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

Date of decision:- 20th May, 2024.

\+ **CS(OS) 3442/2014 & CRL.M.A.18671/2017, I.A.23048/2023**

MOHIT S ICHHPUNIANI & ANR. ..... Plaintiffs

Through: Ms. Vibha Mahajan Seth, Adv. for P-1. (M: 9810702410)

versus

AMAN S ICHHPUNIANI ..... Defendant

Through: Mr. Bhuvan Gugnani and Ms. Malvika Arora, Advs. (M: 8851316354)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present suit has been filed seeking partition declaration and rendition of accounts in respect of the assets left by the deceased parents of the parties. The Plaintiffs claim 1/3rd share each in the movable and immovable properties. Status quo was directed vide order dated 14th November, 2014. The issue in the present suit was in respect of the Wills of late Smt. Vinod S. Ichhpuniani dated 26th October, 2000 and 7th May, 2013.

3. It is the case of the Plaintiffs that during the lifetime of their parents, the Plaintiffs and the Defendant's family acquired several immovable properties, including a residential flat at S-473, Greater Kailash, Part-II, New Delhi, purchased on 11th August, 1988. This property, consisting of two bedrooms, attached bathrooms, a drawing-cum-dining room, kitchen,

and courtyard, was bought in the name of Late Shri Sudershan Kumar Ichhpuniani. Subsequently, in 1994, Flats 3-A and 3-B at W-75, Greater Kailash, were acquired for the family's residence. It is stated that both flats, treated as a single unit, were formally registered on 23rd July, 2002, under the names of Shri Sudershan Kumar Ichhpuniani and Late Smt Vinod Sudershan Ichhpuniani, respectively. It is further stated that after the death of their parents, *i.e.* Late Shri Sudershan Kumar Ichhpuniani on 24th February, 2008 and Late Smt Vinod Sudershan Ichhpuniani on 4th October, 2013, the Plaintiffs and the Defendant inherited equal one-third shares of the family's properties. In the present suit, the Plaintiffs seek their undivided one-third share in these immovable properties and various movable assets such as cash and bank deposits left by their parents.

4. Further, it is stated that the family also owns a commercial property through a company named 'Sudvin Finvest Fairdeals Private Limited,' established by their parents. It is stated that this company holds an office space at Tribhuvan Complex and has equity shares divided among family members. Plaintiffs allege that the Defendant has been using the company's assets for personal benefit without proper distribution of profits, loans, and other financial benefits due to them. The Plaintiffs subsequently demanded a transparent accounting and partition of the company's assets, including equity shares and outstanding loans, as well as their respective shares in all movable and immovable properties. However, due to the Defendant's non-cooperation the Plaintiffs filed the present suit.

5. In this suit, vide order dated 16th July, 2019 issues were framed as also in the Test Cas. 33/2017 (which was filed for issuance of LOA). The petitioner was directed to file affidavits within a week and be available for

statement recording on 22nd January, 2020, with further proceedings scheduled accordingly. Further, additional issue with respect to the Will of the father was framed vide order dated 26th May, 2022. Thereafter, on 17th November, 2022, a detailed order was passed in the suit wherein the application under Order VIII Rule 1A (3) was decided and the documents relied by the Defendant were not considered. Subsequently, 18th January, 2024, the parties were referred to mediation for amicable resolution of the disputes.

6. Vide order dated 1st February, 2024 a preliminary decree was passed. The preliminary decree reads as under:

> *"1. This is a suit for partition of the estate of late Sh. Sudershan Kumar Iehhpuniani, late Smt. Vinod S Iehhpuniani and the Hindu Undivided Family (HUF) of the late Sh. Sudershan Kumar Iehhpuniani.*
> *2. Admittedly, the plaintiff Nos. 1, plaintiff Nos. 2 and defendant, being the children, are the only class - 1 legal heirs of the late Sh. Sudershan Kumar Iehhpuniani and late Smt. Vinod S Ichhpuniani.*
> *3. Sh. Sudershan Kumar Iehhpuniani died on 24.02.2008 and his wife, Smt. Vinod S Iehhpuniani died on 04.10.2013.*
> *4. The immovable properties of the parents have been described in paragraph 7 of the plaint which read as under:-*
>
> > *"(i) Flat No. 2, located at Ground Floor (Middle) at S- 473, Greater Kailash, Part-11, New Delhi-110048.*
> > *(ii) 3-A at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi-110048.*
> > *(iii) 3-B at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi-110048.*
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> *5. The movable properties of the parents have been described in paragraphs 19 and 25 of the plaint which*

read as under:-

> *"19. The equity shareholders of the said company Sudvin Fin vest Fairdeals Private Limited, the numbers of shares held and the percentage of holding as per the financial statements for the year ended 31st March 2013 is as under:-*
>
> | ***Name of Shareholder*** | ***No. of Shares*** | ***%*** |
> |---|---|---|
> | *Mrs Vinod Ichpuniani* | *4,55,000* | *45.54%* |
> | *S K Ichhpuniani (HUF)* | *1,64,900* | *16.51%* |
> | *Aman Ichhpuniani* | *2,25,000* | *22.52%* |
> | *Radhika Ichhpuniani* | *1,55,000* | *15.43%* |
>
> *25. That creditors of Sudvin Finvest Fairdeals Private Limited include Late Smt Vinod S Ichhpuniani as a significant creditor of the said Company. As per the audited financial statements of the said company for the financial year ended Mar 31, 2013 Late Smt. Vinod S Ichhpuniani has a loan outstanding for an amount of Rs. 66,63,400 (Rupees sixty six lacs sixty three thousand four hundred only) to the said company. Thus, on the death of Late Smt Vinod S Ichhpuniani, the plaintiffs namely Mr Mohit S Ichhpuniani and Ms, Radhika S Ichhpuniani are also entitled to 1/3rd hare each in the Loans standing in, the name of Late Smt Vinod S Ichhpuniani /creditor of the Company, by operation of law. The plaintiffs ip their capacity as creditors, demanded the full amount of their share of loans outstanding to the said company immediately due and payable together with interest accrued on the same from the defendant. "*

6. The joint statuses of the properties has not been denied in the Written Statement filed by the defendant but the only defence taken is that the Will dated 07.05.2013 has been executed in favour of the defendant by Late Smt Vinod S Ichhpuniani.

7. Since the Testamentary Case, i.e Test.Cas 33/2017, seeking grant of Letters Of Administration with regard to Will dated 07.05.2013 of the mother, Smt Vinod S Ichhpuniani has already been dismissed and since in terms of orders dated 16.07.2019, 16.12.2019 and 22.08.2023, no affidavit of evidence has been filed by the defendant, the defence of the defendant that the property has been bequeathed in his favour by virtue of the Will of Smt Vinod S Ichhpuniani is no longer available. In these circumstances, the averments of the plaint stands admitted.

8. For the said reasons, the application under Order XII Rule 6 CPC is allowed and a preliminary decree of partition is passed declaring the share of the plaintiffs and defendant to be one-third undivided share each in the properties being (i) Flat No. 2, located at Ground Floor (Middle) at S- 473, Greater Kailash, Part-11, New Delhi-110048, (ii) 3-A at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi- 110048 and (iii) 3-B at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi-110048.

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18. Hence, a preliminary decree for partition with respect to the movable properties as mentioned in paragraph 19 and 25 of the plaint is also passed declaring plaintiffs and defendant to be entitled to one-third share each in movable properties belonging to Late Smt Vinod S Iehhpuniani and Late Sh. Sudershan Kumar Ichhpuniani."

7. A Local Commissioner was appointed for suggesting the modes of partition of the three properties. The Commissioner has filed her report.

8. The Commissioner has inspected the immovable properties and has given her report. According to her, the property at S-473, Greater Kailash, Part-II, New Delhi – 110048 is incapable of being partitioned by metes and bounds. This is the same position *qua* 3-B at W-75, First Floor, (Front),

Greater Kailash, Part-II, New Delhi-110048 as well. The report of the Local Commissioner is extracted below:

> *"21. That on 01.02.2024, this Hon'ble Court was pleased to pass a preliminary decree of partition, declaring the share of the Plaintiffs and Defendant to be one-third undivided share each in the properties being (i) Flat No. 2, located at Ground Floor (Middle) at S-473, Greater Kailash, Part-II, New Delhi – 110048; (ii) 3-A at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi – 110048; and (iii) 3-B at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi-110048.*
>
> *22. That considering that Suit Property No. 1 is single independent unit comprising solely of one entry and exit, and considering the manner of construction, with the two toilets only to the left side and the sole kitchen to the left, it is the opinion of the undersigned that as things stand, Suit Property No. 1 cannot be partitioned by metes and bounds in terms of the shares allotted in the said Preliminary Decree for them to be equivalent in terms of space and in value.*
>
> *23. That considering that Suit Property No. 2 is a single independent unit comprising solely of one entry and exit, and considering the manner of construction, with the two toilets and three bedrooms only to the right side and the sole kitchen to the left, it is the opinion of the undersigned that as things stand, Suit Property No. 2 cannot be partitioned by metes and bounds in terms of the shares allotted in the said Preliminary Decree for them to be equivalent in terms of space and in value."*

9. The only option, therefore, at this stage is for sale of the immovable properties.

10. Insofar as the HUF is concerned, according to ld. Counsel for the parties there is no doubt that the only assets of the HUF are movable assets

in the form of shares and loans in M/s Sudvin Finvest Fairdeals Private Limited in respect of which there is also a winding up petition pending before the NCLT.

11. As per the Plaintiff, the shareholding and the loans would be divisible as under:

Movable Assets:

Total Shareholding in Sudvin Finvest Fairdeals Pvt. Ltd. for the Year ending 31st March, 2013:

S. No	**Shareholder**	**No. of Shares**
1.	Mrs. Vinod Ichhpuniani	4,55,000
2.	S.K. Ichhpuniani (HUF)	1,64,900
TOTAL		6,19,900

1/3rd each: 2,06,633.33 shares with face value/ fully paid up value of Rs. 10 each.

Loans of related parties in Sudvin Finvest Fairdeals Pvt. Ltd. for the year ending 31st March, 2013

S. No	**Shareholder**	**No. of Shares**
1.	Mrs. Vinod Ichhpuniani	66,63,400
2.	S.K. Ichhpuniani (HUF)	39,86,200
TOTAL		1,06,49,600

1/3rd each: Rs. 35,49,866.66/- each

12. However, these figures are not confirmed by the Defendant who submits that his client is in Canada. In view of the above, the only course of action now available is for sale of the immovable properties and transfer of the shares and loans in terms of paragraph 18 of 1st February, 2024.

13. Accordingly, a final decree is passed declaring the shares of each of the parties as under:

i. Mr. Mohit Sudershan Ichhpuniaini- 1/3rd

ii. Ms. Radhika Sudershan Ichhpuniani-1/3rd

iii. Mr. Aman Sudershan Ichhpuniani-1/3rd

In the following three properties:

(i) *Flat No. 2, located at Ground Floor (Middle) at S-473, Greater Kailash, Part-11, New Delhi-110048,*
(ii) *3-A at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi-110048 and*
(iii) *3-B at W-75, First Floor, (Front), Greater Kailash, Part-II, New Delhi-110048.*

14. Insofar as the movable assets are concerned, in terms of paragraph 18, the movables are also liable to be equally divided 1/3rd each.

15. In view of the fact the properties have to be now sold, **Ms. Anandita Rana Adv. (Mob.: 9871776135)** who was earlier appointed as a Local Commissioner is again appointed as the Local Commissioner to enable the sale of the three properties identified above.

16. In the said process, the Local Commissioner may ascertain the market value of the properties and also obtain valuation/ offers from any of the parties who may be willing to buy the share of the other parties. If the same does not conclude in a finalization of sale and purchase between the parties within 3 months, the Local Commissioner is free to proceed ahead with the sale of the properties in the open market.

17. All necessary steps in that regard shall be taken by the Local Commissioner.

18. Insofar as the movables are concerned, the calculations has been handed over by the Plaintiff's counsel to the Defendant's counsel. If the same is acceptable, the share transfer certificates shall be executed.

19. In view of the order stated above, even the movable assets of the HUF

shall stand partitioned 1/3rd each between the parties.

20. Any steps which are to be taken by the parties before the income tax authorities or any other authorities shall be taken by the *karta* of the HUF with the consent of all parties.

21. If the parties face any impediment in giving effect to the decree they are free to move an application.

22. The Local Commissioner, at this stage, is paid Rs. 3 lakhs as her fees to be equally shared by the parties. If any party does not pay the requisite amount, the same shall be adjustable from the amounts payable to that party after the sale is effected.

23. The suit is decreed in the above terms. All pending applications are disposed of. The decree sheet be drawn in the above terms.

PRATHIBA M. SINGH
JUDGE

MAY 20, 2024
dj/bh