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

Date of decision: 21st May, 2025

+ CS(OS) 176/2025 and IA Nos. 7342-44/2025

SAHIB DAYAL GOEL & ORS.Plaintiffs

Through: Mr.Jawahar Chawla, Advocate

versus

PREM DAYAL GOELDefendant

Through: Mr. K. R. Gupta and Mr. Harsh
Tayal, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present suit has been filed seeking partition qua the estate of late Sh. Bishamber Dayal and more specifically immovable property bearing No.7A/3, W.E.A. Area, Karol Bagh, Delhi, 110005 ('suit property')
2. The Plaintiffs contend that late Sh. Bishamber Dayal passed away on 30.11.1975 leaving behind five (5) Class-I Legal Heir. The Plaintiffs claim 1/5th undivided share each in the suit property.
3. The plaint is silent as to whether this claim of 1/5th undivided share in the suit property is being made on the basis of intestate succession or by testamentary succession.
- 3.1. The learned counsel for the Plaintiffs as well is unable to assist this



Court with respect to the basis of the said claim.

3.2. However, a holistic perusal of the plaint gives a distinct impression to this Court that the said plea has been set up on the basis of intestate succession.

4. Defendant has placed on record under cover of index dated 22.04.2025 documents to show that late Sh. Bishamber Dayal had executed a Will dated 20.06.1972 with respect to the suit property and had bequeathed the suit property in favour of Defendant's son i.e., Sh. Ragbar Dayal and daughter Smt. Kumari Sumitra Goel, to the exclusion of all his other legal heirs.

4.1. Defendant has placed on record affidavit/No Objection Certificate ('NOC') dated 21.01.2006 executed by the Plaintiff No. 1 herein as well as by Mrs. Vimla Gupta Widow of Sh. Hardayal Gupta, which records that Plaintiff No. 1 and Mrs. Vimla Gupta admitting the validity of the Will dated 20.06.1972 and accepting the same to be true and correct. Similar NOC issued by other Class I legal heirs of late Sh. Hardyal Gupta have been placed on record.

4.2. Defendant has also placed on record the copy of the reply dated 10.01.2025 issued to the legal notices dated 23.07.2024 and 16.12.2024.

5. In reply, learned counsel for the Plaintiffs states that after being served with these documents and upon perusal of these documents, the Plaintiffs admit the Will dated 20.06.1972 and the execution of the affidavit/NOC dated 21.01.2006. He fairly admits that in view of this Will the contention of devolution of rights on the basis of intestate succession in this immovable property in the estate of late Sh. Bishamber Dayal cannot be sustained. With respect to the replies dated 23.07.2024 and 16.12.2024, he



states that the said replies were not forwarded by the lawyer to the Plaintiffs.

6. This Court has considered the submissions of the parties and perused the record. The Plaintiffs have withheld material documents from this Court, which disentitle them from maintaining the suit. It is fit case for initiating perjury proceedings.

7. Learned counsel for the Plaintiffs states that keeping in view the age of the Plaintiff No.1 who is 92 years old, this Court may not initiate any perjury proceedings against him for withholding the Will and the NOC.

8. Plaintiff No.1 is present in Court and is wheelchair bound.

9. Keeping in view the advanced stage of the Plaintiff No.1, though this Court is not satisfied that the Plaintiff No.1 could have withheld such material fact from the Court, the request of the counsel for the Plaintiffs is acceded to.

10. In view of the Will dated 20.06.1972 and the NOCs issued by Plaintiff No. 1 and the mother of Plaintiff Nos. 2(a) to (d); the Plaintiffs have no cause of action for seeking reliefs on the plea of intestate succession qua the suit property. Late Sh. Bishamber Dayal expired on 30.11.1975 and the Will was acted upon by his legal heirs upon his death. Any claim to challenge the devolution of interest based on Will dated 20.06.1972 would be barred by limitation.

11. Accordingly, the plaint filed on the basis of succession to the estate of Late Sh. Bishamber Dayal is rejected qua property bearing No.7A/3, W.E.A. Area, Karol Bagh, Delhi, 110005, for want of cause of action.

12. In the plaint, the Plaintiff has also prayed for partition of the movable estate of Late Sh. Bishamber Dayal. There are no particulars of the movable estate set out in the plaint nor any documents have been filed. The plaint



even fails to give an assessment of the value of the alleged movable estate. It is a bald claim and raised mechanically. Thus, this claim in the suit is without any cause of action. Moreover, late Sh. Bishamber Dayal died in 1972 and this claim for partition of the estate filed 50 years later is barred by limitation.

13. The plaint is therefore, rejected.

14. Pending applications are disposed of.

MANMEET PRITAM SINGH ARORA, J

MAY 21, 2025/SV

Click here to check corrigendum, if any