

14.07.2025

CS No. 10164/16
Jag Mohan Gupta vs. Girdhari Lal

Present: Ld. Counsel for the plaintiff no. 2A.
Sh. Srivats Kaushal, Ld. Counsel for Lrs no. 1B(i),1D, 1E, 2A, 2B,
3B, 3C and 4A and 4B.
Ms. Aashna Arora and Sh. Gurtej Pal Singh, Ld. Counsel for Lrs of
defendant no. 1C(a) to 1C(d) through VC.
Sh. Mayank Bansal, Ld. Counsel for Lrs of defenant no. 11 alongwith
Sh. Sanjay Jain.
Sh. S.S Jain, Ld. Counsel for the defendant no. 10 a/w defendant no.
10(d).

**ORDER ON THE APPLICATION UNDER THE PROVISIONS OF
SECTION 151 CPC SEEKING DELETION OF defendant no. 11A(i) to
defendant no. 11(A)(ix) including defendant no. 11B, 11C and 11D**

The present suit is a suit for partition amongst two branches i.e. between the branch of Sh. Prem Raj and the branch of Sh. Samman Lal who were the purchasers of the suit property which has been purchased by the joint hindu family firm, Samman Lal and Phool Chand as one party and L.Prem Raj as another party vide sale deed dated 27.03.1930.

Vide the preliminary decree dated 02.01.1980, it was declared that the plaintiff (Jagmohan Gupta) and defendant no. 13 (Chandramohan Gupta) both sons of Sh. Prem Raj have 1/4th share each in the suit property.

It was further declared that defendant no. 1 to 3 i.e. Sh. Girdhari Lal, Sh. Bimal Pershad, Sh. Trilok Chand, all sons of Sh. Phool Chand have 1/18th share in the suit property.

It was further declared that defendant no. 4 and 6 i.e. Sh. Virender Kumar, son of Sh. Ishri Pershad and Sh. Sanjeev Kumar, son of Sh. Sher Singh have 1/12th share in the suit property.

It was further declared that the estate of Lala Nihal Chand has the remaining 1/6th share in the suit property.

So far as the branch of Sh. Prem Raj is concerned which is represented by the plaintiff, Sh. Jagmohan Gupta and Sh. Chandra Mohan (originally impleaded as defendant no. 13 and transposed as plaintiff no. 2 vide order dated 14.10.1987),

there was no dispute with respect to their entitlement to the shares. The third son of Sh. Prem Raj i.e. Sh. Brij Mohan who had expired on 14.06.1963 was represented in the suit through his Lrs viz. Defendants 14 to 17 i.e. Smt. Kamla Devi (widow), Ashwani Kumar Gupta, Rajeev Kumar Gupta and Pradeep Kumar Gupta.

The Lrs of Sh. Brij Mohan Gupta in their written statement filed on 23.01.1973 had claimed no share in the suit property and the statement of Smt. Kamla Devi was recorded by the Court to this effect on 25.01.1973.

So, the third son of Sh. Prem Raj i.e. Sh. Brij Mohan since had not claimed any share in the suit property and neither any of his Lrs had claimed the same hence, the branch of Sh. Brij Mohan Gupta was allocated no share vide the preliminary decree dated 02.01.1980.

So far as the branch of Sh. Samman Lal is concerned, Sh. Samman Lal was survived by three sons i.e. Sh. Phool Chand, Sh. Ishri and Sh. Nihal Chand. Since the Lrs of the branch representing Sh. Phool Chand i.e. Sh. Girdhari (defendant no. 1), Sh. Bimal (defendant no. 2) and Sh. Trilok (defendant no. 3) is concerned, there was also no dispute with respect to their respective shares devolved upon Sh. Phool Chand.

Similarly, the branch representing Sh. Ishri is concerned, he was survived by two sons and one widow i.e. Sh. Virender (defendant no. 4), Sher Singh and Smt. Suraj Devi.

Sh. Sher Singh, son of Sh. Ishri was survived by widow Smt. Shanti Devi (defendant no. 4), son Sh. Sanjeev Kumar (defendant no. 6) and two daughters viz. Sudha (defendant no. 7) and Sujata (defendant no. 8)

Since Sh. Sher Singh who had expired in the year-1970 had executed a Will thereby excluding his widow and his daughters, his share devolved exclusively upon his son Sh. Sanjeev.

In view of the aforesaid, the only dispute which was left was with respect to the third son of Sh. Samman Lal i.e. Sh. Nihal Chand.

Sh. Nihal Chand was survived by his two sons i.e. Sh. Vikram (defendant no. 10) and Sh. Chikram (defendant no. 11) besides his widow Smt.

Inderwati and four daughters i.e. Shakuntala (represented through defendant no. 11A(i) to 11A(ix), Smt. Sumitra (defendant no. 11B expired on 10.05.1999), Santosh i.e. Defendant no. 11C and Smt. Kumkum Jain (defendant no. 11D).

As mentioned in the preliminary decree, Lala Nihal Chand had left a WILL in favour of his two sons and had excluded his four daughters from his estate and his widow i.e. Smt. Inderwati had also executed a WILL excluding the four daughters and had bequeathed her share in favour of her two sons of Lala Nihal Chand.

Keeping in view that there were inter se disputes in the branch representing late Lala Nihal Chand, it was directed vide the findings on Issue no. 4 of the preliminary decree dated 02.01.1980 that the aforesaid inter se disputes be determined vide separate proceedings.

It is submitted by the counsels representing Lrs of defendant no. 10 and 11 jointly that separate proceedings had infact taken place between the branch of Lala Nihal Chand and a decree has been passed by the Court of Ms. Manju Goel in suit bearing no. 504/1997 whereby only the two sons of Lala Nihal Chand i.e. Sh. Vikram and Sh. Chikram have been held entitled to the shares and assets left behind by Lala Nihal Chand in equal shares to the exclusion of all the other Lrs of Lala Nihal Chand as per the WILL left by Lal Nihal Chand and Smt. Indrawati.

It is submitted by counsel for Lrs of defendant no. 10 and 11 that the aforesaid decree was passed on 18.03.2000 and there is no challenge to such a decree till date and the same has attained finality.

In the wake of the aforesaid, Ld. Counsel for defendant no. 10 and 11 submits that their application filed under the provisions of Section 151 CPC is pending disposal vide which they have prayed to delete the names of defendant no. 11A(i) to defendant no. 11A(ix), 11B, 11C and 11D appearing in the memo of parties dated 15.12.2000.

It is further submitted that the said application has been filed pursuant to the passing of the judgment and decree dated 18.03.2000.

It is further submitted that till today i.e. after the expiry of a period of more than 25 years from the date of passing of the judgment dated 18.03.2000, there is no challenge to the aforesaid judgment and decree.

It is further submitted that in fact the husband Sh. Rattan Lal Jain of Smt. Kumkum Jain (defendant no. 11D) i.e. one of the daughters of Lala Nihal Chand had appeared before the court and has got his statement recorded on 18.03.2025 to the effect that since partition has already been effected between Lrs of defendant no. 10 and 11 and the partition decree is on record, hence, he is not claiming any share in the suit property.

It is pertinent to mention that nobody has been appearing on behalf of defendants 11A(i) to defendant no. 11(A)(ix) including defendant no. 11B, 11C and 11D and that too despite service effected by the court through publication carried out from time to time extensively and have till date i.e. after the expiry of the period of almost 13 years have not filed their reply to the said application and the reply thereto had only been filed by plaintiff no. 2.

Ld. Counsel for plaintiff no. 2A submits that since there is no challenged to the judgment and decree dated 18.03.2000 hence, he would not be addressing arguments on the present application.

Keeping in view the aforesaid since as on date, there is no challenge to the judgment and decree dated 18.03.2000 whereby only defendant no. 10 and 11 were held entitled to the shares and assets left behind by Lala Nihal Chand in equal shares to the exclusion of all the other Lrs of Lala Nihal Chand as per the WILL left by Lal Nihal Chand and Smt. Indrawati, the present application is allowed and defendants no. 11A(i) to defendant no. 11(A)(ix) including defendant no. 11B, 11C and 11D are ordered to be deleted from the memo of parties dated 15.12.2000 since they have no right, title or interest in the suit property and thus they cannot be said to be either necessary or proper parties to the present suit.

Let an amended memo of parties be filed strictly in accordance with the order passed today.

**ORDER ON THE APPLICATION SEEKING DIRECTIONS AND
AS FILED BY DEFENDANT NO. 11C ON 07.05.1999.**

Vide the present application, defendant no. 11C who is one of the daughters of Late Lala Nihal Chand has sought directions to be issued to the Local Commissioner to separate her share with others and also to render accounts with respect to collection of the rent by the other parties.

In view of the order passed on the application filed under the provisions of Section 151 seeking deletion of defendant no. 11A(i) to defendant no. 11(A)(ix) including defendant no. 11B, 11C and 11D and further taking into consideration the judgment and decree dated 18.03.2000 whereby the aforesaid defendant i.e. Smt. Santosh Kumari, wife of Sh. Durlabh Kumar Mittal/Santosh Mittal has been excluded from the properties left by Sh. Nihal Chand, the present application being infructuous is hereby dismissed.

List for further proceedings on **15.07.2025 at 2:30 PM.**

Sachin Sood
DJ-01, Central,
THC, 14.07.2025