

(2011) 02 DEL CK 0540
In the Delhi High Court
Case No : CS (OS) No. 1419 of 2005

Smt. Poonam Chhabra

APPELLANT

Vs

Shri Madan Mohan Hasija

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0540

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : K.N. Popli, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—This is a suit for partition, rendition of accounts and injunction. The plaintiff is the sister of the Defendant, both of them being the children of late Shri Ram Lal Hasija and late Smt. Shanta Rani Hasija. It is alleged in the plaint that the ground floor of residential property bearing No. 2/45, Geeta Colony, was purchased by the parents of the parties in the name of their father late Shri Ram Lal Hasija. The ground floor of property No. 2/46, Geeta Colony, was purchased by them in the name of her mother late Smt. Shanta Rani Hasija. Property No. 2/45 was occupied by the parents of the parties, whereas property No. 2/46 was occupied by the Defendant and his family. It is further alleged that Shop No. 150 at Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi, was also purchased by late Shri Ram Lal Hasija in his own name, where he was carrying business of whole sale and retail of Pan, Bidi, Cigarette ,etc. under the name and style of M/ s. Ram Pan Store. It is also alleged that the parents of the parties had jewellery weighing 55-60, tolas besides balance in the bank, and had also given about Rs. 10 lakhs on interest. It is also claimed that the Defendant has refused to give any share in the properties of the parents to the plaintiff and has also failed to render accounts of the income received by him from the business of the father. The plaintiff has sought partition of the property No. 2/45, Geeta Colony, and Shop No. 150, at Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi. She

has also sought rendition of accounts in respect of the business being carried in Shop No. 150, at Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi. The plaintiff has further sought an injunction restraining the Defendant from creating any third party interest in the aforesaid property and from carrying any business in Shop No. 150, at Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi.

2. The Defendant filed written statement contesting the suit. He took preliminary objection that the suit property is owned exclusively by him having been purchased from his own earnings. It was also alleged that the business in the shop was being carried by the Defendant since he was 11 years old.

3. The Defendant was proceeded ex-parte vide order dated 1.2.2011. In her affidavit by way of evidence, the plaintiff has stated that the ground floor of the residential property No. 2/45, Geeta Colony was purchased by her parents in the name of her father late Shri Ram Lal Hasija and the same is shown in the site plan Ex.PW-1/1. She has further stated that her parents were living in the aforesaid property whereas the Defendant was living in property No. 2/46, Geeta Colony with his family. She has also stated that in his lifetime, late Shri Ram Lal Hasija had also purchased Shop No. 150, at Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi, which is shown in the red colour in the site plan Ex.PW-1/2. She has stated that her father and the Defendant were carrying business of whole sale and retail of Pan, Bidi, Cigarette ,etc. under the name and style of M/s. Ram Pan Store, in partnership and after the death of the father, her brother was rendering accounts of the business to her mother and was paying half of the income to her. However, after the death of the mother, he failed to render any account of the aforesaid business to the plaintiff. She has also stated that at the time of death, her parents had huge bank balance and jewellery about 50-60 tolas and they had also given loan of Rs. 10 lakhs to different partners. Ex.PW-1/3 is the legal notice sent by the plaintiff to the Defendant vide postal receipt Ex.PW-1/4 and Ex.PW-1/5.

4. The plaintiff, who is present in the Court, states that she is pressing for partition only of property No. 2/45, Geeta Colony, and Shop No. 150, at Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi besides seeking rendition of accounts in respect of her share in the assets of partnership firm and the profits earned by the Defendant, after the death of her mother from the business which he is running in shop No. 150, Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi. She further states that she does not have proof of any bank balance nor does she has any knowledge of the persons to whom money was given on loan by her father. She is not pressing for any relief in respect of the bank balance and the amount of Rs. 10 lakhs which her father had given on loan to various persons.

5. Since the Defendant has chosen to remain absent from the Court despite filing written statement, the deposition of the plaintiff remains unchallenged and I see no reason to disbelieve her statement on oath. Consequently, I hold that late Shri Ram Lal Hasija, father of the parties, was owner of House No. 2/45, Geeta

Colony and shop No. 150, Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi, and being one of the two children, the plaintiff has half share in the aforesaid properties. The plaintiff is also entitled to half share in the jewellery left by her mother late Smt. Shanta Rani Hasija. The plaintiff would be entitled to 50% of the share of his father in the assets of the partnership firm which the Defendant was running along with his father late Shri Ram Lal Hasija. She is also entitled to 25% of the profit earned by the Defendant from the business being run by him in Shop No. 150, Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi.

6. For the reasons given in the preceding paragraphs, a preliminary decree for partition of the properties bearing House No. 2/45, Geeta Colony and shop No. 150, Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi, the jewellery left by late Smt. Shanta Rani Hasija and the assets of the partnership firm which the Defendant had formed along with father, as on the date of the death of late Shri Ram Lal Hasija is hereby passed in favour of the plaintiff and against the Defendant. A decree for rendition of accounts of the profit earned by the Defendant after the death of his mother, from the business, which he is running in shop No. 150 Banarsi Dass Building, Main Market, Gandhi Nagar, Delhi is also passed, in favour of the plaintiff.

7. Shri G.P. Thareja, Advocate is appointed as Local Commissioner to suggest the appropriate mode of partition of the abovereferred property. The fee of the Local Commissioner is fixed initially at Rs. 25,000/- which shall be paid by the plaintiff. The decree sheet be drawn accordingly.