

#S-1

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 31.01.2023

**FAO(OS) 109/2022 & CM APPL. 45395/2022 (for taking on record
the additional documents)**

PHOOLWATI DECEASED THR LRS & ORS Appellants

versus

DEVINDER SINGH & ORS. Respondents

Advocates who appeared in this case:

For the Appellants : Mrs. Kajal Chandra, Ms. Perna
Chopra and Ms. Sakshi Anand,
Advocates along with appellant
No. 3 in-person.

For the respondents : Mr. Ujjwal K. Jha, Mr. Rajeev
Goyal, Mr. Vedant Tiwari and Ms.
Koninica Bose, Advocates for R-1
& R-2.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

CM APPL. 45396/2022 (Exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of accordingly.

FAO(OS) 109/2022

1. The present appeal under Section 10 of the Delhi High Court Act, 1966, has been instituted on behalf of Smt. Phoolwati deceased through LRs & Ors. (hereinafter referred to as “appellants”), assailing the order dated 27.07.2022 in CS(OS) No. 657/2017, passed by the learned Single Judge of this Court, in the appellants’ application being IA No. 8118/2020, under Chapter IX Rule 6 of the Delhi High Court (Original Side) Rules, 2018, seeking pronouncement of judgment, in terms thereof.
2. The appellants’ case is substantially predicated on the decision rendered by the Hon’ble Supreme Court of India in the case of ‘***Vineeta Sharma vs. Rakesh Sharma***’, reported as (2020) 9 SCC 1 and in particular paragraphs 135 and 137.5 thereof, which read as follows:-

“135. A special definition of partition has been carved out in the Explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of Section 6, the intendment of the legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of Section 6(5) are required to be interpreted to cast a heavy

burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes

than envisaged under Section 6(5) had taken place.

"137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

3. In sum and substance, it is the appellants' case that the present suit instituted on behalf of the appellants, can be disposed of, since there is no requirement in the facts and circumstances antecedent to adduce any evidence, in relation to the issues that have been struck by the learned Single Judge in the subject suit.

4. For the sake of completeness, issues as were framed in CS(OS) 657/2017 on 25.11.2019, are being reproduced as follows:-

"i. Whether the plaintiffs are entitled to a decree of partition of the suit properties as mentioned in para No.3 of the plaint? OPP

ii. Whether the plaintiffs are the legal heirs/legal representative of late Lo Ram? OPP

iii. Whether the plaintiffs and defendants are joint owners of the suit properties? OPD

iv. Whether the partition of the suit properties between the legal heirs of late La Ram have taken place in the year 1980? OPD

v. *Whether the present suit is not maintainable being barred by Section 185 of the Delhi Reforms Act, 1954? OPD*

vi. *Whether the present suit is barred by limitation? OPD*

vii. *Whether the present suit is barred under the provisions of the Delhi Land Revenue Act? OPD*

viii. *Whether the plaintiffs are entitled to receive compensation awarded with respect to any other properties of deceased Lo Ram along with defendants? OPP*

ix. *Whether the plaintiffs are entitled for a decree of permanent injunction against the defendants or their employees, agents, assignees, representatives and/or any other person or body claiming through them, as successor or otherwise, restraining them from creating third party interest and/or transferring, encroaching, constructing or - trespassing the possession of the suit properties to any person or in any manner?*

x. *Reliefs."*

5. In this behalf, it would be appropriate to extract in extenso the observations made in the impugned judgment dated 27.07.2022, in the backdrop of the limited controversy between the parties, in relation to these proceedings.

*"17. I have considered the submissions made on behalf of both the parties. The main averment on behalf of the plaintiffs is that the issues as framed in the present case are fully covered by the judgment of Vineeta Sharma Vs. Rakesh Sharma (Supra) and other judgments as aforesaid. It is thus prayed on behalf of the plaintiffs to pass judgment since the provisions as contained in the substituted Section 6 of Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment, in the same manner as son with the same rights and liabilities. **However, it is to be noted that in the present case, the defendants have setup case***

with respect to an oral partition which took place way back in the year 1980. It is pertinent to mention here that with respect to the issue of oral partition, Hon'ble Supreme Court itself carves out an exception in paragraph 137.5 of the aforesaid judgment. Thus, it has been held in the aforesaid judgment of Vineeta Sharma (Supra) that oral partition is not maintainable, however, the exception carved out by Hon'ble Supreme Court is that the oral partition can be proved by supporting evidence/documentary evidence.

18. Hon'ble Supreme Court has held in categorical terms that in exceptional cases, where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been effected by a decree of court, it may be accepted. Paragraph -137.5 states as follows:

"137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

19. There is clear finding by Hon'ble Supreme Court in the aforesaid judgment that if any partition of property has been arrived at before 20.12.2004, the suit for partition is not maintainable. Further, in terms of paragraph 137.5 of the said judgment, Hon'ble Supreme Court has also laid down the criteria when oral partition may be accepted. As already noted hereinabove mutation of the various properties falling under the share of different parties, has

already been effected. Thus, prima facie the oral partition as alleged in the present case by the defendants, is supported by public document, viz. the mutation carried out on 18.02.2002 by the Revenue Authorities.

20. It was also brought to the notice of this Court that the plaintiffs herein had earlier filed a writ petition, WP. (C) 5163/2015, titled Phoolwati & Ors. Vs. Union of India & Ors. to mutate the land holdings in the revenue records in their favour as legal heirs of late Sh. Lo Ram. The said writ petition filed by the plaintiffs was withdrawn vide order dated 17.03.2016, to file appropriate application before the Revenue Authority. Thereafter, the plaintiffs had filed an application before the Revenue Authority, which came to be dismissed by the said Authority vide order dated 14.08.2017. Against the aforesaid order dated 14.08.2017 passed by the Revenue Authority, appeal has been filed on behalf of the plaintiffs before the Financial Commissioner. The said appeal before the Financial Commissioner is stated to be still pending.

21. A perusal of the aforesaid clearly shows that as of today a valid mutation of the property exists in favour of the defendants and the appeal by the plaintiffs, challenging the mutation in favour of the defendants is still pending. It is to be noted that the mutation of the property in the present case took place on 18.02.2002. Thus, on this aspect, various issues have been raised on behalf of the defendants with respect to the present suit being barred by limitation, besides the issue pertaining to maintainability of the present suit.

22 . In view of the clear law position as laid down by Hon'ble Supreme Court in the aforesaid case of Vineeta Sharma, it is clear that this Court would have to consider the plea of oral partition set up by the defendants, since the defendants are relying upon a public document in their favour, viz. the mutation document, in order to bring the case of the defendants within the exception as

carved out by Hon'ble Supreme Court in the aforesaid case. Thus, any finding as regards allegation of any oral partition in the present case, would essentially have to be given only after evidence is adduced by the respective parties, especially in view of the mutation in favour of the defendants. Though law is clear that mutation does not confer any right or title over any immovable property, the document pertaining to mutation, as long as it is a valid document, would have to be considered to arrive at a decision as regards the plea of oral partition set up by the defendants and to arrive at the decision whether or not the case of the defendants is covered within the exception clause in the case of Vineeta Sharma (Supra). Thus, it is imperative that evidence is led in the present matter and only then a finding can be arrived at whether or not there was any oral partition in the present case, as alleged on behalf of the defendants.

23. The judgments in the case of Nirmala & Ors., Smt. Indu Khorana and Sh. Ishwar Singh (Supra), as relied by the counsel for the plaintiffs are on the issue, that is already subject matter of proceedings in the appeal of the plaintiffs pending before the Financial Commissioner. Since challenge by the plaintiffs to the mutation in favour of the defendants is still pending before the Financial Commissioner, GNCTD, the aforesaid judgments would be subject of reliance in the proceedings before the Financial Commissioner. No finding can be given by this Court on the basis of the said judgments at this stage, as the said issues pertaining to the Delhi Land Reforms Act are already pending before the Financial Commissioner.

24. It is also to be noted that the contention of the plaintiffs as regards their entitlement on the basis of Section 6 of the Hindu Succession Act, 1956, also needs consideration, which can be done only after requisite evidence is lead in this regard. The plaintiffs rely upon the said section to advance their right that a daughter by birth becomes a

coparcener in her own right in the same manner as the son, post the 2005 amendment to the said Act. However, as noted in the preceding paragraphs, the defendants have set up a defence of oral partition. Considering the judgment of Hon'ble Supreme Court in the case of Vineeta Sharma (Supra) wherein the Hon'ble Supreme Court has carved out an exception wherein even plea of oral partition would be considered, if the same are supported by public documents, read with Section 6 (5) of the Hindu Succession Act, 1956 wherein it has been stated that nothing contained in this section shall apply to any partition which has been affected before 20.12.2004, it is clear that in the present case, judgment cannot be passed in terms of the prayers made in the present application. In view of the plea of oral partition set up by the defendants, coupled with mutation in their favour and plea regarding possession of respective shares by the different shareholders, the plaintiffs would have to establish their rights over the suit properties by leading evidence in that behalf.

25. On a conspectus of the facts in the present case, it is held that no judgment can be pronounced by this Court in terms of Chapter IX Rule 6 of the Delhi High Court (Original Side) Rules, 2018, as prayed in the present application. *The issues as framed cannot be said to be covered by the judgment of the Hon'ble Supreme Court in the case of Vineeta Sharma, (Supra), in view of the exception carved out by the Hon'ble Supreme Court itself as noted in paragraph 137.5 of the said judgment. Since in the present case mutation on the basis of oral partition is stated to have taken place on 18.02.2002 and proceedings challenging the same are still pending before the Financial Commissioner, it is held that evidence would have to be led by the parties on the issues framed by this Court vide order dated 25.11.2019.”*

6. A perusal of the afore-extracted paragraphs, leaves no manner of doubt that, insofar, as some of the properties that constitute the subject matter of the subject suit are concerned, an appeal has been preferred on behalf of the appellants before the Financial Commissioner, assailing the order dated 14.08.2017, rendered by the Revenue Authority, mutating the subject land holdings in the revenue records, in favour of the respondents herein.

7. In other words, the learned Single Judge has categorically held that, *prima facie* the oral partition, as alleged by the respondents in the subject suit, is supported by a **public document**. *A fortiori*, the plea of oral partition supported by the public document falls within the category of exceptional cases, as carved out by the Hon'ble Supreme Court itself in **Vineeta Sharma (supra)**. Thus, any finding as regards to the allegations of any oral partition in the present case, would essentially have to be given only after evidence is adduced by the respective parties, especially in view of the mutation carried out by the Revenue Authority on 18.02.2002. Further, the document pertaining to mutation, as long as it is a valid document, would have to be considered to arrive at a decision whether or not the case of the respondents is covered within the exception clause enunciated by the Hon'ble Supreme Court in **Vineeta**

Sharma (supra) and in particular paragraph 137.5. Consequently, it is only after evidence is lead in the subject suit can a finding be arrived at, whether or not there was any oral partition, as asseverated by the respondents.

8. It is nobody's case before us that the order impugned in the present appeal suffers from the vice of perversity. [Reference: *Wander Ltd. & Anr. vs. Antox India P. Ltd.* reported as 1990 (Supp) SCC 727]

9. In view of the foregoing reasoning, we find ourselves in agreement with the *prima facie* findings arrived at by the learned Single Judge, whilst dismissing the application seeking pronouncement of judgment in terms of Chapter IX Rule 6 of the Delhi High Court (Original Side) Rules, 2018, instituted on behalf of the LR/appellants *herein*.

10. The respondents, cannot be non-suited at this stage; *a fortiori*, for the axiomatic reason that, they would necessarily be required during the course of the trial of the subject suit to discharge the onus of proving an oral partition by leading cogent and credible evidence.

11. In this behalf, the reliance placed by the learned Single Judge on the exception enunciated by the Hon'ble Supreme Court of India in *Vineeta Sharma (supra)* and in particular in paragraph 137.5 thereof, cannot be faulted as the *public document* in the form of the revenue

record, carrying out mutation of the subject land in favour of the respondents, is indicative of the circumstance that the plea of oral partition set up by the respondents herein, falls within the exception to the general rule, enunciated in *Vineeta Sharma (supra)*.

12. We are consequently of the view that the findings arrived at by the learned Single Judge, in the impugned judgment, do not warrant any interference.

13. The appeal is accordingly dismissed. The pending application also stands disposed of.

**SIDDHARTH MRIDUL
(JUDGE)**

**TALWANT SINGH
(JUDGE)**

JANUARY 31, 2023/rs/ac

[Click here to check corrigendum, if any](#)