

(2018) 01 DEL CK 0097

Delhi High Court

Case No: 767 of 2011

MANJIT CHAWLA &
ANR

APPELLANT

Vs

SAPNA ALIAS
VASUNDHRA & ORS

RESPONDENT

Date of Decision: Jan. 3, 2018

Hon'ble Judges: Sanjeev Sachdeva

Bench: Single Bench

Advocate: Gurinder Pal Singh, Siddharth Borah

Judgement

1. This is a Suit for partition by the Plaintiffs seeking a decree of partition of the following Suit properties:-

(i) 10A, Curzon Road, Dehradun,

(ii) Flat No.31, Jungpura Ext. Market, New Delhi

(iii) Flat No.17, Krishna Market, Lajpat Nagar, New Delhi

2. The Plaintiffs claim one-third share in the property. It is contended that the properties were owned by late Smt. Krishan Kaur, grandmother of the Plaintiffs, who died intestate on 21.07.1990. On her death, she was survived by her husband (Sardar Kripal Singh Duggal), one son (Sardar Pushpinder Singh), one daughter (Smt.

Balwant Kaur) and legal heirs of pre deceased second daughter (Smt. Balbir Kaur).

3. Sardar Kripal Singh Duggal expired on 18.04.2012 (during the pendency of the Suit). Prior to the filing of the Suit, Smt. Balwant Kaur (daughter), expired on 10.07.2005 (legal heirs of Smt. Balwant Kaur are the Plaintiffs; Sardar Pushpinder Singh (son), expired on 02.01.2006 (legal representatives of Sardar Pushpinder Singh are arrayed as Defendant Nos. 1 & 2) and Smt. Balbir Kaur (daughter), who predeceased Smt. Krishan Kaur on 25.12.1978, her legal representatives are arrayed as Defendant Nos. 3 to 5.

4. It is contended that the properties were the self-acquired properties of Late Smt. Krishan Kaur and on the demise of Smt. Krishan Kaur on 21.07.1990, intestate, all the properties have devolved upon her legal heirs in the following proportion:-

Balwant Kaur - 1/3rd share Pushpinder Singh - 1/3rd share Heirs of Balbir Kaur - 1/3rd share

5. Defendant Nos. 1 and 2 (legal heirs of Sardar Pushpinder Singh) in their written statement admit that Smt. Krishan Kaur was the owner of the Suit properties and that she died intestate. However, it is contended that after the death of Smt. Krishan Kaur, her husband Sardar Kripal Singh Duggal, her son Sardar Pushpinder Singh Duggal and surviving daughter Smt. Balwant Kaur entered into an oral family arrangement/settlement in the year 1996, wherein they partitioned the Suit properties amongst them. Property 10-A Curzon Road, Dehradun fell to the share of Sardar Kripal Singh Duggal, Flat No. 31, Jangpura Extension fell to the share of S. Pushpinder Singh Duggal and Flat No. 17, Krishan Market, Lajpat Nagar, fell into the share of Smt. Balwant Kaur. After the demise of Sardar Kripal Singh Duggal, Smt. Balwant Kaur orally relinquished her share in property bearing No. 10-A, Curzon Road, Dehradun in favour of Sardar Pushpinder Singh Duggal.

6. Defendant No 3 to 5 have supported the case of the Plaintiff and concede to a decree being passed.

7. On the pleading of the parties, following issues were framed:-

(i) Whether the Plaintiff is entitled to a decree for partition of the Suit property in terms of prayer(i) of the plaint? OPP.

(ii) Whether the properties in question were orally partitioned as alleged by Defendant No.1 and 2? OPD1 & 2.

(iii) Did Smt. Balwant Kaur relinquish her share in favour of the father of Defendants? If so, its effect? OPD1 & 2.

(iv) Whether Defendant Nos.1 & 2 became sole owner of property bearing No. 10-A, Curzon Road, Dehradun and Flat No.31, Jungpura Extension, New Delhi? OPD1 & 2.

(v) Relief.

8. Plaintiffs, in support of their claim, produced Ms. Manjit Chawla, Plaintiff No. 1 as PW - 1, Dr. Harjit Singh Kochhar, Plaintiff No. 2 appeared as PW - 2. Plaintiffs also produced Mr Surya Prakash, LDC/Record Keeper from the office of Sub-Registrar-I, Mr Narinder Sehrawat, Sub-Inspector, Police Station Hazarat Nizamuddin, Shri Prakash Singh, Constable, Kothwali, Haldwani, Shri Rajinder Singh Hayangi.

9. The Defendants, in support of their claim, produced Smt. Rachna as DW - 1, who is Defendant No. 2; Shri Dalip Singh, husband of Defendant No. 2 as DW - 2.

10. It may be noticed that Mr Dalip Singh, who was produced as DW - 2, was subsequently not produced for cross-examination. On 24.07.2017, statement of counsel for the Defendants was recorded that he did not wish to produce the said witness and closed his evidence. In view of the fact that Mr Dalip Singh was not produced for the purposes of cross-examination, no reliance can be placed by the Defendants on the examination - in - chief and cross-examination of Mr Dalip Singh.

11. In so far as, Issue No. 1 is concerned. Plaintiffs have proved that Smt. Krishan Kaur was the sole and absolute owner of the Suit properties (Documents of title of Suit properties are Exhibit PW1/4 to Exhibit PW 1/11), she died intestate on 21.07.1990 (Death certificate Exhibit PW1/1). On her death, she was survived by her husband (Sardar Kripal Singh Duggal), one son (Sardar Pushpinder Singh), one daughter (Smt. Balwant Kaur) and legal heirs of pre deceased second daughter (Smt. Balbir Kaur). Sardar Kripal Singh Duggal expired on 18.04.2012 (during the pendency of the Suit; death certificate Exhibit PW 1/2). Prior to the filing of the Suit, Smt. Balwant Kaur (daughter), expired on 10.07.2005 (death certificate Exhibit PW1/3) (legal heirs of Smt. Balwant Kaur are the Plaintiffs); Sardar Pushpinder Singh

(son), expired on 02.01.2006 (documents evidencing death are Exhibit PW 1/12 to PW 1/14) (legal representatives of Sardar Pushpinder Singh are arrayed as Defendant Nos. 1 & 2) and Smt. Balbir Kaur (daughter), who predeceased Smt. Krishan Kaur on 25.12.1978, her legal representatives are arrayed as Defendant Nos. 3 to 5. There is no dispute to any of the above-referred facts.

12. The Plaintiffs have deposed that they are in legal and constructive possession of the Suit properties. They were in constructive possession of Flat No. 31, Jangpura Extension through the tenant. On surreptitious vacation of the tenant, a police complaint was also lodged (Exhibit PW 1/15). On a Writ Petition filed by the Plaintiffs, the escheat proceedings initiated by the Collector Dehradun, Uttrakhand qua Suit property No. 10, Curzon Road, Dehradun were quashed (Exhibit PW 1/16).

13. But for the objection of Defendant Nos. 1 and 2 about an oral partition and oral relinquishment deed, on which Issues 2 to 4 have been framed, the Plaintiff would be entitled to 1/3rd share in the Suit Properties and a decree of partition by metes and bounds.

14. The onus of Issues 2 to 4 was placed on the Defendant Nos. 1 and 2.

15. As noticed above, Defendant No. 2 Smt. Rachna deposed as DW - 1 and Shri Dalip Singh husband of Smt. Rachna Defendant No. 2 as DW - 2. As Shri Dalip Singh (DW - 2) was not produced for cross-examination, his testimony cannot be read in evidence and as such is being disregarded.

16. Smt. Rachna, in her Examination in chief, filed by way of an affidavit has deposed as under:

"9. That after the death of Smt. Krishan Kaur, her husband namely S. Kripal Singh Duggal, son namely Pushpinder Singh Duggal and surviving daughter namely Smt. Balwant Kaur entered into an oral family arrangement/settlement in the year 1996 wherein they partitioned the above mentioned three immovable properties amongst them. In view of the said family arrangement/settlement the property No. 10-A, Curzon Road, Dehradun fell in to the share of S. Kripal Singh Duggal and property Flat No. 31, Jungpura Extension, New Delhi fell in to the share of Sh. Pushpinder Singh Duggal whereas property bearing Flat No. 17 Krishna Market, Lajpat Nagar, New Delhi fell in to the share of Smt. Balwant Kaur. 10. That thereafter, unfortunately, the Grand father of the deponent namely Sh Kripal Singh Duggal expired on 18.04.2002 and after his death Smt. Balwant Kaur relinquished orally her share with respect to property bearing 10 - A, Curzon Road, Dehradun, which had fell into the share of sh. Kripal Singh Duggal by

virtue of above family settlement to his sole son S. Pushpinder Singh Duggal (the father of the deponent). 11. That in the manner stated herein above by virtue of the above family arrangement/settlement and relinquishment S. Pushpinder Singh Duggal became sole and exclusive owner of the properties bearing No. 10-A, Curzon Road, Dehradun (UP) and Flat No. 31, Jungpura Extension, New Delhi."

17. In her cross examination she has inter alia deposed as under:

".....Smt. Krishna Kaur had executed an agreement in favour of my father namely Sardar Pushpinder Singh with regard to her properties. It is correct that I have not filed any such document on record. It is wrong to suggest that there is no such document..... There was a family agreement between my father and her sisters with regard to the Suit properties. I do not remember the date of the said agreement. Q47. I put it to you that Smt. Balwant Kaur never relinquished her share in respect of property bearing No. 10A, Curzon Road, Dehradun. Ans. My father told me that the said property solely belonged to him. There was an agreement between my father and sisters whereby my father became the sole owner of the said property. Q48. I put it to you that there was no family arrangement / settlement or any partition as alleged by you in the year 1996? Ans. Yes."

18. Apart from the above testimony, no evidence has been produced by the Defendant Nos. 1 and 2 on the issues 2 to 4 to establish that there was any oral partition of the properties or that Smt. Balwant Kaur relinquished her share in favour of the father of Defendants or to show as to how Defendant Nos. 1 & 2 became sole owner of property bearing No. 10-A, Curzon Road, Dehradun and Flat No.31, Jungpura Extension, New Delhi.

19. The contention of Defendant Nos. 1 and 2 is that an oral partition took place between S. Kripal Singh Duggal, S. Pushpinder Singh Duggal and the surviving daughter Smt. Balwant Kaur. There is no mention that the legal heirs of Smt. Balbir Kaur (the predeceased daughter) in the alleged oral family arrangement/settlement. On the contrary, the stand is admittedly that they were not parties to such an arrangement. Legal heirs of Smt. Balbir Kaur were also class - I legal heirs of Smt. Krishan Kaur and succeeded to the Suit Properties. Firstly, there is no evidence to show that any family arrangement/settlement ever took place. There is no evidence

produced to show as to when such a family arrangement/settlement took place. No evidence has been produced to show as to in whose presence such an arrangement/settlement was entered into or the same was ever acted upon and what were the terms and condition thereof. Even if such an arrangement/settlement had taken place, the same would be void because of absence of all the family members participating in the same. The Defendants have failed to prove that there was any family arrangement/settlement partitioning the properties by metes and bounds.

20. The stand of the Defendant Nos. 1 and 2 is that Smt. Balwant Kaur orally relinquished her share in favour of S. Pushpinder Singh Duggal. Apart from Defendants failing to produce any evidence of any nature to prove the relinquishment, law does not permit any oral relinquishment of share in an immovable property. Defendant Nos. 1 and 2 have clearly failed to prove that Smt. Balwant Kaur relinquished her share in favour of S. Pushpinder Singh Duggal.

21. Defendant Nos. 1 and 2 have clearly failed to discharge the onus with regard to issues 2 to 4 and accordingly they are decided against the said Defendant and in favour of the Plaintiffs.

22. In view of the above, the Suit properties i.e. (i) property No. 10A, Curzon Road, Dehradun, (ii) Flat No.31, Jungpura Ext. Market, New Delhi and (iii) Flat No.17, Krishna Market, Lajpat Nagar, New Delhi are held to be joint properties in which Plaintiffs jointly have 1/3rd Share, Defendant Nos. 1 and 2 jointly have 1/3rd share and Defendant Nos. 3 to 5 jointly have 1/3rd share.

23. Accordingly, a preliminary decree of partition is passed declaring that the Plaintiffs jointly, Defendant Nos. 1 and 2 jointly and Defendant Nos. 3 to 5 jointly, have 1/3rd share each in the Suit Properties i.e. (i) property No. 10A, Curzon Road, Dehradun, (ii) Flat No.31, Jungpura Ext. Market, New Delhi and (iii) Flat No.17, Krishna Market, Lajpat Nagar, New Delhi. Plaintiffs are also held entitled to costs of the Suit against Defendant Nos. 1 and 2. Decree Sheet be drawn up accordingly.

24. List the Suit for further proceedings before the Roster Bench on 11.01.2018.