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

+ **CS(OS) 44/2022, I.A. 1393/2022 & I.A. 17589/2022**

PARAMJIT SINGH

.....Plaintiff

Through: Ms. Kritika Gupta and Mr. Paramjit
Singh, Advocates alongwith Plaintiff
in person

versus

GURINDER SINGH & ORS.

.....Defendants

Through: Mr. O. P. Aggarwal, Advocate for D-
1 to D-4 (Through VC)
Mr. Parminder Singh, D-7 in person

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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11.07.2024

I.A. 17589/2022 (under Order XII Rule 6 CPC on behalf of the plaintiff)

1. This is an application filed by the plaintiff under Order XII Rule 6 Code of Civil Procedure, 1908 ('CPC') for passing a preliminary decree of partition with respect to the immovable property comprising of plot no. 72, Vigyan Vihar, Delhi-110092 ('subject property') and for appointing a Local Commissioner to suggest the mode of partition of the said property, consequently, on receipt of the report to pass a final decree for partition.
2. Notice in this application was issued on 31.10.2022 and defendant nos. 1 to 4 have since filed their reply on 04.03.2023.
3. Learned counsel for the plaintiff states that defendant nos. 1 to 4 (along with the plaintiff and deceased son late Sh. Surinder Pal Singh) are the Class I legal heirs of late Sh. Ajit Singh, the title holder of the subject



property. She states that the subject property was purchased by late Sh. Ajit Singh from Delhi Development Authority ('DDA') and he constructed a double storeyed house on the said property.

3.1. She states that plaintiff and late Sh. Surinder Pal Singh are the sons of late Sh. Ajit Singh from his first wife late Mrs. Kuldeep Kaur. He states that defendant no. 4 is the second wife of late Sh. Ajit Singh and defendant nos. 1 to 3 are the children from the said second wife.

3.2. She states that late Sh. Ajit Singh died intestate on 16.05.2005 leaving behind the aforesaid six individuals as his Class I legal heirs. He states that one of his sons Surinder Pal Singh died subsequently on 06.10.2021 and is survived by his Class I legal heirs i.e., wife and children who are arrayed as defendant nos. 5 to 7 herein.

3.3. She states that the plaintiff, defendant nos. 1 to 4 each are entitled to 1/6th share in the subject property and defendant nos. 5 to 7 together are entitled to 1/6th share between them being the legal heirs of late Sh. Surinder Pal Singh, the deceased son of late Sh. Ajit Singh.

3.4. She states that defendant nos. 5 to 7 unequivocally admit the claim of the plaintiff in their common written statement dated 07.01.2023.

3.5. She states that defendant nos. 1 to 4 as well have filed a common written statement dated 25.02.2022. She states that defendant nos. 1, 2 and 4 are residing in the subject property. She states that in the written statement the said defendants have categorically admitted the familial relationship of the plaintiff with late Sh. Ajit Singh and the plaintiff's inheritance in the subject property to the extent of 1/6th share.

3.6. She states that defendant nos. 1 to 4 have in the said written statement offered to pay the plaintiff 1/6th value of his share in the subject property on



the basis of the circle rate and have opposed the sale of the subject property. She states that the offer of the defendants to pay 1/6th share on the basis of the circle rate is inequitable. She states that the fair market value of the subject property is Rs. 6 crores whereas the value as per circle rate estimated by defendant nos. 1 to 4 is Rs. 1,13,37,984. She states that plaintiff is willing to sell his 1/6th share on the value of Rs. 6 crores to defendant nos. 1 to 4 and if the same is not acceptable to them, he is willing to buy out their shares of defendant nos. 1 to 4 of the value of Rs. 6 crores.

3.7. She states that partition by metes and bounds is not possible as the property admittedly as per defendant nos. 1 to 4 admeasures 111 sq. metres and is double storeyed which cannot accommodate the 5 separate families of the parties herein.

3.8. She states that there is therefore, no impediment in passing a preliminary decree with respect to the shares of the parties and directing a sale in these facts and circumstances.

4. The defendant no. 7 who appears in person submits on behalf of defendant nos. 5 to 7 that he as well supports the prayers of the plaintiff.

5. In reply, Mr. O.P. Agarwal, learned counsel for defendant nos. 1 to 4 states that defendant no. 4 i.e., Mrs. Gurmeet Kaur has orally informed him about a Will executed by late Sh. Ajit Singh.

5.1 He states that as per the said Will the subject property has devolved upon defendant no. 4 to the exclusion of all the parties herein. He states that the existence of this Will has been withheld by defendant no. 4 from all the parties including from her children, defendant nos. 1 to 3; and she has now for the first time disclosed the same to him.

5.2 He states that the said Will is not a part of the record and he will file



the same in due course. He states that in view of the existence of this Will the present application ought to be dismissed.

6. Learned counsel for the plaintiff states that the stand of defendant no. 4 that there exists a Will is false and contrary to the averments made by her on oath in the written statement, reply to I.A. No. 1393/2022 and reply to the present application.

6.1 She states that each of these pleadings has been signed by defendant no. 4 and supported by her affidavit. She states that in these pleadings defendant no. 4 and defendant nos. 1 to 3 have categorically stated in the affirmative that late Sh. Ajit Singh did not execute a Will and died intestate. She especially relies upon the averments made in reply to I.A. No. 1393/2022 at paragraph 3 therein.

7. This Court has considered the submissions of the parties and perused the record.

8. The following facts are unequivocally admitted by each of the parties:

- i. Late Sh. Ajit Singh is the title holder of the subject property i.e., property no. 72, Vigyan Vihar, Delhi.
- ii. Sh. Ajit Singh died on 16.05.2005.
- iii. Plaintiff, defendant nos. 1 to 4 and late Sh. Surinder Pal Singh were the Class I legal heirs of late Sh. Ajit Singh on the date of his death.
- iv. Sh. Surinder Pal Singh died on 06.10.2021 and defendant nos. 5 to 7 are his Class I legal heirs.
- v. The defendant nos. 1 to 4 in their reply¹ dated 23.02.2022 filed

¹ At para 3.



to I.A. No. 1393/2022² categorically admitted that late Sh. Ajit Singh died prior to execution of any Will. The defendant nos. 1 to 4 in their reply³ dated 04.03.2023 to the present I.A. categorically admitted that late Sh. Ajit Singh died intestate.

9. Admittedly, at the request of the parties, the matter was referred to mediation on two (2) occasions vide orders dated 07.03.2024 and 22.03.2024, however, as per the mediation reports dated 20.03.2024 and 24.04.2024 the mediation ended as 'not settled'.

10. In fact, the defendant nos. 1 to 4 in their written statement⁴ dated 25.02.2022 admitted that after the demise of late Sh. Ajit Singh, defendant nos. 1 to 4 offered to pay the plaintiff herein and late Sh. Surinder Pal Singh the value of their 1/6th share each in the property on the basis of the circle rate prices which, offer was rejected by the plaintiff.

11. In the admitted facts noted hereinabove, the prayer of the plaintiff seeking a preliminary decree of partition is clearly made out. The oral plea of the counsel for defendant no. 4 as regards existence of a purported Will of late Sh. Ajit Singh is ex-facie contrary to the pleadings sworn by defendant no.4 on oath. The relevant portion of the pleading of defendant no. 4 in reply to I.A. No. 1392/2022 and I.A. No. 17589/2022 admitting that late Sh. Ajit Singh:

Relevant portion of reply to IA 1392/2022 reads as under:

3. That the averments contained in paragraph 3 and 4 of the application under reply are wrong and denied. It is further submitted that the answering defendants never ever denied the share of the plaintiff in the said property and have always been ready to pay the value of his share as per the present circle rate of the area. It is submitted that the plaintiff was barred by their

² Application filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC

³ At para 3(b)

⁴ At paras 8, 12, 17 and 19 of the para-wise reply section of the pleadings



*father Late Sh. Ajit Singh from any of his self-acquired property due to their unscrupulous activities. However due to sudden death of **Late Sh. Ajit Singh he could not make a will** to the that effect and it is only after gaining knowledge about absence of existence of will of Late Sh. Ajit Singh the plaintiffs started harassing the Defendants and asking unreasonable amounts for their share which is quite evident from the suit itself. The filing of the present suit is harassment to the answering defendants and is clearly abuse of the process of the court.*

(Emphasis supplied)

Relevant portion of reply to IA 17589/2022 reads as under:

*b) That during the life time of late Sh. Ajit Singh, he had serious dispute/strained relations with the sons from his first marriage due to frauds/scams committed by them (as mentioned in the Written Submissions filed by defendant no. 1-4). Late Sh. Ajit Singh had severed all ties with the plaintiff and his brother late Surinder Pal Singh and had debarred them orally. However **late Sh. Ajit Singh expired intestate thus the defendants no 1- 4 do not deny 1/6th share of the plaintiff and also of his brother Late Sh. Surinder Pal Singh.***

(Emphasis supplied)

12. Pertinently, arguments in this application were also heard on 09.07.2024 on which date defendant no. 2 was personally present in Court and he categorically stated before the Court that there was no Will executed by late Sh. Ajit Singh.

13. In the considered opinion of this Court, therefore, this oral plea of Will raised by the counsel for defendant nos. 1 to 4 during oral arguments is misleading and clearly intended at interfering with the administration of justice. In fact, this Court is of the opinion that criminal contempt proceedings ought to be initiated against defendant nos. 1 to 4 for raising a plea which is not borne out from the record and is in fact, contrary to the express stand taken by the said defendants in their pleadings. The plea is unsubstantiated from the record and is clearly intended to prevent passing of orders in the present application. Directions for issuing show cause notice of



contempt are issued separately in this order.

14. This Court therefore, finds no merit in the arguments of defendant nos. 1 to 4 in opposing the prayers in the application. In fact, defendant nos. 1, 2 and 4 are residing in the subject property while the plaintiff and defendant nos. 5 to 7 are outside the property. The defendant nos. 1 to 4 are therefore, clearly intending to continue with the status quo of their possession to their benefit and to the prejudice of the other legal heirs. However, this inequity cannot be permitted to continue.

15. Accordingly, a preliminary decree of partition of property no. 72, Vigyan Vihar, Delhi-110092 is passed declaring the plaintiff Sh. Paramjeet Singh, defendant no. 1 Sh. Gurinder Pal Singh, defendant no. 2 Sh. Pardeep Singh, defendant no. 3 Smt. Inderjit Kaur and defendant no. 4 Smt. Gurmeet Kaur to be having 1/6th undivided share each therein. Further, defendant no. 5 Smt. Paramjit Kaur, defendant no. 6 Mrs. Amandeep Kaur and defendant no. 7 Sh. Parminder Singh are hereby declared to be having together 1/6th undivided share in the subject property being the Class I legal heirs of late Sh. Surinder Pal Singh.

16. Learned counsel for the plaintiff has stated that considering the size of the subject property i.e., 111 sq. metres, the same cannot be partitioned by metes and bounds to accommodate five (5) separate families of the plaintiff, defendant no. 1, defendant no. 2, defendant no. 3 and defendant nos. 5-7. She states that the relief sought in this application be moulded accordingly.

17. This Court finds merit in the submission of the plaintiff and in fact, even defendant nos. 1 to 4 in their common written statement had offered to buy out the shares of plaintiff and late Sh. Surinder Pal Singh.

18. At the hearing dated 09.07.2024 the plaintiff has agreed to sell his



share or buy out the share of the defendants on the value of Rs. 6 crores assigned for the entire subject property. The plaintiff states that he has no objection to the sale of subject property to a third party if it fetches a price higher than Rs. 6 crores.

19. Accordingly, a final decree of partition of property no. 72, Vigyan Vihar, Delhi-110092 is also passed, of sale thereof and of distribution of sale proceeds between the parties as per their respective shares in the preliminary decree for partition.

19.1. In this case, the plaintiff has already proposed the market valuation of the subject property as Rs. 6 Crores and has offered to sell his share to the defendant nos. 1 to 4 at the aforesaid price. The plaintiff has also agreed to purchase the shares of defendant nos. 1 to 7 at the said price. Since, defendant nos. 1 to 4 are in possession of the suit property they are hereby given the first option to exercise the right to purchase the plaintiff's and defendant nos. 5 to 7's share at the aforesaid valuation. The said option would have to be exercised by defendant nos. 1 to 4 within three (3) weeks (i.e. on or before 01.08.2024) from today by issuing a written notice to the plaintiff and defendant nos. 5 to 7.

19.2. In case, defendant nos. 1 to 4 fail to exercise the said option to buy then within next two (2) weeks, plaintiff will be entitled to buy the share of defendant nos. 1 to 7 on the basis of the valuation of Rs. 6 crores. However, this option to buy the shares of defendant nos. 1 to 7 will have to be exercised by the plaintiff between 02.08.2024 and 16.08.2024 by issuing a written notice to the defendant nos. 1 to 7.

19.3. At this stage, if defendant nos. 1 to 4 are able to find a buyer who is willing to pay a market valuation which is higher than Rs. 6 crores to the



parties herein, the offer of such a buyer will be communicated to the plaintiff and defendant nos. 5 to 7. This higher offer will be communicated on or before 31.08.2024.

19.4. In the aforesaid manner, it will be open to the parties to make inter se bids with respect to the subject property, with the party bidding the highest acquiring the share/s of the other/s against payment of consideration thereof as per the bid and execution of requisite documents. This process of inter se bidding will be completed on or before 31.08.2024, failing which either party may approach the Court for sale of the subject property through public auction.

19.5. In case, defendant nos. 1, 2 and 4 sell out their shares, since they are in possession of the subject property, they shall deliver vacant peaceful possession of the subject property to the purchaser or the highest bidder, as the case may be and if the said defendants or any one of them fails to handover possession, they will be liable to be dispossessed therefrom as if in pursuance to a decree for recovery of possession of immovable property.

20. The parties are left to bear their own costs. Decree sheet be drawn up.

21. Pending applications are disposed of.

Suo moto notice of Contempt of Court proceedings

22. The CPC was amended w.e.f. 01.07.2002 and sub-rule (4) was added to Order VI Rule 15 therein, making it mandatory for the party verifying the pleading to furnish an affidavit in support of the same. The object of this amendment was to fix responsibility for assertions made in the plaint on the person who verifies the pleading; and this is to ensure that false allegations are not made freely and recklessly. False verification is an offence punishable under Section 191 and 193 of the Indian Penal Code ('IPC').



23. In the facts of this case, it is evident that defendant nos. 1 to 4 have filed their replies to I.A. 1393/2022 and I.A. 17589/2022, the said replies are supported by the affidavit attested by all four (4) of the said defendants. In these replies, defendant nos. 1 to 4 have categorically asserted that late Sh. Ajit Singh died intestate. In these pleadings it has been stated in the affirmative that late Sh. Ajit Singh did not execute any Will during his lifetime.

24. Defendant no. 2 who appeared in person before this Court on 09.07.2024 also stated in the affirmative that late Sh. Ajit Singh has not executed any Will.

25. However, the oral statement made by learned counsel for defendant no. 4 before this Court today is contrary to what has been affirmed in those affidavits and it appears to this Court that the said oral plea has been consciously made to interfere with and obstruct passing of an order by this Court in the course of administration of justice. The conduct of defendant nos. 1 to 4 is brazen and makes a mockery of the judicial process.

26. Thus, upon a careful perusal of replies to the I.A.s filed by the defendant nos. 1 to 4 and the statement made before this Court on 09.07.2024 and the conflicting statement made by the counsel for the defendant today, this Court deems it fit to issue notice to defendant nos. 1 to 4 to show cause as to why proceedings for criminal contempt under Section 2(c) read with Section 12 of the Contempt of Courts Act, 1971 be not initiated against them for raising false pleas before this Court. The registry is directed to register *suo moto* Criminal Contempt Case and proceed accordingly.

27. A copy of this order be served on defendant nos. 1 to 4. The defendant



nos. 1 to 4 are directed to file their reply affidavit within four weeks.

28. The registry is directed to register this contempt petition and place before the Roster Bench on 12.11.2024 along with the suit record for the convenience of the Roster Bench.

MANMEET PRITAM SINGH ARORA, J

JULY 11, 2024/msh/sk