

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

% **Date of decision: 13th February, 2020.**

+ **CS(OS) 285/2018**

VINOD KUMAR SAHNI & ORS **Plaintiffs**
Through: Mr. D.S. Chauhan, Ms. Ruchi Singh
& Mr. Prashant Kumar, Advs.

Versus

UMESH KUMAR SAHNI & ORS **Defendants**
Through: Mr. Shantanu Aggarwal & Mr. Abhay
Pratap Singh, Advs. for D-1.
Mr. Shekhar Gupta, Adv. for D-6.

AND

+ **CS(OS) 587/2018, IA No.15793/2018 (u/O XXXIX R-1&2 CPC) &
IA No.4250/2019 (u/O VII R-11(a)(c)&(d) CPC)**

GAURAV SAHNI **Plaintiff**
Through: Mr. Shekhar Gupta, Adv.

Versus

MEERA TANDON SAHNI & ORS. **Defendants**
Through: Mr. D.S. Chauhan, Ms. Ruchi Singh
& Mr. Prashant Kumar, Advs. for D-1
to 4.
Mr. Shantanu Aggarwal & Mr. Abhay
Pratap Singh, Advs. for D-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Both the suits are for partition of vacant plot of land bearing No.G-1,
ad-measuring 663.8 sq. yds., Rajouri Garden, New Delhi.

2. The counsel for Gaurav Sahni, counsel for (i) Vinod Kumar Sahni, (ii) Sushil Kumar Sahni, (iii) Vinay Kumar Sahni and (iv) Meera Tandon Sahni and the counsel for Umesh Kumar Sahni, appear.

3. None appears for Vidya Bhushan Kapoor, Sonal Arorar Kapoor, Kirti Kapoor and Gaurav Kapoor though they have filed written statement in CS(OS) No.285/2018 supporting Vinod Kumar Sahni, Sushil Kumar Sahni, Vinay Kumar Sahni and Meera Tandon Sahni therein. As far as, CS(OS) No.587/2018 is concerned, it is informed that they have been served but have not appeared and have not been proceeded against *ex parte* as yet and have not filed any written statement.

4. The controversy has been understood from the appearing parties. It is not in dispute that, (i) Shadi Lal Sahni was the owner of the aforesaid plot of land and died intestate on 27th June, 1987 leaving his (a) widow Sushila Sahni, (b) sons Vinod Kumar Sahni, Sushil Kumar Sahni, Vinay Kumar Sahni, Ashok Kumar Sahni and Umesh Sahni, and, (c) daughter Pushp Lata Kapoor, as his only natural heirs; his mother having pre-deceased him; (ii) thus on the demise of Shadi Lal Sahni, the widow and each of his five sons and one daughter inherited one-seventh undivided share in the plot aforesaid, from Shadi Lal Sahni; (iii) Sushila Sahni, widow of Shadi Lal Sahni died on 6th June, 2007 and it is the case of Sushil Kumar Sahni and Vinay Kumar Sahni that she has left behind a validly executed last Will dated 18th May, 2005 bequeathing her one-seventh share in favour of Sushil Kumar Sahni and Vinay Kumar Sahni; (iv) Ashok Kumar Sahni, son of Shadi Lal Sahni, also died on 28th January, 2015 leaving Gaurav Sahni as his only son; (v) Meera Tandon Sahni claims that Ashok Kumar Sahni, after the

demise of mother of Gaurav Sahni, had married her and has left a validly executed last Will dated 7th May, 1997 bequeathing his one-seventh undivided share inherited from Shadi Lal Sahni in favour of Meera Tandon Sahni only; and, (vi) Pushp Lata Kapoor, daughter of Shadi Lal Sahni has also since died, leaving Vidya Bhushan Kapoor, Sonal Arora Kapoor, Kirti Kapoor and Gaurav Kapoor as her only natural heirs.

5. The aforesaid being the undisputed position and the property subject matter of partition being an open plot of land, I have enquired from the appearing counsels, whether not the property has to be necessarily sold, considering the size thereof and the number of shareholders thereof and the indivisibility by metes and bounds thereof and why not the sale proceeds of one-seventh share of Sushila Sahni and the sale proceeds of one-seventh share of Ashok Kumar Sahni be deposited in this Court and parties go to evidence only qua the document claimed to be the Will of Sushila Sahni and Ashok Kumar Sahni and which is stated to have not been proved in any proceedings.

6. The counsel for Vinod Kumar Sahni, Sushil Kumar Sahni, Vinay Kumar Sahni and Meera Tandon Sahni states that he will have to seek instructions.

7. However the aforesaid being the necessary corollary in law, there is no need to await the instructions.

8. The other appearing counsels also do not want their consent to be recorded though have not been able to argue any impediment to the aforesaid course of action.

9. However the decree/order can be in one suit only and not in both the suits.

10. CS(OS) No.285/2018 being earlier in point of time and no other reason having been disclosed for CS(OS) No.587/2018 also to continue, CS(OS) No.587/2018 is disposed of in view of pendency of earlier instituted suit, being CS(OS) No.285/2018.

11. In CS(OS) No.285/2018, a preliminary decree for partition of plot of land bearing No.G-1, ad-measuring 663.8 sq. yds., Rajouri Garden, New Delhi is passed, declaring for the time being, deceased Sushila Sahni, Vinod Kumar Sahni, Sushil Kumar Sahni, Vinay Kumar Sahni, deceased Ashok Kumar Sahni and Umesh Kumar Sahni to be having one-seventh undivided share therein and Vidya Bhushan Kapoor, Sonal Arora Kapoor, Kirti Kapoor and Gaurav Kapoor together to be having remaining one-seventh undivided share therein.

12. Preliminary decree for partition be drawn up.

13. A final decree for partition of plot of land bearing No.G-1, ad-measuring 663.8 sq. yds., Rajouri Garden, New Delhi is also passed, of sale thereof and of distribution of sale proceeds amongst the parties as per their shares declared in the preliminary decree for partition, with option to the parties to, if so desire, before having the property sold to outsider, make *inter se* bids, with the party/s bidding the highest, acquiring the share of other/s against payment of consideration, execution of documents and removal of all impediments to get vacant, peaceful, physical possession of the plot aforesaid.

14. Final decree for partition be drawn up.

15. As far as the one-seventh share of sale proceeds of deceased Sushila Sahni and the one-seventh share of sale proceeds of deceased Ashok Kumar Sahni are concerned, the same be deposited in the Court, to be distributed subject to adjudication of the following issues.

- (i) Whether the document dated 18th May, 2005 is the validly executed last Will of Sushila Sahni and if so, to what effect?
OP Sushil Kumar Sahni and Vinay Kumar Sahni.
- (ii) Whether the document dated 7th May, 1997 is the validly executed last Will of Ashok Kumar Sahni and if so, to what effect? OP Meera Tandon Sahni
- (iii) Relief.

16. Though the counsel for Gaurav Sahni has stated that he is disputing the marriage of Meera Tandon Sahni with Late Ashok Kumar Sahni but the counsel for Meera Tandon Sahni states that marriage was registered in the Register maintained under the Hindu Marriage Act, 1955 and a photocopy of the certificate of registration has been produced and the original shall be given inspection of to the counsel for Gaurav Sahni within ten days hereof. The counsel for Gaurav Sahni is also at liberty to, in the said time, have the register examined, if entertains any doubts about the authenticity of the certificate of registration of marriage and for this reason issue qua marriage has not been framed.

17. Though the counsel for Gaurav Sahni has also contended that the claim of Meera Tandon Sahni of Ashok Kumar Sahni having left a Will is time barred inasmuch as Gaurav Sahni had disputed the said Will in earlier litigation, but on enquiry it is stated that the said Will was not in issue in the

earlier proceedings and otherwise the document has not been proved / disproved in any legal proceeding. Thus no merit is found in the argument of the setting up of the Will in this suit for partition being barred by time.

18. No other issue arises or is pressed.

19. The parties to file their list of witnesses within 15 days.

20. Sushil Kumar Sahni and Vinay Kumar Sahni to lead evidence first and to file affidavits by way of examination-in-chief within six weeks as sought.

21. If more than one attesting witness to any of the documents claimed to be the Will are sought to be examined, affidavits by way of examination-in-chief of all to be filed together and all to be tendered together for cross-examination.

22. Witnesses of Sushil Kumar Sahni and Vinay Kumar Sahni to be not cross-examined by any of the parties who are not disputing the Will and to be cross-examined only by the counsels for the parties who are contesting the Will.

23. After the evidence of Sushil Kumar Sahni and Vinay Kumar Sahni, Meera Tandon Sahni to lead evidence next, with her witnesses to be again cross-examined only by the counsels for the parties who are disputing the Will of Ashok Kumar Sahni and not by any of the other counsels.

24. Thereafter the parties opposing Will of Sushila Sahni to lead evidence and lastly the parties opposing Will of Ashok Kumar Sahni to lead evidence.

25. Option given of having evidence recorded on commission has been declined.

26. List before the Joint Registrar on 13th April, 2020 for scheduling the dates of trial.

27. The date already given of 18th March, 2020 in CS(OS) No.587/2018 is cancelled.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 13, 2020

‘gsr’

