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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) 143/2023 & C.M.Nos.67425-67426/2023

MS VEENETA SINCE DECEASED THROUGH LRS

..... Appellant

Through: Mr. Praveen Suri with Mr. Bharat and
Mr. N.K.Singh, Advocates.

versus

MS JYOTI GUPTA

..... Respondent

Through: Mr. Rohit Rattu, Advocate.

Reserved on: 3rd May, 2024

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Date of Decision: 22nd May, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:**

1. The present appeal has been filed under Section 10 of the Delhi High Court Act, 1966, challenging the impugned order dated 28th November, 2023, passed by the learned Single Judge in CS (OS) No. 392/2019, dismissing the I.A. No. 14019/2021 filed by the Appellants herein under Order XXII Rule 4 of Code of Civil Procedure, 1908 ('CPC'), claiming to be the legal representatives of late Ms. Vaneeta Gupta and seeking their substitution.
2. Late Ms. Vaneeta Gupta was the defendant no.1 in the civil suit filed by Respondent/plaintiff seeking partition, possession, rendition of accounts and ancillary reliefs qua the estate of late Sh. Parmanand Gupta. The suit properties relevant for the present appeal are:



- (a) Property No. D-133, Mahendru Enclave, Delhi – 110033;
- (b) Plot No. D-136, Mahendru Enclave, Delhi;
- (c) Plot No. D-114, Mahendru Enclave, Delhi; and
- (d) House No. 1601, Outram Lane, Kingsway Camp, Delhi – 110009

Arguments of the learned counsel for the parties

3. Learned counsel for the Appellants stated that Appellant No. (ii) i.e., Mr. Sanjeev Kumar Singhal ('SKS') is the brother of late Ms. Vaneeta Gupta. He stated that Appellant No. (ii) had purchased properties bearing no. D-114 and D-136, Mahendru Enclave, Delhi, from late Ms. Vaneeta Gupta in the year 2006 by way of the customary documents i.e., Agreement to Sell (ATS), General Power of Attorney (GPA), receipt and Will. He stated that though there is no registered sale deed in favour of Appellant No. (ii), these customary documents are sufficient to entitle the said Appellant to be impleaded as a legal representative of late Ms. Vaneeta Gupta in the suit proceedings. In this regard, he relied upon the judgments of Supreme Court in *Manovikas Kendra Rehabilitation & Research Institute v. Prem Prakash Lodha*¹ and *Yashpal Jain v. Sushila Devi and Ors.*²

3.1 He stated that in the alternative, it is also the case of the Appellants herein that properties bearing no. D-114 and D-136, Mahendru Enclave, Delhi and property no. 1601, Outram Lane, Kingsway Camp, Delhi – 110009 were purchased by late Ms. Vaneeta Gupta from late Sh. Parmanand Gupta in the year 1999-2000. He stated that at the relevant time, the sale consideration for purchase was provided by Appellant Nos. (i) and

¹ (2005) 7 SCC 224 (paragraph no. 2)

² 2023 SCC OnLine SC 1377 (paragraph nos. 4 and 5)



(ii) to late Ms. Vaneeta Gupta. He stated that, therefore, the interest of late Ms. Vaneeta Gupta in these three properties would devolve upon the Appellants herein.

3.2 He stated that Appellant Nos. (i) to (iii) herein are the mother and brothers respectively of late Ms. Vaneeta Gupta. He stated that late Ms. Vaneeta Gupta died issueless and, therefore, her properties whether purchased or inherited by her from late Sh. Parmanand Gupta would devolve on the Appellants herein.

3.3 Secondly, he stated that late Smt. Bhagwati³, mother of late Sh. Parmanand Gupta, died on 30th January, 2020. He stated that she was arrayed as defendant no.2 in the underlying suit, however, her legal heirs have not been brought on record by Respondent. He stated that, therefore, the suit stands abated against her and consequently, the underlying suit cannot continue in the absence of her legal heirs.

3.4 Lastly, he stated that during the divorce by mutual consent of late Sh. Parmanand Gupta with his first wife, Smt. Madhu Gupta (i.e., the mother of Respondent), a settlement was arrived at between the said parties. He stated that as per the said settlement, all rights of the Respondent - plaintiff qua late Sh. Parmanand Gupta stood settled. He stated that, therefore, Respondent is not entitled to any inheritance from the estate of late Sh. Parmanand Gupta.

4. In reply, learned counsel for the Respondent stated that as held by the learned Single Judge in the impugned order, it is the Respondent herein, who

³ Arrayed as defendant no.2 in CS (OS) No. 392/2019.



is the natural legal heir of late Ms. Vaneeta Gupta as per Section 15(1)(b) of the Hindu Succession Act, 1956 ('Act of 1956'). He stated that, therefore, the Appellants are not entitled to substitution in the suit. In this regard, he relied upon the judgment of Supreme Court in *Jaladi Suguna (deceased) through LRs v. Satya Sai Central Trust and Ors.*⁴

4.1 He stated that after the death of late Sh. Parmanand Gupta, his mother late Smt. Bhagwati had filed a probate petition bearing PC No. 42284/2016, under Section 278 of the Indian Succession Act, 1925 ('Act of 1925') seeking grant of letters of administration for his estate. He stated that the said petition was opposed by late Ms. Vaneeta Gupta, who filed her objections admitting the ownership of late Sh. Parmanand Gupta qua the suit properties but claimed exclusive right of inheritance on the basis of unregistered Will dated 12th December, 2003. He stated that late Ms. Vaneeta Gupta propounded the said unregistered Will for contending that the subject properties have devolved upon her exclusively. He stated that the Trial Court after concluding evidence, vide judgment dated 17th March, 2018, returned a categorical finding that the said unregistered Will dated 12th December, 2003 was not genuine and that Sh. Parmanand Gupta died intestate. He stated that the aforesaid finding in the said judgment has not been challenged by late Ms. Vaneeta Gupta and the same has become final; and is binding on any person claiming through her.

4.2 He further stated that, in the aforesaid succession petition, the Trial Court had passed a restraint order dated 17th March, 2010, injunction late

⁴ (2008) 8 SCC 521 (paragraph 10).



Ms. Vaneeta Gupta from creating any third-party interest in the subject properties in any manner. He stated that Respondent is not bound by any alleged transaction between late Ms. Vaneeta Gupta and the Appellant No. (ii) i.e., SKS, with respect to properties bearing no. D-114 and D-146, Mahendru Enclave, Delhi.

4.3 He stated that the Appellants in order to deprive the Respondent of her inheritance have initiated separate suit proceedings, *inter alia*, seeking declaration with respect to the suit properties.

Findings and analysis

5. We have heard the learned counsel for the parties and perused the record.

6. The underlying suit for partition has been filed qua the estate of late Sh. Parmanand Gupta by his only daughter i.e., the Respondent herein. In the suit, the Respondent impleaded her step mother, Ms. Vaneeta Gupta, as defendant no. 1 and her grandmother, Smt. Bhagwati, as defendant no. 2. With the death of Ms. Vaneeta Gupta and Smt. Bhagwati, the Respondent is the sole surviving Class-I legal heir of late Sh. Parmanand Gupta.

7. The suit has been filed seeking partition of the following immovable properties:

- (a) Property No. D-133, Mahendru Enclave, New Delhi – 110033;
- (b) Plot No. D-136, Mahendru Enclave;
- (c) Plot No. D-114, Mahendru Enclave;
- (d) House No. 1601, Outram Lane, Kingsway Camp, Delhi – 110009;
- (e) Office premises No. 7255, 3rd floor, Ajindra Market, Prem Nagar, Delhi – 110007; and



(f) Plot at Karan Vihar etc.

Plea of intestate succession under Hindu Succession Act, 1956

8. Prior to the filing of the partition suit, Smt. Bhagwati had filed a succession petition under Section 278 of the Act of 1925 seeking grant of letters of administration for the estate of late Sh. Parmanand Gupta. In the said proceedings, late Ms. Vaneeta Gupta propounded an unregistered Will dated 12th December, 2003, purported to have been executed by late Sh. Parmanand Gupta, bequeathing all his moveable and immovable properties in her favour exclusively. The parties led evidence in the said proceedings and subsequently, the Trial Court vide its judgment dated 17th March, 2018, concluded that the Will dated 12th December, 2003, was not genuine and declared that late Sh. Parmanand Gupta died intestate. The findings returned by the Probate Court in said judgment have not been challenged and have attained finality.

9. Pertinently, the details of all the properties mentioned in the underlying suit find due mention in the alleged Will dated 12th December, 2003, propounded by late Ms. Vaneeta Gupta and, therefore, the ownership of late Sh. Parmanand Gupta of the suit properties is not in dispute.

10. In the underlying suit, the learned Single Judge by the impugned order has concluded that in view of Section 15(2)(b) of the Act of 1956, the share in the estate of late Sh. Parmanand Gupta, which has devolved upon late Ms. Vaneeta Gupta will further devolve upon the Respondent/plaintiff exclusively by operation of law.

10.1 The learned Single Judge in the impugned order has further concluded that in view of Section 15(1)(b) read with Rule 1 of Section 16 of the Act of



1956, the estate of late Ms. Vaneeta Gupta, which she had (self) acquired in her own name would also devolve upon the Respondent/plaintiff exclusively by operation of law.

10.2 In our considered opinion, the said findings of the learned Single Judge are correct on a plain reading of Sections 15 and 16 of the Act of 1956. The law on Section 15 and Section 16 of Act of 1956 was encapsulated and enunciated by Supreme Court in its judgment in ***Arunachala Gounder (dead) by Legal Representatives v. Ponnusamy and Ors***⁵, relevant paras whereof read as under:

“75. The scheme of sub-section (1) of Section 15 goes to show that property of Hindu females dying intestate is to devolve on her own heirs, the list whereof is enumerated in clauses (a) to (e) of Section 15(1). Sub-section (2) of Section 15 carves out exceptions only with regard to property acquired through inheritance and further, the exception is confined to the property inherited by a Hindu female either from her father or mother, or from her husband, or from her father-in-law. The exceptions carved out by sub-section (2) shall operate only in the event of the Hindu female dies without leaving any direct heirs i.e. her son or daughter or children of the pre-deceased son or daughter.

76. Thus, if a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband. In case, a female Hindu dies leaving behind her husband or any issue, then Section 15(1)(a) comes into operation and the properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act.

77. The basic aim of the legislature in enacting Section 15(2) is to ensure that inherited property of a female Hindu dying issueless and intestate, goes back to the source.

78. Section 15(1)(d) provides that failing all heirs of the female specified in Entries (a)-(c), but not until then, all her property howsoever acquired will devolve upon the heirs of the father. The devolution upon the heirs of the father shall be in the same order and according to the same rules as

⁵ (2022) 11 SCC 520



would have applied if the property had belonged to the father and he had died intestate in respect thereof immediately after her death. In the present case since the succession of the suit properties opened in 1967 upon death of Kupayee Ammal, the 1956 Act shall apply and thereby Ramasamy Gounder's daughters being Class I heirs of their father too shall be heirs and entitled to 1/5th share each in the suit properties.”

(Emphasis Supplied)

10.3 In view of the settled position of law, the submission of the Appellants that the properties which (i) were purchased by late Ms. Vaneeta Gupta and also, (ii) which devolved on late Ms. Vaneeta Gupta from late Sh. Parmanand Gupta, would both be inherited by the Appellants under the Act of 1956 is contrary to law and without any merits. The Appellants are, therefore, not entitled to inherit late Ms. Vaneeta Gupta's estate under the Act of 1956. The learned counsel for the Appellants has fairly not contested the position of law under Section 15 of the Act of 1956 as applicable to the facts of this case.

Alternative plea of legal representative; that late Ms. Vaneeta Gupta purchased the properties from Sh. Parmanand Gupta in 1999-2000 and sold them further to Appellant No. (ii)

11. In the alternative, the Appellants contended that they are entitled to substitution in the suit as the legal representative of late Ms. Vaneeta Gupta on the ground that Appellant No. (ii) i.e., SKS purchased properties bearing no. D-114 and D-136, Mahendru Enclave, Delhi, from late Ms. Vaneeta Gupta during her lifetime in the year 2006.

11.1 In addition, Appellant No. (ii) seeks impleadment on the basis that he allegedly provided funds to late Ms. Vaneeta Gupta for purchase of property bearing no. 1601, Outram Lane, Kingsway Camp, Delhi – 110009 from late Sh. Parmanand Gupta in the year 1999.



11.2 Appellant No. (i) seeks impleadment on the basis that she provided monies to late Ms. Vaneeta Gupta for purchasing properties bearing no. D-114 and D-136, Mahendru Enclave, Delhi from late Sh. Parmanand Gupta in the year 1999-2000.

11.3 The Appellants contended that in view of the aforesaid transaction they are entitled to be impleaded as legal representatives of late Ms. Vaneeta Gupta.

12. We thus, proceed to examine the aforesaid assertion of the Appellants, which is not based on any right of succession under the Act of 1956, but are based on non-testamentary documents alleged to have been executed by late Ms. Vaneeta Gupta in their favour during her lifetime and/or on the plea of *benami*.

13. In this regard, at the outset, it is noted that Appellant No. (iii) i.e., Sh. Rajiv Singhal, does not rely upon any non-testamentary document executed by late Ms. Vaneeta Gupta in his favour nor claims to have provided any monies to late Ms. Vaneeta Gupta and, therefore, he cannot maintain the claim of being a legal representative and this appeal at his instance, is without any merits.

14. As regards Appellant No. (i), Ms. Savita Singhal, she as well has not relied upon any non-testamentary document executed by late Ms. Vaneeta Gupta in her favour. She has instead alleged that she provided funds amounting to Rs. 90,000/- and Rs. 1,20,000/- to late Ms. Vaneeta Gupta in the year 1999-2000 to purchase properties bearing no. D-114 and D-136, Mahendru Enclave, Delhi, from late Sh. Parmanand Gupta and raises a plea of *benami* for these properties.



14.1 As regards Appellant No. (ii), SKS, he has relied upon non-testamentary documents executed by late Ms. Vaneeta Gupta in his favour in the year 2006 with respect to transfer of properties bearing no. D-114 and D-136, Mahendru Enclave, Delhi. This Appellant has contended that he is the owner of these two properties. He also alleged that he provided consideration to late Ms. Vaneeta Gupta to purchase property bearing House No. 1601, Outram Lane, from late Sh. Parmanand Gupta in the year 1999 and thus, raises a plea of *benami* for the said property.

14.2 Since, there is an overlap in the claims of Appellant No. (i) and (ii), their claims of being a legal representative are being dealt together.

Documents and pleadings contrary to the judicial record in the Probate Petition No. 42284/2016

15. The Appellant Nos. (i) and (ii) contended that property bearing no. D-114, Mahendru Enclave, Delhi, was allegedly sold by late Sh. Parmanand Gupta on 04th November, 1999, to late Ms. Vaneeta Gupta by executing the customary documents of unregistered ATS, GPA, Will. It is contended that the consideration for purchase in the year 1999 was provided by Appellant No. (i). It is contended that in turn, late Ms. Vaneeta Gupta in the year 2006 transferred this property to Appellant No. (ii) by executing an unregistered ATS, registered GPA and receipt on 01st September, 2006 and hence, Appellant No. (ii) contended that he is the legal representative of late Ms. Vaneeta Gupta for this property.

15.1 Similarly, it is alleged that property bearing no. D-136, Mahendru Enclave, Delhi, was allegedly sold by late Sh. Parmanand Gupta on 12th January, 2000, to late Ms. Vaneeta Gupta by executing the customary



documents of unregistered ATS, GPA, Will. It is similarly contended that the consideration for purchase was provided by Appellant No. (i) in the year 2000. It is stated that in turn, late Ms. Vaneeta Gupta in the year 2006 transferred this property to Appellant No. (ii) by executing an unregistered ATS, registered GPA and receipt on 04th September, 2006 and hence, Appellant No. (ii) contended that he is the legal representative of late Ms. Vaneeta Gupta for this property as well.

15.2 In this regard, we may note that the genuineness of these alleged customary documents purportedly executed in the year 1999-2000 by late Sh. Parmanand Gupta for properties bearing no. D-114 and D-136, Mahendru Enclave, Delhi, is highly suspect as in the judicial proceedings for grant of Letters of Administration, which were instituted on 31st May, 2006 and concluded on 17th March, 2018, late Ms. Vaneeta Gupta never disputed the absolute ownership of late Sh. Parmanand Gupta in properties bearing nos. D-133 and D-114, Mahendru Enclave, Delhi. Further, she did not rely upon any such alleged transactions of 1999-2000 in probate proceedings for claiming independent title.

15.3 On the contrary, late Ms. Vaneeta Gupta propounded the Will dated 12th December, 2003, alleged to have been executed by late Sh. Parmanand Gupta wherein these properties were enlisted as his absolute properties in the year 2003. Before the probate Court, late Ms. Vaneeta Gupta claimed ownership in the said properties on the basis of devolution under the alleged Will dated 12th December, 2003. In fact, even in the present appeal, the said Will is being relied upon by the Appellants. Therefore, the stand of Appellant No. (i) and (ii) that the said properties stood sold in 1999-2000 to



late Ms. Vaneeta Gupta and were not part of the estate of late Sh. Parmanand Gupta on the date of his death on 11th February, 2004, is contrary to the stand of the deceased before the Probate Court and the alleged Will dated 12th December, 2003, relied upon by the Appellants.

16. Similarly, the claim of Appellant No. (ii), SKS, that late Ms. Vaneeta Gupta purchased the property bearing House No. 1601, Outram lane, from late Sh. Parmanand Gupta *vide* unregistered customary documents dated 09th August, 1999, is again *ex facie* contrary to the assertions made by late Ms. Vaneeta Gupta in the probate petition bearing PC No. 42284/2016, wherein in her reply filed on 11th August, 2006, she admitted that the said property absolutely belonged to late Sh. Parmanand Gupta as on the date of his death on 11th February, 2004.

17. The relevant para of the probate petition and reply of Appellant reads as under:

In unamended petition	In reply dated 11 th August, 2006
<i>That late Parmanand Gupta left behind the following properties: -</i> A. Property bearing No. D-133, Mahendru Enclave, Delhi, which is a 2nd half storey built up property on a land measuring 250 sq. yds. B. Open Plot of land bearing No. D-114, Mahendru Enclave, Delhi measuring about 250 sq. yds. C. Property No. 1601, which is 2-1/2 storey built up property situated at Outram Lane, Delhi. D. Property No. 7255, Ajindra Market, 3rd floor, Prem Nagar, G.T. Road, Delhi.	<i>Para 4 of the petition, as stated, is not admitted. <u>It is submitted that the deceased Shri Parmanand Gupta had left behind the movable and immovable properties apart from the properties mentioned in this para, and the entire estate of the deceased has vested in the respondent no.2 on the death of Shri Parmanand Gupta. The petitioner is not entitled to any share in the estate of the deceased.</u></i>



(Emphasis Supplied)

18. Therefore, the claim of alleged sale of these properties in Mahendru Enclave and Outram Lane by late Sh. Parmanand Gupta in favour of late Ms. Vaneeta Gupta in the year 1999 and 2000 does not commend to this Court as it is *ex-facie* contrary to the judicial record of the succession petition. Thus, the claims of Appellant No. (i) and (ii) that the said property was purchased by late Ms. Vaneeta Gupta with the funds provided by Appellant Nos. (i) and (ii) is contrary to the judicial record of succession petition, unpersuasive and without any merits.

Documents inadmissible in law.

19. Further, in law, the chain of the alleged unregistered customary documents dated 04th November, 1999, for property bearing no. D-114, Mahendru Enclave, Delhi, the alleged unregistered customary documents dated 12th January, 2000, for property bearing no. D-136, Mahendru Enclave, Delhi, and the alleged unregistered customary documents dated 09th August, 1999, with respect to property bearing house no. 1601, Outram Lane, in the absence of stamping and registration cannot confer any right, title or interest in an immovable property in view of Section 17 of the Registration Act, 1908 and Section 54 of the Transfer of Property Act, 1882 ('Act of 1882'). The said documents are unregistered and inadequately stamped and are, therefore, inadmissible in evidence. Therefore, no right, title or interest has enured in favour of late Ms. Vaneeta Gupta in the subject properties on the basis of the said documents, even assuming the same were



genuine. (*Re: Shiv Kumar and Ors. v. Union of India and Ors.*⁶ and *Shakeel Ahmed v. Syed Akhlaq Hussain*⁷)

20. Since, no title rights enured in favour of late Ms. Vaneeta Gupta on the basis of the alleged customary documents of 1999 - 2000, she could not have transferred any rights in favour of Appellant No. (ii) i.e., SKS herein.

21. Even the Appellant No. (ii) himself is relying upon an unregistered ATS and registered GPA to claim title and possessory rights in properties no. D-114 and D-136, Mahendru Enclave, New Delhi. For the reasons recorded above, the unregistered ATS is inadmissible in law as per Section 17(1A) of Registration Act and these documents do not create any right, title or interest in favour of the Appellant No. (ii) as per Section 54 of the Act of 1882.

22. Thus, Appellant No. (ii) cannot be held to be the legal representative of late Ms. Vaneeta Gupta on the basis of the unregistered ATS with respect to properties no. D-114 and D-136, Mahendru Enclave, Delhi.

23. Similarly, a mere claim of alleged advancement of funds by Appellant No. (i), Ms. Savita Singhal, to late Ms. Vaneeta Gupta would not confer any right, title or interest in the properties at Mahendru Enclave. This claim is also inconsistent with the claim of Appellant No. (ii) who independently claims absolute rights in the same properties at Mahendru Enclave.

24. Also, the plea of Appellant No. (ii) as regards alleged advancement of funds to late Ms. Vaneeta Gupta for purchase of House no. 1601, Outram Lane, even if presumed correct, confers no right on him to claim the status of legal representative.

⁶ (2019) 19 SCC 229.

⁷ 2023 SCC OnLine SC 1526.



25. We may observe that the Appellants Nos. (i) and (ii) have raised multiple alternate arguments for substitution, which are wholly inconsistent and based on inadmissible documents. As observed above, the genuineness of these documents is highly suspect and, therefore, we are unable to accept the contention of Appellant Nos. (i) and (ii) that they are the legal representatives of late Ms. Vaneeta Gupta. The judgments relied upon by the Appellant do not apply to the facts of this case.

26. The findings in the judgment of the probate Court operate in *rem* and, therefore, no reliance can be placed by the Appellants on the alleged Will dated 12th December, 2003. In fact, continuing to place reliance on the said alleged Will by Appellants would amount to a fraud on the Court.

27. The contention of the Appellants that the underlying suit has abated with the death of late Smt. Bhagwati i.e., defendant no. 2 in the suit is incorrect. The Respondent/plaintiff is admittedly the Class-I Legal Heir of Smt. Bhagwati and therefore, Smt. Bhagwati's estate is duly represented.

28. Lastly, the contention of the Appellants that the Respondent/plaintiff is not entitled to claim succession under the Act of 1956 to the estate of late Sh. Parmanand Gupta due to the settlement recorded between late Sh. Parmanand Gupta and late Ms. Madhu Gupta during their divorce is also without any basis. There is no stipulation in the said settlement that Respondent/plaintiff's rights to succession under Act of 1956 shall stand extinguished. The Respondent/plaintiff is admittedly the Class-I legal heir of late Sh. Parmanand Gupta as per Section 8 of the Act of 1956 and the said settlement does not curtail her rights of succession under the Act of 1956.



29. Accordingly, in view of the above, the present appeal is dismissed as being without any merits. Pending applications are disposed of.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

MAY 22, 2024/msh/aa/sk