
(2011) 07 DEL CK 0099
In the Delhi High Court
Case No : CS (OS) No. 369 of 2009

Sh. Shashi Kant Khosla and Another	Vs	APPELLANT
Smt. Mamta Dhawan and Another		RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0099

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Atul Bandhu, for the Appellant; None, for the Respondent

Judgement

Manmohan Singh, J.—After filing the suit the Plaintiffs have also filed the application being IA No. 6398/2010 under Order 12 Rule 6 for passing the decree in view of the admission made by the Defendants in the written statement.

2. In view of the statement made by the parties in order dated 10.11.2009, the matter was referred to Delhi High Court Mediation and Conciliation Centre, however, the settlement could not be arrived at between them.

3. I have gone through the present application and have also heard the learned Counsel for the parties.

4. The facts of the case are that the Plaintiffs, Shri Shashi Kant Khosla and Smt. Prem Ahluwalia, have filed the present suit for partition against the Defendants Smt. Mamta Dhawan and Shri Sanjay Khosla. The facts of the case are that Shri Om Prakash Khosla, deceased, a Hindu died on 03.12.2007 at New Delhi, leaving behind the following four children:

i)

Sh. Shashi Kant

Aged 60 years

Son

Plaintiff No. 1

ii)

Smt. Prem Ahluwalia

Aged 63 years.

Daughter

Plaintiff No. 2 nee Prem Khosla W/o Sh.Sagar Ahluwalia D/o late Sh. Om Prakash

iii)

Smt. Mamta Khosla

Aged 50 years.

Daughter

Defendant 1 nee Mamta Dhawan W/o Sh. Naresh Dhawan, d/o Lt. Sh. Om Prakash Khosla

iv)

Sh. Sanjay Khosla

Aged 48 years.

Son

Defendant 2

5. It is the admitted case of the parties that the deceased Om Prakash Khosla at the time of his death left behind both moveable and immovable properties and assets, the details of which are given as under:

A. Immovable Properties

i) A one storeyed house, with one room bath room and kitchen at the first floor, 325 Sq. Yards bearing No. C-592, Defence Colony, New Delhi;

ii) An Industrial Plot bearing No. 66, Block II, Badli Industrial Estate, Delhi, by admeasurements 500 sq. yards.

B. Moveable Properties

I. Security deposits

II. Saving Bank Accounts

III. Post Office Deposits

IV. Current Bank Accounts

V. Shares & Debentures

VI. Deposits in Banks

VII. UTI & Govt. Securities

VIII. LIC, ICICI, IDBI Banks, Bonds,

IX. Jewellery

X. Cash in Banks;

XI. Household goods & other Misc. assets or movable properties.

6. It is not denied by the parties that the Plaintiffs and Defendants, being heirs of the deceased late Shri Om Prakash Khosla are the co-owners and co-sharers in the various moveable and immoveable properties left behind by the deceased each having equal share. Shri Om Prakash Khosla also left a Will, registered as at No. 329, in Book No. 3 Vol. N486 on pages 23 to 25 on 19.4.2006 with Sub-Registrar-VII, New Delhi bequeathing the properties aforesaid and acquired thereafter to the parties to the suit in equal shares.

7. Admittedly, the original of the said will was lying in the locker with State Bank of Patiala, Defence Colony, New Delhi. In the said will the deceased had recorded that:

my heirs will be bound irrevocably by "my decision of 1/4th share in both the properties". Further the deceased also recorded that his "movable assets being security deposits, saving and current Bank Accounts, post office account, shares, debentures, deposit in bank, UTI, Govt. Securities, LIC, ICICI Bond, IDBI Bank Bonds, Jewellery, Cash, household and other assets over any other movable properties I may acquire during my life time, the same shall devolve upon my aforesaid four children in equal shares.

8. It is stated in the plaint that parties are in joint physical possession of the immoveable property. The Plaintiffs had made a request to the Defendants to amicably partition the properties by metes and bounds in 4 shares, or to sell the said property and share the cash proceeds thereof equally as the request of the Plaintiffs was not acceded to by the Defendants, therefore, the present suit has been filed by Plaintiffs. Upon service, both the Defendants have filed the written statement raising certain pleas, the details of which are given as under:

(i) That no site plan has been filed with the plaint, the complete details of the immoveable properties i.e. the house in Defence Colony and industrial plot bearing No. 66, Block II, Badli Industrial Estate, Delhi were not given by the Plaintiff in the plaint. It is denied by the Defendant No. 1 that the properties are governed by the provisions of Hindu Succession Act, the Plaintiffs ought to have sought the probate or administer the said registered Will rather to file the present suit for partition which is not maintainable.

(ii) That the property situated at Defence Colony is in the actual physical possession of the Defendants. The Plaintiffs have merely put their locks on one

room on the ground floor and one room on the terrace but they are not in actual physical possession of the said property. As regards the other property i.e. industrial plot bearing No. 66, Phase-II, Badli Industrial Estate, New Delhi, it is in joint physical possession of the Plaintiffs and the Defendants. At present the beneficial enjoyment of the said property is with the Plaintiff No. 2 and the Defendant No. 2. The father of the parties had given one garage room of the Defence Colony house to a widowed lady, namely Ms. Raj Kaur, as a permissive licensee and that lady is still using the said room at C-592, Defence Colony, New Delhi and unless Mrs. Raj Kaur vacates the premises, the partition of the property of the Defence Colony is not possible.

9. From the entire written statement filed by the Defendant No. 1 it transpired, that as far as the existence of immovable properties as well as moveable assets is concerned, the Defendant No. 1 has not denied the factum of the same. The Defendant No. 1 has also not denied the existence of the registered Will of late Shri Om Prakash Khosla rather the Defendant No. 1 has stated in the written statement that the Defendant No. 1 has been requesting the Plaintiffs to get the Will dated 19.04.2006 probated or administered in accordance with law and divide the properties in question. However, it was the Plaintiffs who have refused to accede to the demand of the Defendant No. 1.

10. The plea of the Defendant No. 2 in the written statement in addition to grounds taken by the Defendant No. 1 is that the Plaintiffs have not been virtually residing in the property that is C-592, Defence Colony, New Delhi. The Plaintiff No. 1 resides at Panchkula and the Plaintiff No. 2 at Vasant Kunj, New Delhi. It is wrongly stated in the plaint that they are in joint possession of the suit property. The objection was also raised by the Defendant No. 2 that the suit has not been valued properly for the purposes of court fee and the Plaintiff has not approached the Land and Development Authority, Government of India for mutation of the plot of land i.e. House No. C-592, Defence Colony, New Delhi and filed the suit in a great hurry even without serving the notice for partition of the property, therefore, there is no cause of action for filing the present suit. The other objection raised by the Defendant No. 2 is that the possession of one portion of property at Defence Colony is occupied by one lady tenant. The said fact has not been disclosed by the Plaintiffs nor the said tenant was evicted before filing of the suit, therefore, the Defence Colony property cannot be partitioned, unless the said portion is vacated by the tenant.

11. It appears from the order dated 08.02.2010 that with the consent of parties Ms. Raashi Beri, Advocate was appointed as a Local Commissioner to open the locker No. 33 maintained with the State Bank of Patiala, Defence Colony, New Delhi in the presence of the parties and ordered that the Local Commissioner shall file the report of inventory to this Court and parties agreed that the articles and documents, if any found, be restored to the aforementioned locker.

12. The Local Commissioner filed her report on 24.02.2010. The operative portion of the report reads as under:

Pursuant to the order, on 17.02.2010, I sent notice to the parties as well as to Mr. J.B. Singla, Branch Manager, State Bank of Patiala, Defence Colony, requesting them to be present at the aforesaid bank on 22.02.2010 at 11 am. The Plaintiffs and the Defendants presented themselves at the bank on 22.02.2010 at 11 am. The document marking the presence of the parties to carry out the aforesaid order is attached as Annexure `I".

The key to the disputed locker No. 33 was produced by Plaintiff No. 1 Sh. Shashi Kant Khosla. The disputed locker was opened by me in the presence of the Plaintiffs and the Defendants, as well as the Bank Manager. The locker contained one plastic pouch containing various pieces of jewellery. The inventory of the articles found in the locker is attached as Annexure `II". As per the orders of the court, the aforesaid articles were perused by the parties and were restored to the locker thereafter.

The locker also contained a brown paper envelope containing an original will of Mr. Om Prakash Khosla, consisting of three pages. The details of the document found in the locker are attached as Annexure `III". The parties wished to obtain copies of the said documents. As per the orders of the Hon"ble High Court of Delhi, copies were made of the aforesaid original will and I duly certified the copies and gave one copy each to all the parties. A copy of the original will found in the locker is attached as Annexure `IV".

13. In the written statement filed by the Defendants they have admitted the fact that a registered will was left by their father. The said admission was made by the Defendant No. 1 in para a & d of the preliminary objection and in para 3 and 4 of the reply. Similarly, the Defendant No. 2 in the written statement has specifically admitted that a Will was executed by Shri Om Prakash Khosla, father of the parties which was got registered with the Sub-Registrar.

14. In view of the admission made by the parties, it is clear that the property of late Shri Om Prakash Khosla has to be divided in terms of the Will as parties in the matter are the only legal heirs of late Shri Om Praksash Khosla and the subject matter of the property has to be divided in 4 equal shares i.e. two Plaintiffs and two Defendants. The other objections raised by the Defendants are without any merit and are rejected. Therefore, the application filed by the Plaintiff under Order 12 Rule 6 being IA No. 6398/2010 is allowed and a preliminary decree is passed holding that the properties left behind by the father of the parties, late Shri Om Prakash Khosla shall be partitioned as per Will and all the immoveable and moveable properties left by him in terms of the will be divided accordingly.

15. Mr. M.N. Dudeja, Advocate, Mobile No. 9811321220 is appointed as a Local Commissioner to verify the suit properties in dispute and to file a report with regard to mode and manner in which the suit properties could be partitioned and also to report the present status of the properties on or before 9th September, 2011. The fee of the Local Commissioner is fixed at the first instance at Rs.

60,000/- which shall be shared by the parties.

16. The pending applications filed by the parties shall stand disposed of.