



2024 : DHC : 2290



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28th November, 2023

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Pronounced on: 12th March, 2024

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CS(OS) 433/2018

SONIA JOKHANI

D/o Late Sh. Nand Lai Jokhani

R/o House No. H-59, Second Floor,

Kirti Nagar, Delhi - 110015

..... Plaintiff

Through: Mr. Harpreet S. Nagpal, Advocate
with plaintiff.

versus

1. JUGAL KISHORE JOKHANI

S/o Late Sh. Nand Lai Jokhani

R/o House No. H-59, Second Floor,

Kirti Nagar, Delhi - 110015

2. POONAM MADAN

D/o Late Sh. Nand Lai Jokhani

W/o Shri Rajeev Madan

R/o GA-104, Shivaji Enclave,

Rajouri Garden, Delhi-110027

..... Defendants

Through: Mr. M.K. Arora, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 14230/2019 (u/O VII Rule 11 of CPC, 1908)

1. The defendant has sought rejection of Plaint under O VII Rule 11 of CPC, 1908 on the ground that it does not disclose any cause of action and is



barred under law.

2. The present suit has been filed by the *plaintiff seeking Partition, Rendition of Accounts, and Permanent Injunction* of the property bearing No. H-59, Kirti Nagar, New Delhi (*hereinafter referred to as “suit property”*).

3. The **facts in brief** are that the plaintiff and the defendant Nos. 1 & 2/applicants are the siblings, being the children of Late Shri Nand Lal Jokhani and Late Smt. Kamlesh. Late Shri Nand Lal Jokhani, the father of the parties, had purchased the suit property, admeasuring about 300 sq. yards (*hereinafter referred to as “suit property”*) in the name of his mother, Late Smt. Lachmi Devi (grandmother of the parties) vide Sale Deed dated 03.05.1961 who became the absolute owner of the suit property. The Sale Deed is claimed to be in possession of the defendant No. 1.

4. Late Shri Nand Lal Jokhani, father of the plaintiff, built the dwelling house on the suit property. He died intestate on 26.12.1982, much before the death of Late Smt. Lachmi Devi, who died on 01.11.1987. At the time of Smt. Lachmi Devi's demise, the plaintiff was aged about 15 years. As revealed much later, Late Smt. Lachmi Devi executed a registered Will dated 13.08.1985. However, the plaintiff saw the original Will dated 13.08.1985 only in the year 2010 when defendant No.1/ Jugal Kishore Jokhani had filed a suit for Permanent Injunction bearing number CS(OS) 207/2010 against the plaintiff.

5. **It is submitted in the plaint** that after the demise of Smt. Lachmi Devi, Late Smt. Kamlesh, the mother of the parties, became the sole and absolute owner of the suit property on the basis of Will dated 13.05.1985 and started receiving the rent from the tenants occupying different portions



of the suit property. It is stated that from a plain reading of the Will dated 13.08.1985, it appears that on the demise of Smt. Lachmi Devi, her properties including the suit property shall devolve upon Smt. Kamlesh and after the death of Smt. Kamlesh, the properties shall devolve upon defendant No. 1.

6. Late Smt. Kamlesh had applied for mutation of the suit property in the year 2002, claiming herself to be sole and absolute owner of the suit property. "No objection" was given by the plaintiff and the defendants as they accepted her as the sole and absolute owner.

7. Therefore, the mother of the plaintiff is alleged to be the sole and absolute owner of the suit property i.e. Kirti Nagar property and also of movable properties namely Gold Ornaments weighing 800 to 900 grams, Silver ornaments weighing 900 to 1000 grams and Bank Accounts/ Fixed Deposits with State Bank of India and Punjab National Bank.

8. Smt. Kamlesh died intestate on 29.12.2006 and is survived by the plaintiff and the defendants who became entitled to 1/3rd share each in the Suit Property and the other movable properties listed in the plaint.

9. However, it is alleged that defendant No.1 Jugal Kishore Jokhani on 03.06.2008, by making misrepresentation and concealing the facts, got the suit property mutated in his name. On the same date i.e. 03.06.2008 without the knowledge and consent of the non-applicant/plaintiff, he executed a Sale Deed in favour of M/s Nelsan Constructions & Promoters Pvt. Ltd in respect of the first floor of the suit property. A Collaboration Agreement was entered into between defendant No. 1 and M/s Nelsan Constructions for reconstruction of the entire suit property into a multi-storied building, consisting basement, ground floor and the second floor. In addition to the



reconstruction of the suit property, the Developer also paid a sum of Rs. 50,00,000/- to defendant No. 1.

10. The plaintiff claims to have no knowledge of the said Sale and Collaboration Agreement. In October, 2008, upon initiation of the demolition of the suit property, the plaintiff vigorously objected the applicants/defendants as the same was being done without her consent. However, on the assurance given by defendant No. 1 that the plaintiff shall get her share in the suit property, the plaintiff did not take any further action.

11. The plaintiff and the family of defendant No. 1 stayed at a rented accommodation during the reconstruction of the suit property. Subsequently, without informing the plaintiff, the defendant No. 1 quietly moved his family i.e., his wife and the children, in the newly constructed suit property.

12. Further on 08.09.2011, the developer Ms Nelson Constructions sold the first floor of the suit property to one Gurdev Singh Bansal by executing the Sale Deed in his favour.

13. On 31.10.2011, the non-applicant/plaintiff attempted to enter the suit property, but she was restrained forcibly by the applicant/defendant No. 1 by claiming that she had not right to enter the suit property by virtue of Judgment/Decree dated 30.08.2011 passed by Civil Judge, Tis Hazari Court, Delhi in CS(OS) 207/2010, Suit for Injunction that was filed by the applicant/defendant No. 1 against her. However, the said *ex parte* Judgment/Decree dated 30.08.2011 was set aside *vide* Order dated 03.01.2013. Subsequently, the suit was dismissed as infructuous *vide* Judgment/Decree dated 05.02.2014 as in the interim, the non-applicant/plaintiff had already shifted to the suit property.



14. The plaintiff claims to be ever since continuously residing on the second floor of the suit property with defendant No. 1 as a co-owner. The plaintiff had claimed accounts for the rent received by defendant No. 1 for parts of the suit property from May 2014 onwards. However, defendant No. 1 had refused to account for the same.

15. The plaintiff had earlier preferred a Suit No. CS(OS) 649/2017 for *Partition and Rendition of Accounts against the applicants/defendants*, but unfortunately, due to lack of legal assistance, the complete facts could not be pleaded in the Suit, and the same was withdrawn *vide* Order dated 23.02.2018 with liberty to institute the fresh Suit. The present Suit has been filed seeking Suit for Partition, Rendition of Accounts and Permanent Injunction.

16. **It is submitted by defendant No. 1 in his application under Order VII Rule 11 CPC** that as per the admissions of the plaintiff herself, Late Smt. Lachmi Devi, the grandmother of the parties, was the registered owner of the suit property. She executed a Will dated 13.08.1985 in favour of her daughter-in-law, Smt. Kamlesh (*the mother of the parties to the present Suit*), which is also admitted by the plaintiff. By virtue of the said Will, the suit property was bequeathed by Late Smt. Lachmi Devi to her daughter-in-law, Late Smt. Kamlesh and after her demise, the suit property was to devolve upon the applicant/defendant No. 1 citing them as the consecutive beneficiaries.

17. It is asserted that the plaintiff had got married during the lifetime of their father, but unfortunately it ended in divorce and she received an alimony of Rs. 7,00,000/- with the efforts of applicant/defendant No. 1. Even though the plaintiff was working as a school Teacher, defendant No. 1



continued to support her and her children, but the plaintiff played a key role in creating disturbance in the life of defendant No. 1 and his wife which resulted in a separation for almost two years. But ultimately, the family got together as soon as the plaintiff went away from their life.

18. It is asserted that after the demise of Smt. Kamlesh, the mother of the parties on 29.12.2006, the applicant/defendant No. 1 became the sole beneficiary and the sole and absolute owner of the suit property under the registered Will and he has been in control of the suit property. The mutation of the suit property was got done in his name. The applicant/defendant No. 1 fought the legal battle to get all tenants evicted from the various portions of the suit property. Thereafter, the applicant/defendant No. 1 admittedly entered into the Collaboration Agreement dated 28.07.2008 and also executed a Sale Deed of the first floor in the name of the Builder.

19. It is submitted that all these facts are well within the knowledge of the plaintiff, but she has chosen to remain silent and acquiesced her so-called right and is now bound under Section 115 of the Evidence Act and by her acts of 2007-2008 and subsequent Suit for Injunction filed by the defendant No. 1 against the plaintiff.

20. *The claims of the plaintiff are barred by time* since she was aware of the Will as well as the mutation of the suit property in the name of applicant/defendant No. 1 and subsequent demolition of the suit property and reconstruction thereof way back in 2008. It is, therefore, submitted that the present Suit is devoid of any cause of action and is liable to be rejected.

21. It is further submitted that without getting the Sale Deed dated 03.06.2008 in favour of the Builder declared as null and void, she cannot claim a relief for Partition as sought by her.



22. Reliance has been placed on the decisions in Sh. Rajinder Kumar Kapur & Anr. vs. Sh. Madan Mohan Lal Kapur & Anr., 2019 SCC OnLine Del 9472; Naresh Lachmandass Aswani vs. Haridas alias Hardas Lachamandas Suit No. 808/2011 decided on 18.10.2013, Shrawan Kumar Jaipuriyar v. Krishna Nandan Singh, (2020) 16 SCC 594.

23. **The plaintiff in her Reply** has submitted that the applicant/defendant No. 1 had initially filed I.A. No. 5339/2019 under Order VII Rule 11 of CPC, 1908 read with Section 7(vi)(f) of the Court Fees Act, 1870 for rejection of the Plaint which is pending adjudication.

24. The second Application No. I.A. 14230/2019 i.e. present application, has been filed on behalf of the defendants for rejection of the present Suit which clearly reflects the *mala fide* intention of the defendants. Two applications with similar prayer are pending adjudication and the same are barred under law. The present application is, therefore, liable to be dismissed.

25. It is stated that the applicant/defendant No. 1 has sought *rejection of the Plaint* on three grounds, namely, (i) *lack of cause of action*, (ii) *barred by limitation*, and (iii) *appropriate court fee not being affixed*. It is claimed that all three grounds agitated in the present application, are without merit.

26. Insofar as the *cause of action* is concerned, it is asserted that the registered Will dated 13.08.1985 of Late Smt. Lachmi Devi is admitted. From the perusal of the contents of the Will, it is crystal clear that Late Smt. Kamlesh, the mother of the parties, had got an absolute right, title and interest in the suit property by virtue of the Will. It is a settled principle of law that once the testator has given an absolute interest in her entire property to the devisee, it is not open for the testator to further bequeath the same



property in favour of a second person as successive legatees cannot be created in a Will. Moreover, defendant No. 1 has waived his successive right over the suit property by giving his “*No Objection*” to the Mutation in favour of Smt. Kamlesh. Admittedly, the suit property was mutated in the name of Late Smt. Kamlesh on 13.11.2002 during her lifetime. Thus, on her demise, the suit property devolved equally in 1/3rd share each on the non-applicant/plaintiff and the applicants/defendants, who are the legal heirs of Late Smt. Kamlesh.

27. It is submitted that though the execution of the Will is admitted by the parties, the dispute lies in the interpretation of its wordings which cannot be determined without conducting a trial. Therefore, the plaintiff has interest in the suit property and the Suit for Partition is maintainable as having a valid cause of action, which can be determined only after a trial.

28. It is further asserted that the Suit is *not barred by limitation* as the right to claim partition is a recurring one as has been held by the Apex Court in the case of Syed Shah Ghulam Ghouse Mohiuddin and Ors. vs. Syed Shah Ahmed Mohiuddin Kamisul Quadri (Died) by LRs and Ors., MANU/SC/0486/1971.

29. It is further asserted that the plea taken by the applicants/defendants that the present suit is not maintainable without seeking a Declaration of the Sale Deed dated 03.06.2008 as null and void, is incorrect. A Suit for Declaration of the Sale Deed as null and void involves the Builder who is the third party to the Partition Suit. Hence, the non-applicant/plaintiff has chosen first to claim partition and has reserved her right to institute a separate Suit for Declaration of the Sale Deed as null and void. The non-applicant/plaintiff is also entitled to *Rendition of Accounts* to receive the



money of her share.

30. The non-applicant/plaintiff has further asserted that she has rightly valued the suit property. The suit property has been valued at Rs. 6,50,00,000/- for the purpose of jurisdiction, but for the purpose of court fee has been valued at Rs. 200/- on which the court fee of Rs. 20/- has been affixed in terms of Section 7(iv)(f) of the Court Fees Act, 1870. For this reliance has been placed on the decisions in Commercial Aviation and Travel Company vs. Vimla Pannalal AIR 1988 SC 1636, Sushma Tehlan Dalal vs. Shivraj Singh Tehlan and Ors. MANU/DE/0719/2011 and Manoharan vs. Sivarajan and Ors. MANU/SC/1192/2013.

31. **On merits**, all the averments made in the present application are denied.

32. **Submissions heard.**

33. At the outset, a preliminary objection has been taken on behalf of the non-applicant/plaintiff that there are two applications under Order VII Rule 11 of CPC, 1908 filed which is not permissible under law.

34. The first Application No. I.A. 5339/2019 had been filed for rejection of the Suit on account of affixing deficit court fee on the Plaint, but the same has been dismissed as not pressed *vide* Order dated 23.08.2022. However, the present application under Oder VII Rule 11 of CPC, 1908 espouses different reasons for rejection of the Plaint and the same is, therefore, maintainable.

35. Admittedly, the suit property was purchased in the name of Late Smt. Lachmi Devi, the grandmother of the parties to the Suit, *vide* Sale Deed dated 03.05.1961. A plea had been taken on behalf of the plaintiff that in fact, the suit property had been purchased by their father,



Late Shri Nand Lal Jokhani in the name of his mother, Late Smt. Lachmi Devi. However, there is no denial that the Sale Deed was executed in the name of Late Smt. Lachmi Devi and she was the absolute owner. Aside from bald assertions of suit property having been purchased by Late Shri Nand Lal Jokhani, there is no detail of how and in what manner that Late Shri Nand Lal Jokhani purchased the suit property in the name of Late Smt. Lachmi Devi, his mother. The Sale Deed dated 03.05.1961 was in the name of Late Smt. Lachmi Devi and she was admittedly the sole and absolute owner of the suit property.

36. The parties have also not disputed that a registered Will dated 13.08.1985 was executed by Late Smt. Lachmi Devi.

37. To comprehend the rival contentions of the parties, it is pertinent to reproduce the said Will which reads as under: -

“ WILL

Know all men to whom these presents shall come that I, Smt. Lachmi Devi, wife of late Shri Ram Chand Jokhhani, aged about of Eighty Two years, R/o H-59, Kirti Nagar New Delhi-110015, have on this 13th day of August, one thousand nine hundred and eighty five executed it to be my last “WILL & Testament”.

WHEREAS, I am possessed of and fully cognisant of my mental faculties and calibre:

WHEREAS, I have executed this my last “WILL TESTAMENT” without any under pressure, influence, coercion or fraud from any quarter, whatsoever.

AND WHEREAS, I am in a sound and disposing mind and am also possessed a sound mind and body.

AND I, THEREFORE, do execute this last “WILL & TESTAMENT” and bequeath and devise unto smt. Kamlesh, wife of late Sh. Nand lal, aged about 50 years, r/o H-59, Kirti Nagar, New Delhi-110015 my only son’s wife. That my



property bearing No. H-59, Kirti Nagar, New Delhi-110015 which is two and half storeyed building and the same is partly self occupied and partly on rent (let out) ***shall devolve after my death to my daughter-in-law Smt. Kamlesh as aforesaid and after the death of said Smt. Kamlesh the same shall be devolved to my grand son namely, Jugal Kishore, who is only son of my daughter-in-law and son late Shri Nand Lal. My grand daughters namely, Prem Lata and Soniya shall have no claim whatsoever in the property in question.***

AND I, further declare that all my moveable or immovable properties which I shall be possession at the time of my death shall vest exclusively to my daughter-in-law Smt. Kamlesh and after the death of Smt. Kamlesh the same shall be vested to my grand son Sh. Jugal Kishore and they shall be entitled to deal in any manner in regard to the properties left by me including the property bearing No. H-59, Kirti Nagar, New Delhi-110015. After my death the rent of the tenanted premises in the aforesaid property shall be collected either by Smt. Kamlesh or by Shri Jugal Kishore aforesaid.

AND I HEREBY revoke all my previous "WILL AND CODICILS" executed by me heretofore.

AND I hereto set my hand of signature on this 13th day of August, one thousand nine hundred and eighty five in the presence of the attesting witnesses who have each signed in the presence of each other and in my presence, at one place and same time, at my request.

Witnesses:

1. Sd/-
K.K. Saluja

EXECUTANT/TESTATOR
Smt. Lachmi Devi

2. Sd/- "

38. A bare perusal of the Will shows that the suit property was to vest in Late Smt. Kamlesh as an owner for her life time, and after her demise, the property was to devolve on the defendant No. 1/Jugal Kishore, the only son



of Late Shri Nand Lal Jokhani and Late Smt. Kamlesh.

39. The contents of the Will make it evident that it was only *a life estate* that was created in favour of Late Smt. Kamlesh. In the recent case of Geetha vs Nanjundaswamy, 2023 SCC OnLine SC 1407, the Apex Court had observed that while considering whether a plaint discloses cause of action, it must be read meaningfully as a whole by taking it to be true. If the plaint when read in its entirety, does not disclose any cause of action, then the suit must fail.

40. Interestingly, the plaintiff in para 31 of the Plaint has also reiterated the contents of the Will which the plaintiff has stated to be correct. The relevant paragraph of the plaint reads as under:

“31. That, upon plain reading of the Will dated 13.08.1985, it appears that on the demise of Smt. Lachmi Devi, her properties including the property bearing H-59, Kirti Nagar, New Delhi, shall first devolve upon Smt. Kamlesh, and after death of Smt. Kamlesh, the properties shall devolve upon the defendant no. 1. The defendant no. 1 has so claimed himself as the owner of the said property. The averments of this para are without prejudice to the rights of the plaintiff, and in compliance of the directions / observations of the Hon'ble Court in earlier suit.

32. That infact, upon perusal & careful consideration of the Will, it is apparent that Smt. Lachmi Devi devolved the said property exclusively in favour of Smt. Kamlesh. Also, Smt. Kamlesh had pre-existing right in the said property being wife of Late Sh. Nand Lai Jokhani. Further, Smt. Kamlesh, during her lifetime, had claimed herself as sole & absolute owner of the said property and got the property mutated in her favour. The said application of Smt. Kamlesh was duly supported by the



affidavits of the plaintiff and the defendants herein wherein all have accepted Smt. Kamlesh as sole & absolute owner of the property bearing no. H-59, Kirti Nagar, New Delhi. Thus, any further devolution, on the basis of the Will dated 13.08.1985, of the said property in favour of the defendant no. 1 is void and inoperative.”

41. The plaintiff claims a 1/3rd share in the suit property through her mother Smt. Kamlesh, who dies intestate on 29.12.2006. Despite reiterating the contents of the Will, the plaintiff claims that the said Will devolved the suit property absolutely in favour of Smt. Kamlesh. On one hand, in paragraph 2 of her plaint, the plaintiff has stated that late Shri Lachmi Devi was the Sole and absolute owner of the Suit Property who bequeathed the suit property favour of Smt. Kamlesh. However, on the other hand, she claims that Smt. Kamlesh, being the wife of predeceased son, had a pre-existing right in the property through her husband Late Shri Nand Lal Jokhani. It is further stated in para 32 of the plaint that Smt. Kamlesh is the absolute owner of the suit property as the same was mutated in her name.

I. Whether a Mutation record can confer absolute title?

42. The property admittedly was mutated in the name of Late Smt. Kamlesh during her lifetime for which all had given a *No Objection*. The plaintiff has claimed that the defendants are estopped from challenging the absolute ownership of the Smt. Kamlesh.

43. In the case of Jitendra vs State of Madhya Pradesh, 2021 SCC OnLine SC 802 the Apex Court had analysed the decisions in Balwant Singh vs Daulat Singh (D) By Lrs., (1997) 7 SCC 137; Suraj Bhan vs Financial Commissioner, (2007) 6 SCC 186; Suman Verma v. Union of India, (2004)



12 SCC 58 to observe that a “*mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.*”

44. Therefore, even though property got mutated in the name of Smt. Kamlesh, she cannot be held as the sole and absolute owner of the suit property merely on account of a mutation in her favour. Therefore, the contents of the plaint need to be further considered to ascertain whether Smt. Kamlesh was indeed an absolute owner by virtue of the Will dated 13.08.1985.

II. Whether Smt. Kamlesh acquired an absolute legal title of ownership in the suit property, by virtue of Will dated 13.08.1985:

45. The title of Smt. Kamlesh, through whom the plaintiff is claiming her entitlement to 1/3rd share in the suit property, arises from the Will dated 13.08.1985 of Smt. Lachmi Devi, her mother-in-law. The authenticity and the contents of the Will are admitted by the plaintiff and infact, relied upon by the plaintiff in her plaint. In the context of the present case, Section 119 of the Indian Succession Act, 1925 assumes significance. It provides for postponed vesting of a legacy. The provision reads as under:

“Section 119.

Date of vesting of legacy when payment or



possession postponed.—

Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations:

(i) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(ii).....

(iii) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(iv).....”

46. Section 119 of the Indian Succession Act, 1956 had been interpreted in detail in the case of Dr. Mahesh Chand Sharma vs Smt Raj Kumari Sharma and ors, 1996 8 SCC 128. It was observed that where a Will contains the words “**and declares that after her (devisee's) death, the property will go to the legal heirs of the testator**”, it squarely falls under



Section 119. According to the provision, unless a contrary intention appears from the Will, a bequest made to a legatee, who is not entitled to immediate possession of bequest, gets vested in such legatee on the date of death of the testator. The Explanation appended to the section elucidates the words "unless a contrary intention appears by the Will" occurring in the main limb of the section. **The Explanation says inter alia that merely because a prior interest in the bequest is given to some other person, it does not mean that a contrary intention is indicated in the Will. Illustration (iii) is of crucial relevance.** It says that where a fund is bequeathed to A for life and after A's death to B, the legacy to B becomes vested in interest in B on the testator's death.

47. In the present case, it is clear that the Will dated 13.08.1988 bequeathed the Kirti Nagar property in favour of Smt. Kamlesh, which was to devolve upon defendant No. 1 on the demise of Smt. Kamlesh. The bequest in favour of defendant No.1 got postponed for the lifetime of Smt. Kamlesh in whose favour only a *life estate* was created. The Will did not confer absolute ownership on Smt. Kamlesh. Therefore, Smt. Kamlesh was merely an interposer and did not acquire absolute ownership in the suit property.

48. The right of a woman to property under the Shastric law was limited essentially to her right to maintenance and was recognized as a charge on the property of the husband which would remain on the property which may be inherited by the co-legal heirs. This legal obligation of a Hindu man to maintain his wife was illustrated by **Golapchandra Sarkar Sastri** in his treatise 'Hindu Law' at p.533 observing thus:

..There cannot be any doubt that under Hindu law the



wife's or widow's maintenance is a legal charge on the husband's estate; but the Courts appear to hold, in consequence of the proper materials not being placed before them, that it is not so by itself, but is merely a claim against the husband's heir, or an equitable charge on his estate; hence the husband's debts are held to have priority, unless it is made a charge on the property by a decree."

49. Along similar lines, the Mulla in his book 'Hindu Law' enunciates the liability of the husband to maintain his wife as follows:

".... The maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relationship, and quite independent of the possession by the husband of any property, ancestral or self acquired."

50. Thus, the old Hindu Law contains incidents of Hindu widow's right to maintenance which amounts to a charge on the property of the husband.

51. Flowing from the old Hindu Law, the *Hindu Woman's Right to Property Act, 1937* was the first legislation to secure the property rights of a woman wherein as per Section 3, a female was entitled to a share in the property of her husband albeit in a limited capacity. It read as under:

"Section 3- Devolution of property

(1)When a Hindu governed by the Dayabhaga School of Hindu Law ...

(2)When a Hindu governed by any school of Hindu law other than the Dayabhaga School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.



(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925, applies."

52. Thus, even though the right to maintenance of a widow was recognised, the section provided that she shall have a limited interest in the property. *Hindu Succession Act, 1956* made revolutionary and far-reaching changes and did away with the invidious distinction between a Hindu male and female in matters of intestate succession. The Hindu Females were conferred with an absolute interest in the property. Section 14 of the Hindu Succession Act, 1956 reads as under:

"Section 14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property



held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

53. In the case of S.S. Munna Lal v. S.S. Rakhumar 1962 Supp 3 SCR 418, the court explained the intention of enactment of the Section 14(1) of the Act, 1956 which was to create an absolute interest in the property of a Hindu woman received by her *by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever.*

54. It was explained in the case of Eramma v. Verupanna (1966) 2 SCR 626, that to attract the effect of clause (1) of Section 14(1), *the property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or 'after the commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title however, restricted the nature of her interest may be It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title.*

55. Thus, by virtue of Section 14 (1) the limited right of ownership of a



Hindu female was converted to that of an absolute ownership, if the other conditions mentioned in the section are fulfilled.

56. **Section 14 (2) of the Act, 1956** on the other hand, acts as a proviso to the aforesaid clause (1) and provides that there shall not be a conversion of restricted interest to an absolute interest where the property has been acquired in a restricted capacity by way of gift or under a Will or any other instrument.

57. In the case of V. Tulasamma v. Sesha Reddi (1977) 3 SCC 99, the Apex Court interpreted the two clauses of Section 14 and observed that Section 14 (1) would operate i.e. women would get an absolute interest, in cases where the properties are given in lieu of the pre-existing right of maintenance of the women while clause (2) applies when property is granted to a female Hindu for the first time without a pre-existing right.

58. The Apex Court in the case of G. Appaswamy Chettiar vs R. Sarangapani, (1978) 3 SCC 55 it was held that where a female got a life estate under a Will executed by her father, was not entitled to claim absolute rights under Section 14(1) and her claim was covered under Section 14(2) of the Hindu Succession Act, 1956.

59. In Gumpha vs Jaibai, (1994) 2 SCC 511, the Apex Court interpreted the scope of Section 14 of the Hindu Succession Act, 1956 to observe that a *life estate* created by and instrument under subsection (2) to Section 14 ensures that a Hindu female does not acquire a better right than what was given to her under the instrument. It does not curtail or erode the absolute estate which comes into operation by law, but excludes from it specifically the property acquired in the manner mentioned therein the reason for it was that the legislature never intended to confer a larger estate on females than



on males. If a Hindu could bequeath his property of which he could create life estate or restricted estate for a male, it would have been incongruous to create an absolute estate in favour of a female when the instrument indicates otherwise. Therefore, Sub-section (2) of Section 14 was read as proviso or exception to sub-section (1) so that it may impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). Similar observations were made in the case of Jogi Ram vs Suresh Kumar, (2022) 4 SCC 274.

60. In light of the aforesaid discussion, it may be observed that the property was owned by Smt. Lachmi Devi who was the mother-in-law of Smt. Kamlesh. Smt Lachmi Devi in her Will dated 13.08.1985, created a restricted estate and provided that Smt. Kamlesh shall have only a life estate and that upon the death of Smt. Kamlesh, the property shall go to the defendant No.1. As the right in the property was created for the first time in favour of Smt. Kamlesh by virtue of the Will of her mother-in-law and it was not in recognition of her any per-existing right, Section 14(2) of the Act, 1956 would apply. It necessarily follows that Smt. Kamlesh had limited right to the suit property and upon her demise, the right devolved on her son/ defendant No.1 who acquired an absolute right, as stated in the Will.

61. From a holistic reading of the plaint, it is evident that Defendant No. 1 became the absolute owner of the property on demise of his mother. **Therefore, the contention of the plaintiff that Smt. Kamlesh became the absolute owner of the suit property by virtue of the Will is self-contradictory and not tenable.**

62. As the suit property has not devolved upon defendant No.1 through his mother but through the Will of the Grandmother, no co-ownership of the



plaintiff is made out from her plaint, to give her a right to seek the partition of the suit property.

III. Whether the suit for partition is maintainable without challenging the Sale Deed dated 03.06.2008?

63. That the plaintiff was conscious of not having any right in the suit property is also evident from her acts. She has stated in paragraph 6 of the plaint that she along with her brothers, had given a *No Objection* in 2002 for the mutation of the suit property in the name of her mother, Smt. Kamlesh on the basis of the Will dated 13.08.1985. Further, the plaintiff herself has submitted that the defendant No. 1, on the basis of the Will dated 13.08.1985, got the suit property mutated in his name on 03.06.2008 without the consent of the plaintiff. Also, the plaintiff herself has stated that a Sale Deed dated 03.06.2008 had been executed by the applicant/defendant No. 1 in favour of M/s Nelsan Constructions & Promoters Pvt. Ltd. However, she has stated in paragraph 4 that she got to see the Original Will dated 13.08.1985 of Smt. Lachmi Devi only when a copy of the same was provided to her during the Suit for Injunction preferred by defendant No. 1, in 2010.

64. From the averments of the plaint itself, it is evident that the plaintiff has been in the knowledge of the Will dated 13.08.1985 of grandmother, Late Smt. Lachmi Devi, at least since 2010 and she has never questioned the authenticity and genuineness of the said Will.

65. Thereafter, non-applicant/plaintiff also stated that she was unaware of the Collaboration Agreement dated 28.07.2008, pursuant to which, the entire suit property was redeveloped and different floors were sold to different



persons.

66. Despite claiming that she was unaware of the aforesaid Mutation, Sale Deed and Collaboration Agreement, it is the admitted position of the plaintiff that she vigorously objected to the demolition of the suit property October, 2008. Yet no action was taken by her in claiming her alleged right in the said property.

67. Moreover, the plaintiff herself has stated that in a suit for Injunction bearing number CS(OS) 207 of 2010, defendant No. 1 had obtained an *ex parte decree of* injunction dated 30.08.2011 against which she had filed an application under Order IX Rule 13 CPC. The *ex parte* Judgment/Decree dated 30.08.2011 was then set aside *vide* Order dated 03.01.2013 and subsequently, the Suit was dismissed as infructuous on 05.02.2014, as she got back into the portion of the suit property. The factum of the Mutation, Sale Deed and Collaboration Agreement along with a copy of the Will dated 13.08.1985, was disclosed in this Suit for Injunction filed by defendant No.1.

68. Despite the knowledge of all the aforesaid events, plaintiff in her cause of action paragraph, has asserted that the cause of action to claim her partition arose when in October, 2017 on the occasion of Tikka on Bhai Dhuj when defendant No. 1 refused to partition the suit property and also threatened to forcibly dispossess her from the portion of the suit property which she had occupied.

69. The first aspect is that once the Sale Deed dated 03.06.2008 had been duly executed by defendant No. 1 in favour of Ms Nelson Construction and Promoters Pvt Ltd. in 2008, by asserting his right as the sole owner of the suit property, the first cause of action to challenge the claim of



applicant/defendant No. 1 as absolute owner arose in the year October, 2008 when the property was being demolished.

70. In the case of Ramti Devi vs Union of India, (1995) 1 SCC 198 the appellant knew of the execution and registration of the Sale Deed on 29-1-1947. **The limitation period of three years prescribed Article 59 of the Schedule to the Limitation Act, 1963 began to run when the appellant had knowledge of the document being executed.** In that case, the suit therein was filed in 1966, while the earlier suit of 1959 had been withdrawn, and was held to be time barred and dismissed by the Apex Court.

71. Even if the averments of the plaintiff that she became aware of the Mutation, Sale dated 03.06.2008 and Collaboration Agreement only dated 28.07.2008 only during the proceedings of CS(OS) 207 of 2010 is accepted, and even if the date of knowledge is presumed to be 05.02.2014 i.e. when the proceedings under CS(OS) 207 of 2010 were concluded, then too the present suit which has been filed in 2018, it is beyond the prescribed period of three years.

72. Further, according to Section 27 of the Limitation Act, 1963, *at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.* Thus, a suit seeking possession of a property cannot be filed after the title of another has been perfected by virtue of Section 27 of Limitation Act, 1963 as held in the case of Bailochan Karan vs Basant Kumar Naik and Anr, (1999) 2 SCC 310.

73. Similarly, in the case of Lata Chauhan vs L.S. Bisht & Ors, 2010 (117) DRJ 715 this court had observed that where the Plaintiff has failed to seek appropriate relief of Declaration or alternatively, cancellation of the



Registered Lease Deed, such relief cannot be granted, because the period of limitation prescribed in this regard by Articles 58 and 59 mandates that suits in regard to such declaration are to be instituted within three years after the cause of action arises.

74. Pertinently, the present suit has been filed on 02.08.2018 and is patently, time barred. Further, in terms of Section 27 of the Limitation Act if the plaintiff had a cause of action to seek *Declaration/Cancellation* of the Registered Lease Deed enuring in favour of defendant No.1, it was extinguished after the expiry of three years from the date of registration of the document/ knowledge of the plaintiff.

75. In Anita Anand Vs. Gargi Kapur, 2018 SCC OnLine Del 11372, the Coordinate Bench of this Court had observed the plaintiff shall not be entitled for partition till he challenges the Gift Deed. Relief of partition would be consequential to the Declaration of the Gift Deed as illegal. Likewise, in Ramti Devi (supra), the Supreme Court held that unless a validly executed and registered document is cancelled by proper Declaration by the Court, the said document remains valid and binds the parties.

76. In Sangeeta Sehgal v. Gautam Dev Sood, 2022 SCC OnLine Del 2685, suit for seeking relief of partition simplicitor without seeking any relief in respect of cancellation of the gift deeds, was filed. It was held that *even if the plaintiffs have questioned the authenticity and existence of the gift deeds or that the mother of the plaintiffs did not have the right to gift the suit property, the same could have been done by seeking a declaration of cancellation of the said gift deeds. Till the time, the said gift deeds are declared to be void or unlawful by the Court, they remain valid and are binding on the parties.*



77. The Division Bench of this Court in *Sanjay Roy v. Sandeep Soni*, 2022 SCC OnLine Del 1525, echoed the same view in respect of Section 27 of the Limitation act, 1963 and held that in the absence of any challenge to a registered Conveyance Deed in favour of a party within the prescribed period of limitation under Article 59 of the Limitation Act, absolute ownership rights in the property would vest in that party.

78. Therefore, from the afore discussed judgements, it is evident that since the plaintiff has failed to challenge the Sale Deed executed in the name of Developer and third party, she cannot assert her right of being a co-owner in suit property to the extent of her alleged 1/3rd share.

79. The plaintiff herself has failed to challenge the Sale Deed dated 03.06.2008 executed in favour of the third parties in respect of part of the suit property. Without challenging the Sale Deed, which was executed by defendant No. 1 as the absolute owner of the suit property, she cannot claim a partition in respect of the entire suit property and the present suit for partition of the suit property would not be maintainable.

IV. Whether the present suit can be rejected under Order VII Rule 11 CPC?

80. In the present case, the plaintiff is not only seeking for a partition of the suit property i.e. Kirti Nagar house, but is also seeking for a partition of the movable properties owned by late Smt. Kamlesh. It is submitted in the plaint that late Smt. Kamlesh was the absolute owner of the following movable properties:

“i. Gold ornaments / jewellery such as necklace, ear-rings, nose rings, bangles, tikka, etc. weighing about 800



– 900 grams.

ii. *Silver ornaments / jewellery such as necklace, anklets, utensil set, etc. weighing about 900 - 1000 grams (approx).*

iii. *Bank Accounts / fixed deposits with State Bank of India, Raghbir Nagar Branch and Punjab National Bank, Kirti Nagar Branch.*”

81. Though late Smt. Lachmi Devi in her Will dated 13.08.1985 mentioned that all her movable properties would vest in Smt. Kamlesh for her lifetime after which the same shall vest in defendant No. 1, there is no averment in the plaint indicating that the aforesaid properties were received by Smt. Kamlesh and that she continued to be in its possession at the time of her demise. Significantly, Smt. Lachmi Devi had also stated that all the moveable properties, after the demise of Smt. Kamlesh, would also vest in defendant no.1.

82. Furthermore, as already noted above, while Late Smt. Lachmi Devi had bequeathed all her movable properties to Late Smt. Kamlesh, but there was no detailing of the movable properties of Smt. Lachmi Devi in the Will. It is also pertinent to note that while the plaintiff has alleged that Smt. Kamlesh was the absolute owner of the properties disclosed above, but aside from vague assertions there is no specifics of any of the items i.e. the gold ornaments and silver ornaments and except a bald assertion that they include necklaces, ear rings, nose rings, bangles, tika etc. Likewise, a claim has been made about Smt. Kamlesh being an owner of bank accounts and Fixed Deposits with SBI and PNB, Kirti Nagar Branch, but it is again only bald assertions without giving the details of the accounts or the amounts lying in the said account.



83. Furthermore, the plaintiff had filed an earlier suit CS(OS)649/2017 seeking Partition of the suit property and Rendition of Accounts which was confined to the immovable property. The said suit was withdrawn vide Order dated 23.02.2018. The plaintiff had not mentioned a word in respect of the movable properties which surprisingly finds mention in the present suit. This assumes significance considering that Smt. Kamlesh had died on 29.12.2006 and there is no averment ever after till the filing of present suit, that there remains any moveable property of Smt. Kamlesh in any banks or otherwise.

84. Therefore, considering that these alleged movable properties of Late Smt. Kamlesh did not find any mention in the earlier suit No.649/2017 and in the present suit as well there is only a vague assertion which lacks in specifics, it cannot be said that any cause of action has been disclosed in the plaint in respect of movable properties as well of Late Smt. Kamlesh.

Conclusion:

85. It is, therefore, held that the present Application under Order VII Rule 11 of CPC, 1908 is hereby allowed and the suit is dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 12, 2024
S.Sharma