



2024:DHC:6886



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

+ CS(OS) 699/2024 & I.A. 37985/2024, I.A. 37986/2024, I.A. 37987/2024, I.A. 37988/2024

NAMRITA MALIK

.....Plaintiff

Through: Mr. Amitesh Gaurav, Advocate

versus

KULWANT KAUR AND ORS

.....Defendants

Through: Mr. Rajender Agarwal, Advocate for
D-1, D-2 & D-4

Date of Decision: 02nd September, 2024

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (O R A L)

CS(OS) 699/2024

1. The present suit has been filed seeking a preliminary and final decree in favour of the plaintiff and against the defendants, thereby, declaring that the plaintiff has 1/16th share in the property bearing House no. D-144, Anand Niketan, New Delhi-110021, admeasuring approximately 250 sq. yards ('suit property') and seeking possession of the said 1/16th share in the suit property in plaintiff's favour.

2. The relevant facts as mentioned in the plaint which are relevant for adjudication of the present matter, are as follows: -

2.1. It is stated that the late Smt. Joginder Kaur ['plaintiff's grandmother' or 'testatrix'] was the recorded owner of the suit property by virtue of a



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registered sub-lease deed dated 20.08.1968 and during her lifetime, she bequeathed the suit property in favour of her son, Sh. Kanwarjeet Singh Kakkar [‘plaintiff’s father’] by virtue of a registered Will dated 12.10.1995.

2.2. It is stated that the Class-I legal heirs and successors of late Sh. Kanwarjeet Singh Kakkar are the plaintiff and defendant nos. 1-3 herein [collectively referred to as ‘Class-I legal heirs of late Sh. Kanwarjeet Singh Kakkar’]. Plaintiff is the youngest daughter, defendant No. 1 is the widow, defendant no. 2 is the son and defendant no. 3 is the eldest daughter of late Sh. Kanwarjeet Singh Kakkar.

2.3. It is stated that late Sh. Kanwarjeet Singh Kakkar passed away on 13.06.2011 whereas, late Smt. Joginder Kaur passed away on 03.01.2012. It is stated that thus, late Sh. Kanwarjeet Singh Kakkar predeceased late Smt. Joginder Kaur.

2.4. It is stated that in the registered Will dated 12.10.1995, it was declared that in case Sh. Kanwarjeet Singh Kakkar predeceases the testatrix i.e., Smt. Joginder Kaur, then [Class-I] legal heirs of late Sh. Kanwarjeet Singh Kakkar shall have the right to have their names mutated in government records *qua* the suit property.

2.5. It is stated that thereafter, the plaintiff, defendant nos. 2 and 3 executed a common registered relinquishment deed dated 28.02.2012 (‘relinquishment deed’), thereby, relinquishing their title rights in the suit property in favour of their mother i.e., defendant no. 1 herein.

2.6. It is stated that the suit property consists of three floors [ground floor, 1st floor and 2nd floor] and defendant nos. 1 and 2 are residing on the ground floor, whereas, 1st and 2nd floor have been let out to a third party. However, during the course of arguments, learned counsel for the plaintiff stated that



defendant nos. 1 and 2 are residing on the ground floor and the 1st floor; and have let out only the 2nd floor.

2.7. It is stated that the execution of the relinquishment dated 28.02.2012 was an interim arrangement between the plaintiff and defendant nos. 1 to 3 and it was agreed between the said parties, that plaintiff's share in the suit property will be restored at an appropriate time.

2.8. It is stated that, however, it has come to plaintiff's knowledge that defendant no. 1 is trying to alienate the suit property under the influence of defendant no. 2. Accordingly, the plaintiff has filed the present suit.

3. Learned counsel for the plaintiff states that the relinquishment deed dated 28.02.2012 executed by the plaintiff in favour of defendant no. 1 is void-ab-initio and therefore, the plaintiff need not seek relief of its cancellation.

3.1. He states that the said relinquishment deed has no legal sanctity as plaintiff, defendant no. 2 and defendant no. 3 herein could not have relinquished their shares in favour of defendant no. 1 alone.

3.2. He states that since plaintiff's father Sh. Kanwarjeet Singh Kakkar pre-deceased the testatrix, the bequest made vide registered Will dated 12.10.1995 lapsed as per Section 105 of the Indian Succession Act, 1925 ('Act of 1925'). He states thus, the suit property devolved upon all the Class-I legal heirs of late Smt. Joginder Kaur as per intestate succession. He states that the Class-I legal heirs of late Smt. Joginder Kaur are her son i.e., defendant no. 4, her daughter i.e., defendant no. 5, legal heirs of deceased son late Sh. Ajit Singh Kakkar impleaded as defendant nos. 6 to 9 and lastly, legal heirs of pre-deceased son Sh. Kanwarjeet Singh Kakkar arrayed as plaintiff, defendant nos. 1 to 3 ['collectively referred to as 'Class-I legal



heirs of late Smt. Joginder Kaur’].

3.3. He states that for the relinquishment deed dated 28.02.2012 to be valid, it should have been executed in favour of all the Class-I legal heirs of late Smt. Joginder Kaur i.e., defendant no. 4, defendant no. 5, late Sh. Ajit Singh Kakkar and defendant no. 1 i.e., Mrs. Kulwant Kaur. He relies upon the judgment of this Court in **Tripta Kaushik v. Sub Registrar VI-A and Another**¹. He states that therefore, the relinquishment deed would actually be a gift deed.

3.4. He states that the lapse of the bequest made *vide* Will dated 12.10.1995 was not correctly understood by the plaintiff herein in the year 2012 and therefore, she is not bound by the relinquishment deed.

3.5. He states that the mutation carried out in the records of the government authorities by virtue of the said relinquishment deed in favour of defendant no. 1 has no effect as the same is merely a record for the collection of the property tax.

4. Learned counsel for defendant nos. 1, 2 and 4 states that the plaintiff has suppressed from this Court the registered Conveyance Deed dated 26.11.2012 executed by Delhi Development Authority (‘DDA’) in favour of defendant no. 1 recognizing defendant no. 1’s absolute title in the suit property.

5. This Court has considered the submissions of the counsel for the parties and perused the record.

6. The plaintiff admits that her grandmother late Smt. Joginder Kaur was the recorded owner of the suit property *vide* registered sub-lease dated 20.08.1968.



7. The plaintiff admits that her grandmother executed a registered Will dated 12.10.1995 bequeathing the suit property exclusively to her son Sh. Kanwarjeet Singh Kakkar and to the exclusion of her other Class-I legal heirs [at that time] i.e., defendant no. 4, defendant no. 5 and her other son Sh. Ajit Singh Kakkar. The validity and genuineness of the said Will was not disputed by any Class-I legal heir of the testatrix. The Will reads as under:-

“Will

I, Mrs. Joginder Kaur Kakkar, Aged 70 years, wife of Shri Sham Singh Kakkar, R/o D-144, Anand Niketan, New Delhi- 110021, hereinafter called the Testator hereby make my first and last and final WILL, TESTAMENT in favour of my son Kanwar Jit Singh, Aged about 40 Yrs. Son of Shri Sham Singh Kakkar R/o D-144, Anand Niketan, New Delhi-110021, hereinafter called the BENEFICIARY.

.....

That I am having following legal heirs.

- 1. Mr. Ajit Singh aged 31 Years, Son.*
- 2. Mr. Surjit Singh aged 47 Years, Son.*
- 3. Mr. Kanwar Jit Singh aged 42 years son/Beneficiary.*
- 4. Mrs. Neelu Kapoor, wife of Sh. Kanwal Kapoor.*

AND WHEREAS, I am lawful owner and in possession of the residential built up property bearing No. D-144, Anand Niketan, New Delhi-110023, constructed on the land measuring 250 sq. yds., hereinafter called the ‘said property’.

Life is uncertain; God knows when it may come to an end. At present I am in sound and disposing mind. I want to make the following WILL in order to avoid litigation and complications after my demise.

That I being the sole and absolute owner of the said property and I am fully entitled to sell or transfer the same or to make this WILL.

That I hereby devise and bequeath that after my demise, the above said beneficiary shall be the sole and absolute owner of the above-mentioned property, and the beneficiary will have full power to alienate and transfer the same in any manner, whatsoever the beneficiary chooses. After my demise my legal heirs, representatives, shall have no claim over the aforesaid property, which I have purchased by my hard earned money and

¹ 2020 SCC OnLine Del 2748



the same shall become the absolute and exclusive property of the above said beneficiary and the heirs, nominees of the beneficiary, I appoint the beneficiary or heirs/nominees of the beneficiary administrator, executors for getting the probate of this WILL.

The beneficiary shall have the right to get his/her name mutated in the records of the electricity, water and other Govt. Departments. Any objection raised against the rights of the said beneficiary by my heirs, kith and kins, legal representatives, family members shall be void, untenable and ineffective, in any court of law. Further my husband shall have the right to stay in house. Beneficiary Kanwarjit Singh shall have no right to sell the same without consent of

In case the beneficiary predeceases me, then the heirs/nominees and beneficiary are authorized to get his/her names mutated in property, after my demise.

IN WITNESS WHEREOF, I have set and subscribed my hands on this WILL at New Delhi on the 12th day of October, 1995 without any outside pressure coercion, voluntarily, undue influence and unlawful condition in the presence of the following witnesses. The witnesses have also signed this WILL in my presence and in presence of each other.

.....”

(Emphasis Supplied)

8. The plaintiff admits that since Sh. Kanwarjeet Singh Kakkar pre-deceased the testatrix, however, acting upon the said Will, all Class-I legal heirs of late Smt. Joginder Kaur understood that as per the bequest in the Will dated 12.10.1995, the suit property has devolved upon the Class-I legal heirs of Sh. Kanwarjeet Singh Kakkar and raised no objection to the said devolution.

9. In the considered opinion of this Court, the said understanding of all the parties including the Class-I legal heirs of late Smt. Joginder Kaur was absolutely correct. In the pen-ultimate clause of the Will dated 12.10.1995, it is expressly contemplated that in case Sh. Kanwarjeet Singh Kakkar pre-deceased the testatrix, the suit property will devolve upon the Class-I legal heirs of Sh. Kanwarjeet Singh Kakkar. In fact, the statutory illustration (iii) to Section 105(2) of the Act of 1925, itself clearly explains



that the bequest under the Will dated 12.10.1995 is valid and does not lapse on the death of Sh. Kanwarjeet Singh Kakkar. The Section 105 along with the illustration (iii) read as under: -

“105. In what case legacy lapses.—(1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the will that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations

...

(iii) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(Emphasis Supplied)

10. In this regard, it would be apposite to refer to the judgment of the Supreme Court in **Commissioner, Jalandhar Division and Others v. Mohan Krishan Abrol and Another**², wherein it was held that when interpreting a will, the Court must consider the testator's intentions as stated in the Will. From a perusal of the Will dated 12.10.1995 which also forms the subject matter of the dispute in the present case, it is evident that testatrix had contemplated the situation that her son Sh. Kanwarjeet Singh Kakkar may pre-decease her and on the happening of the said event, she had also provided for in her Will that the suit property will devolve upon the legal heirs of Sh. Kanwarjeet Singh Kakkar. Thus, upon death of Sh. Kanwarjeet Singh Kakkar, the bequest did not lapse as is sought to be contended by the plaintiff.

11. In the plaint, the plaintiff seeks to deliberately misread the Will contrary to the plain words of the bequest, which have been rightly understood by both, the Class-I legal heirs of the testatrix as well as the



Class-I legal heirs of Sh. Kanwarjeet Singh Kakkar. The Will also stands acted upon, in this manner as far back as in 2012. The interpretation now propounded by the plaintiff is clearly an afterthought and even otherwise does not commend itself to this Court.

12. The Class-I legal heirs of late Sh. Kanwarjeet Singh Kakkar were plaintiff, defendant no. 1, defendant no. 2 and defendant no. 3. The suit property, thus, as per the Will dated 12.10.1995 devolved upon these four individuals i.e., plaintiff, defendant nos. 1 to 3 exclusively.

13. It is admitted in the plaint that the plaintiff alongwith defendant nos. 2 and 3 have executed a registered relinquishment deed dated 28.02.2012 recording the devolution of interest in the suit property in their favour and their conscious relinquishment of their shares [in the suit property] in favour of their mother i.e., defendant no. 1 herein. The relinquishment deed dated 28.02.2012 reads as under:-

<i>"Lubani Makker</i>	<i>Arvinder Kakar</i>	<i>Namrita Malik</i>
<i>Kulwant Kaur</i>		
<i>WDC0401893</i>	<i>KKF0482364</i>	<i>TCD0322644</i>
<i>2947/28.02.12</i>		<i>NLN01491</i>

RELINQUISHMENT DEED

This Deed of Relinquishment is Executed on this 28th day of February 2012 by (1) Smt. Lubhani Makker D/o Late Sh. Kanwarjeet Singh Kakkar W/o Sh. Saurabh Makker R/o C-112, OLD DLF, Sector-14, Gurgaon. (2) Sh. Ravinder Kakar S/o Late Sh. Kanwar Jeet Singh kakar R/o D-144, Anand Niketan, New Delhi-110021 and Vijay Malik R/o C-5/19, Safdarjung Development Area, Delhi-110016 (hereinafter called the Releasor/s);

IN FAVOUR OF

Smt. Kulwant Kaur W/o Late Sh. Kanwarjeet Singh Kakar R/o D-144, Anand Niketan, New Delhi-110023, (hereinafter called the releasee/S).

WHEREAS, Sh. Kanwarjeet Singh Kakar S/o Sh. Sham Singh Kakkar (hereinafter called owner) is owner of the land bearing DDA Resdl. Plot bearing

² (2004) 7 SCC 505



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No. D-144, area measuring 250.0 Sq. Yds. Anand Niketan, New Delhi-110021 by virtue WILL registered as Document No.7970, in Addl. Book No. III, Volume No.537, on Pages 157 to 158 on dated 17.10.1995, in the office of Sub-Registrar, New Delhi/Delhi, executed by Smt. Joginder Kaur Kakkar W/o Sh. Sham Singh Kakar. And Whereas, the original allottee on the above said property/plot was Smt. Joginder Kaur Kakkar W/o Sh. Sham Singh Kakar.

AND WHEREAS, the owner Sh. Kanwarjeet Singh Kakar S/o Sh. Sham Singh Kakkar has died on 13.06.2021 at New Delhi and is survived by the following legal heirs only:

S. No.	Name	Age	Relationship with the deceased
1.	Smt. Kulwant Kaur	54 Yrs.	Wife
2.	Smt. Lubhani Makker	34 Yrs.	Daughter
3.	Sh. Ravinder Kakar	30 Yrs.	Son
4.	Smt. Namrita Malik	27 Yrs.	Daughter

AND WHEREAS, the mother of the deceased is not alive.

AND WHEREAS, 1/4th share in the property has devolved upon the each Releasor(s) upon the demise of the allottee.

AND WHEREAS, the Releasor(s) wishes/wish to relinquish her/his/their share in the plot/property as mentioned herein above in favour of Smt. Kulwant Kaur W/o Late Sh. Kanwarjeet Singh Kakar R/o D-144, Anand Niketan, New Delhi-110021, the releasee(s), who is/are the legal heirs of the allottee.

Pursuant to her/his their wishes mentioned above, the Releasors hereby release and relinquishes all their rights, interests and share in the Property and hereby declares and affirms that they shall have no claim right or interest in the Property and the same shall vest absolutely in Smt. Kulwant Kaur W/o Late Sh. Kanwarjeet Singh Kakar R/o D-144, Anand Niketan, New Delhi-110021, the Releasee.

IN WITNESS WHEREOF THE RELEASORS HAVE SIGNED THIS DEED ON THIS 28th DAY OF FEB. 2012, AS AND HEREIN ABOVE.

.....”

(Emphasis Supplied)

14. It is also a matter of record that acting upon the Will dated 12.10.1995



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and relinquishment deed dated 28.02.2012, DDA mutated the suit property in favour of defendant no. 1 vide mutation letter dated 05.09.2012. It is also a matter of record that DDA has executed a Conveyance Deed in favour of defendant no. 1 on 26.11.2012. The defendant no. 1 has thus, since 2012 exercised absolute title rights in respect of the suit property to the exclusion of Class I legal heirs of late Smt. Joginder Kaur and remaining Class-I legal heirs of late Sh. Kanwarjeet Singh Kakkar. The Court Master is directed to take on record the Conveyance Deed dated 26.11.2012.

15. The contention of the plaintiff that the mutation effected in the records of the DDA on 05.09.2012 is for the purpose of property tax is incorrect in the facts of this case. Since, this was a leasehold property as on 05.09.2012, the mutation was recorded by DDA in recognition of the title rights, which had devolved upon defendant no. 1 by virtue of the Will dated 12.10.1995 and the relinquishment deed dated 28.02.2012. The mutation recorded by DDA, which is the paramount lessor is not to be confused for the mutation recorded by Municipal Corporation for the purpose of collection of property tax. Therefore, the submission of the plaintiff as regard the non-effect of mutation in favour of defendant no. 1 in the records of DDA is mis-conceived in law and is hereby rejected.

16. Even otherwise, in the facts of this case, after recording the mutation as regards devolution of title rights, DDA thereafter, executed Conveyance Deed dated 26.11.2012 in favour of defendant no. 1, whereby defendant no.1's rights as a sub-lessee have been perfected and defendant no. 1 is now the absolute owner of the suit property, since the property has now been converted from leasehold to freehold.

17. The plaintiff having executed the relinquishment deed dated



28.02.2012 is left with no right, title or interest in the suit property and the present suit filed seeking her rights as the legal heir of late Smt. Joginder Kaur is therefore without any cause of action.

18. In addition, the plaintiff has failed to seek the relief of cancellation of relinquishment deed dated 28.02.2012 executed by her in favour of defendant no. 1. The Supreme Court in **Suhrid Singh v. Randhir Singh and Others**³ has succinctly explained that the executant of a deed, who wants the deed to be annulled is obliged in law to seek its cancellation. In the same judgment, the Supreme Court held that if the plaintiff is not in possession of the immovable property, the plaintiff ought to seek the consequential relief of possession and pay ad-valorem court fee. The relevant para 7 of the said judgment is reproduced herein below:-

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.”

³ (2010) 12 SCC 112 [para 7]



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(Emphasis Supplied)

19. The plaintiff has not sought the relief of cancellation of the relinquishment deed dated 28.02.2012. In the absence of this prayer, even otherwise the suit is not maintainable. The plaintiff in the plaint at paragraph '18' has alleged that she is in joint and constructive possession of the suit property since she is a co-owner. The plea of joint and constructive possession is fallacious in view of the admitted facts recorded above. The plaintiff has therefore neither sought possession nor paid ad-valorem court fee. The plaintiff has valued the suit property at Rs. 27 Crores and paid a princely amount of Rs. 200/- as court fee on the false plea that she is in joint and constructive possession of the suit property. The absence of these mandatory prayers and non-payment of Court fees are all indicative of speculative nature of the reliefs sought in this suit. The present suit is thus, nothing but an abuse of process of law.

20. Accordingly, the plaint is rejected and the applications filed with the suit are hereby dismissed.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 2, 2024/hp/MG