



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: August 01, 2022

Pronounced on: August 08, 2022

+ RFA(OS) 30/2017 & CM.APPLs. 17472/2017 & 5691/2021

NARINDER KUMAR GOVIL

Appellant

Through: Mr. Bharat Bhushan Gupta, and Mr.
Gaurav Singh, Advocates.

Versus

M K GOVIL & ORS

Respondents

Through: Mr. S.C. Singhal, Ms. Poonam
Taneja and Mr. Pradeep Verma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J

1. By virtue of instant appeal, appellant impugns the preliminary decree of partition dated 09.02.2017 (hereinafter referred to as “**preliminary decree**”) and the final decree of partition dated 08.03.2017 (hereinafter referred to as “**final decree**”) passed by Learned Single Judge in suit



bearing CS(OS) 388/2016 (hereinafter referred to as “suit”).

2. Respondent no.1 instituted a suit for partition of property bearing no. 319, Deepali, Pitampura, Delhi-110 034 (hereinafter referred to as “property”) and for rendition of accounts against respondent no.2, appellant and respondent nos.3 to 5 on the basis of the rent recovered by appellant herein with respect to the second floor of the property, claiming that the property belonged to Late Mr. N.K. Govila, who had died intestate on 09.05.2001. The parties herein are related to Late Mr. N.K. Govila as he is the father of appellant and respondent nos.1 to 3 and father-in-law of respondent no.4 and grandfather of respondent no.5. Said Late Mr. N.K. Govila died intestate leaving his legal heirs namely widow, Late Ms. Shakuntala Goyal, appellant, respondent nos.1 to 3 and late Ms. Madhu Gupta, predecessor-in-interest (wife of respondent no. 4 and mother of respondent no. 5) of respondent nos.4 and 5, who acquired 1/6th share each. Thereafter his daughter, late Ms. Madhu Gupta also died intestate leaving her surviving legal heirs namely respondent nos.4 and 5. Resultantly appellant and respondent nos.1 to 3 acquired 1/5th share each and respondent nos.4 and 5 acquired 1/5th share conjointly in the property.

3. Respondent nos. 2, 4 and 5 in their consolidated written statement and respondent no.3 in her separate written statement, admitted and supported the case of respondent no.1 with respect to partitioning of property and also rendering of accounts of rent realised from second floor of the property.

4. Contrary thereto, appellant chose to contest the suit on various grounds, primarily contending that the suit was barred by limitation and that suit was not properly valued. Appellant further contended that his father Late Mr. N.K. Govila had disowned respondent no.1 vide Will dated



15.03.1999, which though not executed by Late Mr. N.K. Govila but was made by him while he was alive and thus the suit was not maintainable in view of the Will of Late Mr. N.K. Govila. He lastly contended that the second floor of property was constructed by appellant out of his savings during the lifetime of Late Mr. N.K. Govila and furthermore that none of the parties had any share in the rent derived from the second floor of the property.

5. Upon considering case of the parties, Learned Single Judge vide preliminary decree of partition of property found no merit in the contention of counsel for appellant qua limitation as it was not a material plea to be put to trial and as none of the pleas in the written statement appeal merit framing of an issue and further recorded the statement of appellant to the effect that he has exclusively been realising rent of Rs.8,000/- per month from the tenant on second floor of property after the demise of his mother Smt. Shakuntala Goyal. Learned Single Judge proceeded to pass a preliminary decree of partition of property declaring respondent nos. 1 to 3 to be the rightful owner of 1/5th share each and respondent nos.4 and 5 to be the rightful owner of 1/5th share together in the said property and after holding that appellant was entitled to only 1/5th share of the said rental amount of Rs. 57,600/- realized by him for the last 3 years from the second floor of the property held him liable to pay the same proportionate 1/5th share to the other parties herein. Learned Single Judge further passed a decree for recovery of the aforesaid rental amount of Rs. 57,600/- in favour of respondent nos.1 to 3 each and respondent nos.4 and 5 together against appellant. In the end Learned Single Judge granted an opportunity to the parties to consider amicable settlement.



6. Since there was no amicable settlement, Learned Single Judge proceeded to pass a final decree for partition and sale of property and distribution of sale proceeds amongst the parties thereof as per their respective proportionate shares set out in the preliminary decree as the property was incapable of partition by metes and bounds.

7. Hence the appellant vide present appeal challenges both the preliminary decree and the final decree passed by the Learned Single Judge.

8. Amongst the various grounds raised before us learned counsel for appellant has restricted his arguments and placed reliance upon the Will of Late Mr. N.K. Govila and Section(s) 59 and 63 of The Indian Succession Act, 1925 (hereinafter referred to as “Act”). To buttress his arguments learned counsel for appellant relies upon *Vidya Devi v Prem Prakash* (1995) 4 SCC 496 contending that since possession of appellant had been adverse to respondent no.2 for the last 41 years, the appellant had acquired valid title in respect of property; and *Gnanambal Ammal v T Rajulyer & Ors.* AIR 1951 SC 103 contending that when two constructions of a Will are reasonably possible, one of which avoids intestacy while the other involves intestacy, Court would certainly be justified in preferring the construction which avoids intestacy and that in present case the Will ought to be considered, especially as it is in the own handwriting of Late Mr. N.K. Govila; and *Preeti Satija v Raj Kumari & Anr.* (2014) 207 DLT 78 contending that Late Mr. N.K. Govila during his lifetime had already disinherited one of his legal heir, i.e. the respondent no.1 herein by a validly executed Will; and *Navneet Lal v Gokul* AIR 1976 SC 794 contending that as per the cardinal rules to be followed while considering a Will, the intention of the Testator, Late Mr. N.K. Govila herein, is to be gathered



from the surrounding circumstances and after considering the family relationship to ascertain the meaning of the language used therein and further the Will should not be read in isolation rather as a whole by giving effect to every expression.

9. Upon going through the judgments relied, we find none of them provide any assistance to appellant and reliance thereupon is totally misconceived. The judgment in *Vidya Devi (supra)* is not applicable to the facts of this case as it deals with the prescribed period of limitation for instituting a suit for partition and adverse possession, which unfortunately is not the case before us. Similarly the judgment in *Gnanambal (supra)* is also not applicable as the said judgment was rendered under different facts and circumstances, i.e. the genuineness of the Will therein was not disputed by the parties therein whereas in the present case all parties barring appellant have denied the very existence of the Will and further appellant has also been unable to show and prove that the alleged document is actually a Will and the judgment in *Preeti Satija (supra)* is pertaining to the issue and effect of disinheritance of a legal heir by a validly executed Will whereas in the present case as there is no Will on record, nobody, much less Late Mr. N.K. Govila herein disinherited anyone at any stage. Lastly the judgment in *Navneet Lal (supra)* is also not applicable to the facts of the present case as it is pertaining to rules to be followed while considering a Will per se whereas in the present case the existence of alleged Will itself is shrouded in mystery and thus there are no rules to be followed.

10. A bare perusal of the document proclaimed as a Will by appellant before us reveals that though handwritten, however, it does not bear signature of the so-called Testator; does not bear the details/ signatures of



either of the 2 witnesses; and is an incomplete document as it contains blanks and corrections. The document proclaimed as a Will before us is not final and was never concluded by Late Mr. N.K. Govila, the Testator named therein. The said document is not a validly executed Will as per Section 63 of the Act. Mere writing a document by hand without execution and without compliance of the prescribed legal standards of Section 63 of the Act does not render it final, as a Will. Thus and even otherwise, neither Section 59 nor Section 63 of the Act come to the aid of appellant. In fact Section 59 of the Act is not applicable to the facts of the case. The said Will being non-est in law, cannot be read in evidence and thus appellant is barred from placing any reliance upon it and cannot take any benefit thereof.

11. The Hon'ble Supreme Court in ***Raj Kumari & Ors. V Surinder Pal Sharma*** 2019 SCC OnLine 1747 has held that: -

“13.Therefore, the propounder to succeed and prove the Will is required to prove by satisfactory evidence that (i) the Will was signed by the testator; (ii) the testator at the time was in a sound and disposing state of mind; (iii) the testator understood the nature and effect of the dispositions; and (iv) that the testator had put his signature on the document of his own free will.”

12. Appellant has failed to show or prove the Will, the same cannot be considered. Appellant has also failed to show that Late Mr. N.K. Govila had ever executed any document, much less the alleged Will during his lifetime, either in favour of appellant or disowning respondent no.1. As such Late Mr. N.K. Govila never conferred any right, title, interest or share upon any of the



parties herein and thus the appellant and respondent nos.1 to 3 have rightly acquired 1/5th share each and the respondent nos.4 and 5 also have rightly acquired 1/5th share together in the property. Thus the preliminary decree dated 09.02.2017 and the final decree dated 08.03.2017 passed by Learned Single Judge do not call for any interference by this court. Parties shall remain bound by them and proceed further to give effect to it

13. Thus the instant appeal fails and is accordingly dismissed. Pending applications are disposed of as infructuous.

(SAURABH BANERJEE)

JUDGE

(SURESH KUMAR KAIT)

JUDGE

AUGUST 08, 2022/rr/r

