.1 to 3 together to be having the remaining one-eighth share therein.

19. Preliminary Decree for partition be drawn up.

20. Considering the size of the property and the number of shareholders therein, the possibility of division of the property by metes and bounds does not arise.

21. Accordingly, a final decree for partition of property No.K-2139, Chittaranjan Park, New Delhi is also passed, of sale thereof and of distribution of sale proceeds amongst the parties as per the shares declared in the preliminary decree for partition.

22. It is made clear that whosoever may be in occupation/ possession of the property, on sale of the property, if fails to deliver vacant peaceful physical possession of the property, shall be liable to be dispossessed from the property as if in pursuance to a decree for possession of immovable property.

23. The parties are left to bear their own costs.

24. Decree sheet be drawn up.

25. Out of the sale proceeds of the share of defendants no.1 to 3, an amount of Rs.20,000/- towards the costs imposed on 29th November, 2019 and which are not paid, be paid to the counsel for the plaintiffs.

FEBRUARY 19, 2020
'gsr'

RAJIV SAHAI ENDLAW, J.