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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:-22nd May, 2024.*+ **CS(OS) 572/2023 & CRL.M.A. 11693/2024****SMT NISHI HANDA**

..... Plaintiff

Through: Mr. Zeeshan Diwan, Mr. Krishna Datta Multani, Mr. Ahmed Faraz Adv, Mr. Joel James, Advs. (M-9810999490)

versus

SMT MANJU KANWAR

..... Defendant

Through: Ms. Sonali Chopra, Mr. Sahil Gupta & Mr. Siddhartha, Advs. (M-9758777845)

Ms. Ria Thukral, Ms. Perna Chaudhary & Mr. Sahil Vijayran, Advs. (M- 9811170307)

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****PRATHIBA M. SINGH, J.**

1. This hearing has been done through hybrid mode.

Background facts

2. The present suit has been filed by the Plaintiff-Nishi Handa seeking partition, mandatory injunction, and permanent injunction in respect of her undivided 2/3rd share in the suit property. The description of the suit property is provided at paragraph 2 of the plaint as follows:

- Leasehold property registered as Document No. 7185 in Additional Book No. 1 in Vol. No. 1622, pages 163 to 169, before the Sub-

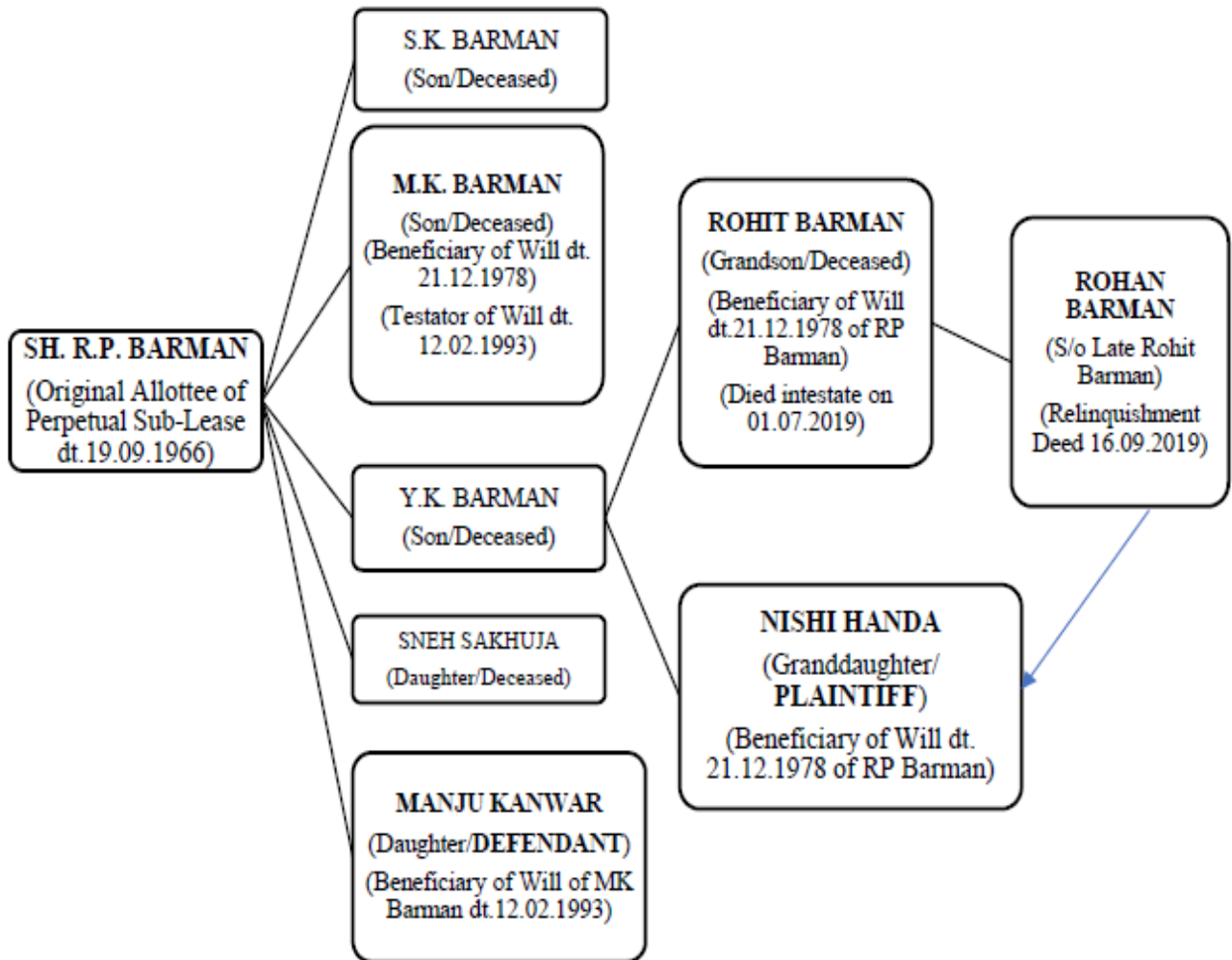


Registrar, New Delhi, on 7th October, 1966.

- Residential house situated at '**Plot No. N-83, Panchshila Park, New Delhi**'.
- Total area: 1200 sq. yds. (1003.20 sq. mts.)
- Comprising front and rear units/portions, garages, servant quarters, and common areas.
- Bounded by:
 - North: Road
 - South: Plot No. 82
 - East: Plot No. 85
 - West: Panch Shila Club Premises

3. The Plaintiff, Smt. Nishi Handa is the wife of Sh. Ronnish Handa and daughter of Late Sh. Y.K. Barman. She is the granddaughter of Late Sh. R.P. Barman. The Defendant-Smt. Manju Kanwar, is the daughter of Late Sh. R.P. Barman and also resides in the suit property. As per the plaint, the Plaintiff is in actual physical possession and resides in the front portion of the suit property. The Defendant resides in the back portion of the suit property. Both parties are co-owners of the suit property, with the Plaintiff holding a 2/3rd share and the Defendant holding a 1/3rd share.

4. The original sole owner and title holder the suit property i.e. **Plot No. N-83, Panch Shila Park, New Delhi – 110017** was Late Mr. R. P. Barman, in whose favour a registered perpetual sub-lease was executed by the Delhi Administration on 19th September, 1966. Mr. R.P. Barman died on 22nd January, 1979. The pedigree table in the present dispute is as follows:



5. Prior to his death, he had executed his last Will and testament dated 21st December, 1978, in favour of three beneficiaries:

- i. Mr. M.K. Barman, the son, a Canadian citizen.
- ii. Mr. Rohit Barman, the grandson.
- iii. Ms. Nishi Barman @ Ms. Nishi Handa, the granddaughter.

6. In terms of the said Will, the suit property was *inter alia* bequeathed in the following manner:



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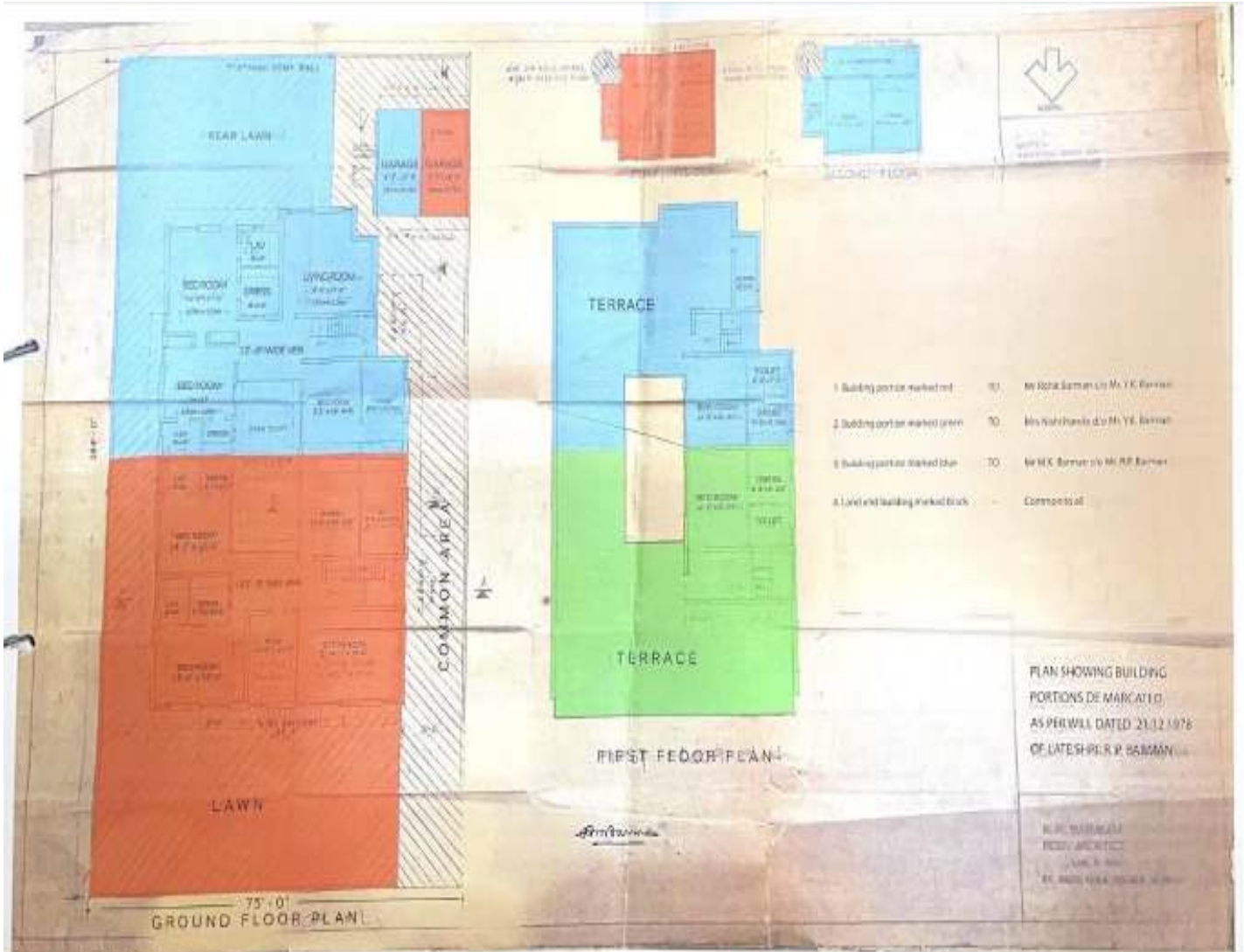


Beneficiary	Bequest Description	Details
Shri M.K. Barman <i>(Building portion marked blue)</i>	Rear/Back Portion of the Residential House	- Ground Floor: One sitting room, one dining room, one kitchen-pantry, two bedrooms with attached bathrooms and dressing rooms, one verandah. - First Floor: One bedroom with attached bathroom and dressing room, one storeroom.
	Garages and Servant Quarters	- One garage on the ground floor. - Two servant quarters plus a bathroom on the second floor.
Rohit Barman <i>(Building portion marked red)</i>	Ground Floor of Front Portion of the suit property	- Ground Floor: One drawing room, one dining room, one kitchen pantry, two bedrooms with attached bathrooms and dressing rooms, one Puja room, inner verandah.
	Garages and Servant Quarters	- One garage on the ground floor. - Two servant quarters plus a bathroom on the first floor.
Nishi Barman <i>(Building portion marked green)</i>	First Floor of Front portion of suit property	- First Floor: One bedroom with attached bathroom and dressing room. - Powers to construct on this portion of the first floor as well as <i>Barsati</i> floor up to limits permissible under the sub-lease terms and municipal bylaws.



7. The Will had a site plan delineating the portions bequeathed in favour of each of the beneficiaries which is as under:

Site Plan A



8. After the demise of Mr. R. P. Barman on 22nd January, 1979, vide letter of mutation dated 29th September, 1985, the suit property was mutated in the joint names of all the three beneficiaries i.e. Rohit Barman, Nishi Handa (the Plaintiff herein) and M.K. Barman in the DDA records, as co-owners/sub-lessees.



Share of Mr. M.K Barman

9. Mr. M.K. Barman, who was a Canadian citizen passed away on 17th January 2010 in Canada. During his lifetime, he executed the Will dated 12th February 1993, by which he bequeathed his portion (i.e. portion of the suit property marked blue) to the Defendant-Ms. Manju Kanwar, who is his sister. As a result, the entire share of Mr. M.K. Barman went to his sister, Ms. Manju Kanwar. The mutation reflecting this change is already stated to have been effected in the DDA records vide letter of mutation dated 1st June 2010. Thus, now, Rohit Barman and the Plaintiff, and the Defendant stood as the joint/co-owners of the suit property.

Share of Mr. Rohit Barman

10. The brother of the Plaintiff, Mr. Rohit Barman, passed away intestate on 1st July 2019. His wife had predeceased him, and his son, Mr. Rohan Barman, became his Class I legal heir. Thus, the share of Mr. Rohit Barman fell to his son, Mr. Rohan Barman. Mr. Rohan Barman relinquished his share vide relinquishment deed dated 16th September, 2019 in favour of the Plaintiff. Thereafter, the Plaintiff and the Defendant became joint owners/co-lessees of the suit property. However, the DDA vide letter of mutation dated 12th March, 2021 and the SDMC vide a letter dated 13th April, 2021 communicated that the Plaintiff's share is 2/3rd and the Defendant's share is 1/3rd.

11. Initially there was a challenge to the relinquishment deed 16th September, 2019 which is registered but is executed on a 100-rupee stamp paper.

12. Ld. Counsel for the Defendant submits, under instructions from the Defendant, that her client does not challenge the relinquishment deed any



more. In effect, therefore, the Plaintiff now has the share of her brother late Mr. Rohit Barman through his son Mr. Rohan Barman.

13. The current position regarding the suit property is that the Plaintiff is in possession of the entire portion that was bequeathed in her favour and Mr. Rohit Barman's favour. The Defendant is in possession of the entire share of the suit property that fell to Mr. M.K. Barman.

14. The present suit prays for partition and for a permanent injunction as also a mandatory injunction in respect of Plaintiff's share of the suit property.

Analysis and Conclusion

15. In the present suit, vide order dated 18th September, 2023, this Court directed *status quo* qua title and possession of the suit property during the pendency of the present suit. On 8th February 2024, since the parties submitted that mediation proceedings are going on, thus the matter was adjourned. On 23rd April, 2024, the parties informed this Court that the mediation proceedings have failed. Thus, on 20th May, 2024, this Court observed as follows:

"2. The Court has perused the Will dated 21st December, 1978 of Late Shri R.P. Barman. In the opinion of this Court, there is no ambiguity in the said Will in respect of the shares of the Plaintiff and the Defendant of the subject property, i.e., Plot. No. N-83, Panch Shila Park, New Delhi, admeasuring 1200 sq. yards.

3. The front portion of the subject property clearly along with the terrace vests with the Plaintiff. The back portion along with terrace vests with the Defendant. The property is still on lease hold basis and free hold application has to be made.

4. Ld. counsel for the Defendant wishes to seek



instructions in the matter.”

16. The above narration shows that hardly any disputes are left between the parties. The Plaintiff is clearly the owner of the front portion of the suit property, along with the terrace, while the back portion, along with the terrace, vests with the Defendant. They are, therefore, each the owners of 50% of the suit property, with the front portion in favour of the Plaintiff and the back portion in favour of the Defendant. The common garage areas and the servant quarters have already been divided between the parties in terms of the site plan. Under these circumstances, with the consent of the parties, the Plaintiff and the Defendant are now declared owners of 50% each in the property at **‘Plot No. N-83, Panch Shila Park, New Delhi – 110017’**.

17. Another cause for dispute between the parties is a letter issued by the DDA on 12th March 2021, which caused confusion by mutating 2/3rds of the share of the property in favour of the Plaintiff. In view of the declaration granted today by this Court, this mutation shall have no legal effect and is recalled. Both parties agree that each of them is the owner of 50% of the suit property. The mutation letter issued by the South Delhi Municipal Corporation dated 13th April 2021, which was a consequence of the DDA’s letter, also stands recalled and shall have no legal bearing. Accordingly, the parties are free to apply for mutation in terms of the present decree and also apply for the conversion of the property from leasehold to freehold. Any expenses for the said conversion shall be borne equally by both the parties. If any payments are to be made to the DDA, they shall be made directly by the Plaintiff and the Defendant to the DDA. Regarding the engagement of a professional for services related to the conversion to freehold, expenses shall



be borne equally by the parties.

18. It is also clarified that the black shaded portion in the site plan shall be used for common purposes and shall not be in the exclusive possession of either party.

19. If either party wishes to sell their 50% share, the right of first refusal shall be given in writing to the other party. If there is no response within 30 days, the party is free to proceed with the sale. If either party wishes to sell or purchase the other's share, they are free to bid for each other's shares also.

20. In view of the decree passed today, allegations made by either party in the pleadings in this suit shall stand withdrawn. *CRL.M.A. 11693/2024* is also withdrawn in view thereof.

21. On behalf the Plaintiff, the following persons are present:

- i. Ms. Nishi Handa
- ii. Mr. Ronnish Handa
- iii. Mr. Rohan Barman

22. On behalf of the Defendant-Ms. Nomita Agarwal submits that she is duly authorised by her mother to appear before this Court. The Court has also noticed that the special power of attorney executed by Ms. Manju Kanwar in favour of Ms. Nomita Agarwal is on record.

23. The suit is disposed of in the above terms. Let the decree sheet be drawn up in the above terms. All disputes between the parties are fully and finally settled with this decree.

PRATHIBA M. SINGH
JUDGE

MAY 22, 2024/dj/bh