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**(2013) 07 DEL CK 0406**

**In the Delhi High Court**

**Case No :** CS (OS) 303 of 2008

Smt. Hardeep Kaur and Others — APPELLANT

Vs

Shri Sadhu Singh and Others — RESPONDENT

**Date of Decision :** 16-07-2013

**Acts Referred:**

**Citation :** (2013) 07 DEL CK 0406

**Hon'ble Judges :** Vipin Sanghi, J

**Bench :** Single Bench

**Advocate :** Sunil Malhotra, for the Appellant;

## Judgement

Vipin Sanghi, J.—The plaintiffs, who are four in number, have filed the present suit to claim reliefs of partition, rendition of accounts and permanent injunction against the three defendants. The reliefs of partition have been sought in respect of the following two properties;

(i) the property bearing No. 2113/164, Tri Nagar, Delhi, which admittedly was owned by Smt. Sant Kaur, wife of late Shri Balwant Singh; and

(ii) factory premises No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi, owned by Shri Balwant Singh.

The plaintiffs have claimed 1/4th share in the aforesaid properties. The plaintiffs have also sought rendition of accounts in respect of the firm-M/s. Balwant Plastic Industries which was carrying on business at the factory premises aforesaid, situated at 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi. The plaintiffs also seek a perpetual injunction against the defendants to seek a restrain against them from selling, alienating and transferring or entering into any agreement in respect of the aforesaid properties.

The case of the plaintiffs is that plaintiff No. 1 is the widow and plaintiff Nos. 2 to 4 are the children of late Shri Gurbachan Singh. The plaintiffs state that Smt. Sant Kaur, wife of late Shri Balwant Singh, was the mother of late Shri

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Gurbachan Singh and defendant Nos. 1 to 3. Late Shri Gurbachan Singh pre-deceased his mother. He passed away on 14.10.1986. Late Smt. Sant Kaur died on 13.08.1996 and at the time of her death, she was the owner of property bearing No. 2113/164, Tri Nagar, Delhi. The plaintiffs claim that they have jointly succeeded to 1/4th share in the said property of late Smt. Sant Kaur. The further claim of the plaintiffs is that the father-in-law of plaintiff No. 1 and the grandfather of plaintiff Nos. 2 to 4 - late Shri Balwant Singh, was the owner of factory premises No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi, wherein the business of M/s. Balwant Plastic Industries was being carried on. They claim that after the demise of late Shri Balwant Singh, and thereafter Smt. Sant Kaur, the said factory premises has also devolved upon the plaintiffs in one share and defendant Nos. 1 to 3 equally. The plaintiffs claim 1/4th share in each of the two properties above mentioned. The further case of the plaintiff is that at the relevant time, the business of M/s. Balwant Plastic Industries was being conducted by Shri Gurbachan Singh, predecessor-in-interest of the plaintiffs and the three defendants-who were his brothers. After the demise of late Shri Gurbachan Singh on 14.10.1986, the plaintiff No. 1 was inducted as a partner in the partnership business of M/s. Balwant Plastic Industries. The plaintiffs state that the defendants have not rendered the accounts in respect of the said partnership business. Consequently, the relief of rendition of accounts of the said business is also claimed by the plaintiff. The claim for permanent injunction is premised on the rights claimed by the plaintiffs in the aforesaid two properties.

2. The defendants filed their written statement. In their written statement, the defendants claimed that their late mother Smt. Sant Kaur had executed her last Will dated 17.01.1996 wherein she has bequeathed the property bearing No. 2113/164, Tri Nagar, Delhi, in their favour and to the exclusion of the plaintiffs. The defendants further claim that defendant No. 1-Shri Sadhu Singh, after leaving his job as a turner in the year 1962, took the factory premises bearing No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi on rent, to start his own business in the name and style of M/s. Balwant Plastic Industries for manufacturing radio plastic parts. Defendant No. 1 purchased the said factory premises in the year 1966 from his own funds in the name of his father late Shri Balwant Singh. He subsequently brought in his two younger brothers, namely, Shri Sawinder Singh-defendant No. 3 and late Shri Gurbachan Singh, the deceased husband of plaintiff No. 1 and father of plaintiffs No. 2 to 4, into the business, and they were subsequently taken in as partners in the firm.

3. The defendants, in their written statement do not deny - and rather admit, that after the demise of late Shri Gurbachan Singh, plaintiff No. 1 had been taken in as a partner in the firm M/s. Balwant Plastic Industries. The defendants, however, deny that they have not rendered accounts of the said firm to plaintiff No. 1. The defendant state that the business of M/s. Balwant Plastic Industries was not profitable after the year 2000 and the same was dissolved by the dissolution deed dated 30.06.2007, by which the assets and liabilities were divided amongst the partners. The defendants have further averred that the

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assets of the factory were sold out in the year 2007 and plaintiff No. 4, son of late Shri Gurbachan Singh, received 1/3rd share in the sale proceeds though the plaintiffs were entitled for only 25% share as per partnership deed dated 02.04.1992, according to which defendant No. 1 is entitled to 40% share and defendant No. 3 is entitled to 35% share. The further defence of the defendant was that during life time of late Shri Gurbachan Singh, with a view to settle his share, a family settlement was reached where under Plot No. 155, Pocket D-12, Sector 8, Rohini, Delhi, allotted by the DDA was given to Shri Gurbachan Singh to avoid family disputes. This plot was given to the plaintiff No. 1, as Gurbachan Singh had died due to cancer.

4. On the basis of the pleadings of the parties, the court framed following issues on 04.02.2009:

1. Whether document dated 17th January, 1996 is validly executed last Will of Smt. Sant Kaur? OPD

2. Whether the plaintiffs have already received the share of their predecessor in the partnership firm M/s. Balwant Plastic Industries and are now not entitled to any relief with respect to the said partnership firm? OPD

3. Whether the plaintiffs have no share in either of the properties owing to the flat at Rohini having been settled in favour of the plaintiffs? OPD

4. Whether the suit is properly valued for the purposes of court fees and jurisdiction and appropriate court fees has been affixed on the plaint? OPP

5. Relief.

5. The Court, after framing the issues, observed that if defendants fail to establish the Will of late mother Smt. Sant Kaur, and also fail in establishing the family settlement, the plaintiffs shall be entitled to 1/4th share in both the properties. Similarly, if the defendants fail in proving the dissolution deed of the firm, the plaintiff no. 1 would be entitled to relief of rendition of accounts. Since the onus to prove the main issues was fastened on the defendants, they were required to lead the evidence first.

6. The defendants, however, did not file the list of witnesses and did not even lead the evidence of any witness by filing any affidavit towards examination-in-chief. The defendants, instead, moved an application for amendment of the written statement being I.A. No. 13771/2009. This application was dismissed on 18.11.2011 with costs of Rs. 5,000/-, while observing that it was a gross abuse of the process of the Court. The first appeal preferred by the defendants to assail the said order-being FAO(OS) No. 135 of 2011, was dismissed by the Division Bench with further costs of Rs. 5,000/-. The said costs have not been paid by the defendants to the plaintiff till date. The right of the defendants to lead their evidence was also closed by the Court on 18.11.2011. Consequently, the plaintiff was given the opportunity to lead its evidence. The plaintiff led the evidence of Shri Inder Pal Singh, plaintiff No. 4 as PW-1 by filing the affidavit by way of

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evidence towards his examination-in-chief. He tendered his affidavit by way of evidence (Ex. PW1/A) on 14.08.2012. The defendants chose not to appear to cross-examine the said witness, even though the date for the said purpose had been fixed in the presence of their counsel Mr. B.R. Ahluwalia, on 30.04.2012. Consequently, the opportunity to the defendant to cross-examine the plaintiff''s witness was closed and the matter was directed to be listed before the Court for hearing. On the last date, i.e. on 01.07.2013, the defendant no. 1 appeared with his son and stated that he needs to engage another counsel to argue the matter. While taking note of the earlier conduct of the defendants, in the interest of justice, it was directed that the matter shall not be taken till the next day. It was made clear that further time shall not be granted to either party and the matter shall proceed for final hearing on the next date. The matter has been called for hearing today and, once again, there is no appearance on behalf of the defendants. In these circumstances, learned counsel for the plaintiff has taken me to the pleadings as well as the unrebutted evidence led by PW1 Shri Inderpal Singh, plaintiff No. 4. He has deposed in his affidavit by way of evidence on the lines of the averments contained in the plaint.

7. As noticed by this court in the order dated 04.02.2009 while framing the issues, the onus to prove the substantive issues lay upon the defendants. The defendants, while admitting that the property bearing No. 2113/164, Tri Nagar, Delhi was owned by Smt. Sant Kaur, and property bearing No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi, was registered in the name of late Shri Balwant Singh, have failed to establish the due execution and validity of the so called Will dated 17.01.1996-stated to be the last Will of late Smt. Sant Kaur which purports to oust the plaintiffs from the property bearing No. 2113/164, Tri Nagar, Delhi. Similarly, the defendants have failed to establish that factory premises bearing No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi, was not the property of late Shri Balwant Singh, or that defendant No. 1 had purchased the same in the name of his late father. Even if it was so purchased by defendant No. 1, the said defendants have not established that the said property did not belong to late Shri Balwant Singh, and that it did not devolve upon his class I heirs equally.

8. The admitted position is that late Shri Balwant Singh and Smt. Kant Kaur had four sons, namely, late Shri Gurbachan Singh-the predecessor-in-interest of the plaintiffs, and the three defendants. Since the defendants have failed to establish the Will attributed to late Smt. Sant Kaur, or that factory premises bearing No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi, which, admittedly, stands in the name of late Shri Balwant Singh did not belong to him, after their respective demise, the said two properties have undoubtedly come to the share of the three defendants and the plaintiffs through their late father late Shri Gurbachan Singh in equal shares i.e. the plaintiffs together have 1/4th share and defendant Nos. 1 to 3 have 1/4th share each.

9. The defendants have also not established their plea of a family settlement

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whereunder it is alleged that Plot No. 155, Pocket D-12, Sector 8, Rohini, Delhi, was given to late Shri Gurbachan Singh in full and final settlement of his claim on the family properties.

10. In view of the aforesaid position, issue Nos. 1 to 3 are decided against the defendants and in favour of the plaintiffs.

11. Though an issue has been raised by the defendants that the suit has not been properly valued for the purpose of court fee and jurisdiction and appropriate court fees has not been affixed on the plaint, no submission has been advanced by the defendants to explain as to why, according to them, the suit has not been properly valued for the purpose of court fees and jurisdiction. It is not explained as to how it could be said that the court fees has not been properly affixed at the initial stage. Pertinently, the plaintiffs have stated that upon determination of the correct value of their share in the property, they shall pay the requisite court fees after the partition takes place.

12. This issue is also, therefore, decided in favour of the plaintiffs and against the defendants.

13. So far as the relief of rendition of accounts in respect of M/s. Balwant Plastic Industries is concerned, once again, I find that the defendants do not dispute the fact that earlier late Shri Gurbachan Singh, and after his demise, plaintiff No. 1 became partners in the said firm in which plaintiff No. 1 had 25% share. Though, it is claimed by the defendants that the said firm was dissolved and the accounts were rendered and settled, the said defence has not been established on record. On the other hand, the plaintiff has stated in their evidence that the accounts of the firm M/s. Basant Plastic Industries have not been rendered to the plaintiff No. 1 after the death of late Shri Gurbachan Singh and that the said accounts are not being rendered to plaintiff No. 1 even thereafter. The plaintiffs also served a legal notice on the defendants (Ex. PW1/2) dated 25.10.2007 by registered post and under certificate of posting. The postal receipts are Ex. PW1/3 in respect of the packets sent by registered post and Ex. PW1/4 in respect of the U.P.C. postal certificates. The A.D. cards of the notices are Ex. PW1/5 collectively. The plaintiffs have stated that the defendants have not responded to the said notice and have not denied the plaintiff''s allegation that accounts of the said firm have not been rendered. The defendants have not filed any documents or evidence to the contrary. It is the admitted position of the defendants that defendant No. 1 and defendant No. 3 were conducting the said business. Defendant No. 1 claims that he was the eldest brother. On the other hand, plaintiff No. 1 was inducted since she is the widow of the deceased brother of the defendants late Shri Gurbachan Singh. It is, therefore, clear that it is for the defendants to render accounts to the plaintiff no. 1. In these circumstances, the plaintiff No. 1 is held entitled to rendition of accounts in respect of the firm M/s. Balwant Plastic Industries. Since the plaintiffs have 1/4th of divided share in the aforesaid two properties, till such share is determined and received by the plaintiffs, they are entitled to protection of their rights and interest. Consequently, they are also

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entitled to relief of perpetual injunction against the defendants.

14. In the aforesaid facts and circumstances, I pass a preliminary decree declaring the share of the plaintiffs jointly and of defendant nos. 1, 2 and 3 individually as 1/4th (25%) in the following immovable properties:

(i) the property bearing No. 2113/164, Tri Nagar, Delhi, which admittedly was owned by Smt. Sant Kaur, wife of late Shri Balwant Singh; and

(ii) factory premises No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi, owned by Shri Balwant Singh.

15. I also pass a decree for rendition of accounts in favour of plaintiff No. 1 and against the defendants, thereby directing defendant Nos. 1 to 3 to render accounts of M/s. Basant Plastic Industries to the plaintiffs. The same be rendered within eight weeks.

16. The defendants are restrained from, in any manner, selling, alienating, transferring, or entering into any agreement in respect of property bearing Nos. (i) 2113/164, Tri Nagar, Delhi, which, admittedly, was owned by Smt. Sant Kaur, wife of late Shri Balwant Singh; and, (ii) factory premises No. 256/9, Gali No. 7, Padam Nagar, Kishan Ganj, Delhi, owned by Shri Balwant Singh, or parting with possession thereof, till the said properties are partitioned by metes and bounds or disposed of in settlement of the claim of the plaintiffs.

17. I appoint Mr. Amrit Pal Sing Gambhir, Advocate (Mobile No. 9999983935), as a Local Commissioner to suggest the mode of division in respect of the aforesaid two immovable properties. The Local Commissioner shall hold discussions with the parties after due notice to them and also take their suggestions. The Local Commissioner shall also get the valuation of the aforesaid properties determined and the valuation report shall form part of his report. The Local Commissioner shall also be entitled to take the assistance of a qualified architect and draftsman for executing the commission. The Local Commissioner shall file his report within eight weeks. The fees of the Local Commission is fixed at Rs. 80,000/-, which shall be shared equally by the plaintiffs on the one hand, and each of the defendants on the other hand. The plaintiff shall pay Rs. 20,000/-, and each of the defendants shall pay Rs. 20,000/- to the Local Commissioner. The Local Commissioner shall also be entitled to all out of pocket expenses and fees of the Architect, Draftsman and Valuer, if any, which shall also be borne by the parties in equal shares in advance, as may be communicated by the Local Commissioner. List before the Court for awaiting the report of the Local Commissioner on 23.09.2013.

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