



2024:DHC:5725



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

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RESERVED ON – 21.05.2024
PRONOUNCED ON –01.08.2024

+ CS(OS) 476/2021, I.A. 13056/2021

RAJESH NARULA AND ORS

..... Plaintiffs

Through: Mr. Kapil Gupta, Mr. Ravi Kumar,
Advts. for P-1

versus

DANESH MEHTA

..... Defendant

Through: Mr. Ranjan Mukherjee, Adv.(VC)

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J.:**

1. The present suit has been filed seeking declaration, partition, mandatory and permanent injunction. The plaintiffs and defendants are real brothers and sisters being the only legal heirs of late Som Nath Narula and Late Mrs. Jiwan Kumari Naurula. Late Mr. Som Nath Narula (father) has died on 29.07.1993 and Late Mrs. Jiwan Kumari Narula (mother) 28.04.2005.
2. Late Mr. Som Nath Narula had left a Will dated 12.07.1992 which contained the list of movable and immovable properties acquired by



him during his lifetime and from his own resources. The details whereof are as follows:

- a. House No.H-27, Kailash Colony, New Delhi-110048 admeasuring 311 sq. yds. (hereinafter referred to as "Property No.1")
- b. Shop No.15, A Block, Vasant Vihar, New Delhi. (hereinafter referred to as "Property No.2")
- c. House No.L-4, Lajpat Nagar-II, New Delhi(hereinafter referred to as "Property No.3")
- d. Plot No.Q-4, Jangpura, New Delhi(hereinafter referred to as "Property No.4")
- e. Flat No.129, Bannuwal Nagar, Pitampura, New Delhi(hereinafter referred to as "Property No.5")
- f. Coal Depot Plot, adjacent to F-109, Lajpat Nagar-II, New Delhi admeasuring 412 sq. yds. (hereinafter referred to as "Property No.6")
- g. Locker at Indian Bank, Kailash Colony, New Delhi.
- h. Fixed Deposits at various banks.
- i. Indira Vikas Patra for Rs.1 lakh.
- j. Godown at Ambala Cantonment, Haryana.
- k. DDA SFS Flat booked in the name of Rajesh Narula (Plaintiff No.1) and paid Rs.40,000 j -.
- l. Road Roller, Mini Plant & Tarcoal Tanki.
- m. House Hold Materials/Items



- n. Maruti Car DBB 71.
 - o. Jeep & Scooter
 - p. Government Bills & Securities
 - q. Bank Accounts in Business
 - r. Current Contracts
 - s. Plot No.5, Lajpat Nagar-III, New Delhi (under Litigation).
 - t. Shop No.4, Khanna Market, Lodhi Road, New Delhi (under litigation).
3. The plaintiff has submitted that during his lifetimes, Late Mr. Som Nath Narula sold the immovable property 2 (j) i.e. Godown at Ambala Cantonment, Haryana and utilized the proceeds for his bona fide needs. Similarly, the application for allotment of DDA SFS Flat i.e. the properties at serials No. 2(k) was cancelled during the lifetime of Late Mr. Som Nath Narula i.e. in between the execution of Will dated 12.07.1992 and before his demise.
4. The plaintiff has further submitted that the property listed at 2(s) i.e. Plot No.5, Lajpat Nagar-III, New Delhi and (t) i.e. Shop No.4, Khanna Market, Lodhi Road, New Delhi were initially owned by Late Sh. Khan Chand Narula i.e. the father of Late Sh. Som Nath Narula and grandfather of the parties herein. It has been submitted that upon the demise of the late Sh. Khan Chand Narula, a dispute arose between his legal heirs, comprising the late Sh. Som Nath Narula and his siblings, and the same is the subject matter of adjudication in RFA No. 642/2016. It has also been submitted that these properties have



not been made part of the subject matter of the adjudication of the present suit. The plaintiff reserved his right to file a separate suit or amend the present suit regarding their share in the immovable properties in case any portion is awarded in the said immovable properties to the plaintiff.

5. The plaintiffs submitted that upon the death of the Late Sh. Som Nath Narula and in terms of his last and final Will dated 12.07.1992, all his movable and immovable properties, except those referred to in paragraphs (3) and (4), devolved upon his wife, the Late Mrs. Jiwan Kumari Narula. The plaintiffs submitted that all the legal heirs accepted and acted upon the last and final Will dated 12.07.1992. During her lifetime, the Late Mrs. Jiwan Kumari Narula utilized all the movable assets for her maintenance; as such, no movable assets survive for distribution among the parties. Therefore, the plaintiffs have not made the movable properties part of the subject matter of adjudication.
6. The plaintiff submitted that late Mrs. Jiwan Kumari Narula also died on 28.04.2005 and thus, by virtue of the Will dated 12.07.1992, the remaining immovable properties devolved upon the legal heirs of late Sh. Som Nath Narula and Late Smt. Jiwan Kumari Narula. The properties which are subject matter of the present suit as follows;

A. House No.H-27, Kailash Colony, New Delhi-110048 admeasuring 311 sq. yds., which is a single storey building (hereinafter referred to as "Property No.1"). Thus in terms of



the Will dated 12.07.1992 the said property is to devolve jointly upon Plaintiff Nos. 1 & 2 and to the exclusion of Plaintiff Nos.3 & 4 and Defendant.

- B. Shop No.15, A Block, Vasant Vihar, New Delhi (hereinafter referred to as "Property No.2") was jointly owned by Late Sh. Som Nath Narula & Plaintiff No.1. Thus in terms of the Will dated 12.07.1992 the said property is to exclusively devolve upon Plaintiff No.1 and to the exclusion of Plaintiff Nos.2 to 4 and Defendant.
- C. House No.L-4, Lajpat Nagar-II, New Delhi, comprising of 3 floors (hereinafter referred to as "Property No.3"). Thus in terms of the Will dated 12.07.1992 the Ground Floor thereof is to exclusively devolve upon Defendant, First Floor thereof is to exclusively devolve upon Plaintiff No.3 & Second/Barsati Floor alongwith roof rights is to exclusively devolve upon Plaintiff No.4, and to the exclusion of Plaintiff Nos.1 & 2.
- D. Plot No.Q-4, Jangpura, New Delhi (hereinafter referred to as "Property No.4"). Thus in terms of the Will dated 12.07.1992 the said property is to devolve jointly upon Plaintiff Nos. 1 & 2 and to the exclusion of Plaintiff Nos.3 & 4 and Defendant.
- E. Flat No.129, Bannuwal Nagar, Pitampura, New Delhi (hereinafter referred to as "Property No.5"). It is apt to mention herein that Late Smt. Jiwan Kumari Narula was housewife during her lifetime, however, the father of parties purchased the said property in her name but out of the his



own funds. Thus as per Will dated 12.07.1992 the said property is to exclusively devolve upon Defendant and to the exclusion of Plaintiffs.

F. Coal Depot Plot, adjacent to F-109, Lajpat Nagar-II, New Delhi admeasuring 412 sq. yds., (hereinafter referred to as "Property No.6"). Thus in terms of the Will dated 12.07.1992 the said property is to devolve jointly upon Plaintiff Nos. 1 & 2 and to the exclusion of Plaintiff Nos.3 & 4 and Defendant.

7. The Plaintiff has submitted that the parties initially had cordial relation. However, recently, on 20.09.2021, plaintiff No.1 came to know that the defendant is trying to sell her share in property No.1 i.e. House No.H-27, Kailash Colony, New Delhi-110048 admeasuring 311 sq. yds., which is a single storey building. The plaintiff told the defendant that she has only right in property No.C and E in terms of Will dated 12.07.1992 and has no right in property No.1. However, the defendant refused to adhere and acknowledged to it and remained adamant to sell her share in all the properties.
8. The Plaintiff in the present suit has sought relief of declaration, declaring the plaintiffs as owners of their respective portions of the properties in terms of Will dated 12.07.1992. The plaintiffs have also sought a decree of partition, dividing the suit properties by metes and bounds between the parties herein, in terms of the will dated 12.07.1992. The plaintiffs has also sought a declaration that the will dated 12.07.1992 is correct and genuine.



9. Summons were served upon the defendants. The defendant appeared but failed to file the written statement, hence, her defense was struck off.
10. The plaintiffs examined PW-1 i.e. Mr. P.D.Mehta whose testimony was recorded by the Local Commissioner. Mr. P.D. Mehta tendered his evidence by way of affidavit as EX.PW-1/X. PW-1 stated that Will dated 12.07.1992 was executed by Late Sh. Som Nath Narula in his presence and proved the Will dated 12.07.1992 as Ex.PW1/A(OSR). The witness was not cross examined by the defendants.
11. The plaintiff No.1 appeared as PW-2 and tendered his evidence by way of affidavit as PW-2/A , PW-1 also proved the copy of Will dated 12.07.1992 - Ex.PW1/A. In his testimony, the PW-1 proved the copy of order dated 02.07.2018 passed in RFA 642/2016 titled as Som Nath Narula (through LR's) v. R.C.Narula and Ors. as Ex. PW2/3; the copy of Sale deed registered with respect to House No. H-27, Kailash Colony, New Delhi-110048 proved as Ex. PW2/4; copy of possession letters issued by DDA pertaining to Shop No. 15, A-Block, Vasant Vihar, New Delhi proved as Ex. PW2/5; the copy of Registered Perpetual Lease Deed registered on dated 25.06.1973 alongwith registered deed of conveyance of building constructed on lease hold site with respect to House No. L-4, Lajpat Nagar 2, New Delhi as Ex. PW2/6; judgment and decree passed in Suit No. 1485/1995 titled as "Harish Chander Narula Vs. Union of India." passed by the courts of Sh. Ajay Goel, SCJ cum RC, Central District,



Tis Hazari Courts, Delhi alongwith judgment dated 07.03.2013 passed in Appeal No. RCA 47/2011 titled as "Union of India Vs. Harish Chander Narula. " passed by the courts of Sh.Virender Kumar Bansal, ADJ, Central District, Tis Hazari Courts, Delhi, with respect to the plot No. Q-4, Jungpura, New Delhi proved as Ex.2/7; the copy of possession letter and Agreement dated 13.06.1994 with respect to Flat No.129, Bannuwal Nagar, Pitampura, New Delhi proved as Ex .PW2/8 and copy of Allotment letter dated 14.01.1957 sent by Housing and Rent Officer, Delhi with respect to Coal Depot Plot, adjacent to F-109, Lajpat Nagar 2, New Delhi proved as Ex.PW2/9.

12.In the cross examination, the plaintiff stated that Will was unregistered and it was in the handwriting of his father and there was only one attesting witness. In the cross examination, the plaintiff stated that the defendant is not in occupation of her share in property no. C i.e., ground floor of House No.L-4, Lajpat Nagar-II, New Delhi . However, the plaintiff was not sure that the defendant is not in occupation of property E i.e., Flat No.129, Bannuwal Nagar, Pitampura, New Delhi. The plaintiff submitted that the defendant does not have any share in property No. 1 i.e., H-27. The defendant in the cross examination did not challenge the valid execution of the will dated 12.07.1992. Hence, under Section 58 of the Indian Evidence Act, 1872, the fact of the execution of the will, having been admitted by the defendant, requires no further proof. The learned counsel further relied on the judgment passed by this Honorable Court in ***Rajan Suri v. State & Ors. (AIR 2006 Delhi 148)***, wherein it was



held that Section 68 of the Evidence Act, which requires at least one attesting witness to prove a will, does not apply if the will's execution is undisputed, as per Section 58 of the Evidence Act.

13.Learned Counsel for the petitioner submits that during the pendency of the present suit, it was revealed that Property No. E, i.e., Flat No. 129, Bannuwal Nagar, Pitampura, New Delhi, is under the lock and key of the Defendant, which otherwise also was to exclusively devolve upon the Defendant to the exclusion of the Plaintiffs. In fact, the parties are in respective possession of the shares allotted to them under the Will dated 12.07.1992. Learned Counsel submits that, the parties, including the Defendant, are bound by the Law of Election, being a facet of the Law of Estoppel, especially after having accepted and acted upon the Will dated 12.07.1992.

14.Learned Counsel further placed reliance upon ***Bhagwat Sharan (Dead) thr. L.Rs Vs. Purushottam & Ors.*** [AIR 2020 SC 2361] and also in ***Karam Kapahi Vs. Lal Chand Public Charitable Trust*** [AIR 2010 SC 2077] wherein it was inter alia held that The law of election is a legal principle stating that a person who accepts a benefit under a deed, will, or other instrument must accept the entire document and cannot reject parts of it. In other words, one cannot "approbate and reprobate" the same instrument by accepting favorable terms while rejecting unfavorable ones. This principle ensures consistency in legal claims and is considered a form of estoppel, preventing a party from taking contradictory positions to gain advantage. The doctrine is well-established in common law and has been affirmed by various



judgments. Reliance has been placed upon *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.* [921-2 KB 608] and *Bhau Ram v. Baij Nath Singh* [AIR 1961 SC 1327]

15. Learned counsel for the petitioner submits that the Will dated 12.07.1992 should be declared as lawful, correct and genuine, basis which the Plaintiffs and Defendant be declared as owners of their respective portions of properties detailed in the Plaint with the consequential relief of partition by dividing the suit properties by metes and bounds between the parties herein and in terms of the Will dated 12.07.1992 with further direction in the nature of mandatory and permanent injunction restraining the parties from in manner interfering or creating third party rights in the respective portion of properties devolving upon them.

16. Since, the defendant has not filed the written statement, and has only come forward to cross examine the plaintiff as PW-2. However, the cross examination of PW-2 also seems have done half heartedly. It is a matter of record that the defendant in the cross examination has not challenged the authenticity, genuineness and validity of Will dated 12.07.1992 executed by Late Sh. Som Nath Narula. It is no longer *res integra* that as discussed in the various judgments as cited by learned Counsel for the plaintiff that obtaining a probate is not necessary in the case of the Will made by Hindu in the Union Territory of Delhi.

17. This court in various judgements, such as *Sanjay Gupta v. Ved Kanti Gupta* [MANU/DE/0733/1994], *Mrs. Winifred Nora Theophilus vs*



Mr. Lila Deane [AIR 2002 Delhi 6], ***Rajan Suri Vs. State & Ors.*** [AIR 2006 Delhi 148] and ***Hari Singh Vs. Union of India*** [MANU/DE/0973/2020] has held that for Hindus in Delhi, it is not necessary to probate a will or obtain Letters of Administration before filing a declaratory suit.

18. It is a settled proposition that it is not necessary to have the will probated or obtain letters of administration in the case of a will executed by a Hindu in the Union Territory of Delhi. The counsel for the plaintiff has also rightly submitted that since the will dated 12.07.1992 has not been disputed by the defendant, in view of Section 58 of the Evidence Act, the will stands admitted. Furthermore, the plaintiff has been examined as PW-1, who was an attesting witness. It is a matter of record that his testimony remained unassailed and unchallenged.

19. In view of the statements made by PW-2 and PW-1, a decree of declaration is passed in favor of the plaintiff and defendants as owners of their respective portions of properties detailed in paragraph No.5 above, and in terms of the will dated 12.07.1992. Hence a decree of partition is passed in terms of the will dated 12.07.1992, by metes and bounds, between the parties. Furthermore, a decree of mandatory and permanent injunction is passed, directing the defendant, her servants, assignees, legal representatives/ representatives, legal heirs, and agents not to sell, transfer, alienate, mortgage, part with possession, lease, create any third-party interest, or encumber or deal with in any



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manner whatsoever, with respect to any of the properties not falling in her share as detailed in paragraph No. 5.

20. The present petition along with pending application stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 01, 2024/ *Pallavi/na*