

IN THE COURT OF VIJAY KUKMAR JHA,
ADJ-02, KARKARDOOMA COURTS(EAST), DELHI

CS No.1980/2016

In the matter of :

Smt. Phoolwati @ Rajni

W/o Sh. Virender Sharma

R/o 8/3, Mandir Marg,

Babarpur, Shahdara,

Delhi- 110032.

..... Plaintiff

Versus

1. Smt. Kusum Lata

W/o Sh. Satya Bhushan Sharma

R/o 6/9A, Mohalla Maharam,

Vishwas Nagar, Shahdara,

Delhi – 110032.

2. Smt. Satwanti Devi

W/o Sh. Chander Shekhar Sharma

R/o A-56, Gali no.2,

North Chhajupur, Shahdara,

Delhi – 110094.

3. Smt. Sheela Devi

W/o Late Sh. Kuldeep Kaushik

R/o. R/o A-56, Gali no.2,

North Chhajupur, Shahdara,

Delhi – 110094.

4. Sh. Satya Bhushan Sharma

S/o Sh. Inder Datt Sharma
R/o Village Sadallapur,
Distt. Gautam Budh Nagar, U.P.

Also at

6/9A, Mohalla Maharam,
Vishwas Nagar, Shahdara,
Delhi – 110032.

..... Defendants

Date of Institution : 06.11.2009
Date of Arguments : 04.07.2020
Date of Judgement : 04.07.2020

Judgment

1. The plaintiff has filed the suit for partition stating in the plaint that the plaintiff and the defendants no. 1 to 3 are the real sisters being the daughters of Shri Radhey Shyam and Smt. Nyadri Devi and defendant no. 4 is the husband of the defendant no. 1.
2. It is the case of the plaintiff that Smt. Anar Devi, who was the grandmother of the plaintiff and defendants no.1 to 3, was the owner of the property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi regarding which she had made Will dated January 19, 1960 in favour of her son Radhey Shyam who unfortunately died on February 2, 1996 because of the said reason Smt. Anar Devi executed another Will dated February 3, 1967 in favour of the mother of the plaintiff and defendants no. 1 to 3. The mother of the plaintiff and defendants no. 1 to 3 died on February 4, 2004; intestate. The father of the plaintiff and

defendants no. 1 to 3 was the owner of the property/house bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi who also died intestate. (Both the properties herein after referred to as the 'suit property')

3. It is further the case of the plaintiff that due to operation of law with respect to suit property after the death of the father and the mother of the parties; intestate the plaintiff and defendant no. 1 to 3 became the joint owners of the said properties; liable to be partitioned among them. After the death of the mother of the plaintiff the plaintiff was requesting the defendants no. 1 to 3 to mutually partition the suit property to which the defendants no. 1 to 3 did not accede necessitating the filing of the present suit for partition by the plaintiff.
4. In the joint written statement filed on behalf of the defendants no. 2 and 3 the said defendants have admitted the entire case of the plaintiff and prayed that the property in dispute be partitioned among the plaintiff and the defendant's no. 1 to 3.
5. The contesting defendant in the present case are the defendants no. 1 and 4 who are the husband and wife and in the joint written statement by way of preliminary objections the defense has been taken regarding the suit filed by the plaintiff not being properly valued for the purposes of court fee and jurisdiction. It is also stated that the suit of the plaintiff is liable to be dismissed because Smt. Nyadri Devi had sold the property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi on August 29, 1996 to defendant no. 4 for consideration amount of

Rs.80,000/- and executed General Power Of Attorney, Sale Agreement, Affidavit, receipt of Rs.80,000/- and Will in favour of the defendant no. 4 in front of the sub-registrar in the presence of the plaintiff and defendants no. 1 to 3. It is also the defense of the defendants no. 1 and 4 that the suit filed by the plaintiff is liable to be dismissed as Smt. Nyadri Devi had sold the property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi on February 18, 1974 to defendant no. 4 for a consideration amount of Rs.10,000/- and executed the usual documents along with the receipt for Rs.10,000/- in front of the sub-registrar and in the presence of the plaintiff and defendants no. 1 to 3.

6. Primarily the defense of defendants no. 1 and 4 is that the defendant no. 4 purchased both the properties (suit property) from Smt. Nyadri Devi on the basis of the usual documentation like GPA, Agreement to sell, etc. executed by Smt. Nyadri Devi.

7. On merits the defendants no. 1 and 4 have admitted the contents of the plaintiff in paragraph 1 to 3 in which the plaintiff had averred regarding the relationship of the plaintiff and defendants no. 1 to 3; that the property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi belonged to Smt. Anar Devi who first executed the Will dated January 19, 1960 in favour of the father of the plaintiff Shri Radhey Shyam and after his death in favour of the mother of the plaintiff Smt. Nyadri Devi on February 3, 1967 and same time the defendant no. 4 claims to have purchased the said property from the mother of the plaintiff.

8. In paragraph 5 of the plaint, the plaintiff has averred that Shri Radhey Shyam, father of the plaintiff and the defendants no. 1 to 3 were the owner of the property bearing no. 6/9-A situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi which after his death the plaintiff and the defendants no. 1 to 3 became the owners of the said property by operation of law being the legal heirs of their father. In reply in the written statement of the defendants no. 1 and 4 it is averred, ***"That the contents of Para 5 are denied to the extent that the plaintiff and the defendants No.- 1 to 3 have become the owners of the property bearing No.- 6/9 A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi-110032 by operation of law as their only legal heirs of their said father. It is respectfully submitted that Late Smt. Nyadari Devi had sale out the property bearing No.- 6/9 A, Mohalla Maharam, Shahdara- 110032 on dated 18-2-1974 to the defendant No.- 4 and Late Smt. Nyadari Devi had also received the consideration amount from the defendant No. 4 and then executed General Power of Attorney, Sale Agreement, Receipt of Rs. 10,000/-and Will in favour of the defendant No.-4 in front of the Sub-Registrar in ' the presence of the plaintiff and the defendant No.- 1 to 3".*** It may be noted that there is no specific denial that the father of the plaintiff and the defendants no. 1 to 3; Shri Radhey Shyam was not the owner of the said property. The other material averments of the plaint have been denied by defendants no. 1 and 4 in the written statement.

9. In the replication filed to the written statement of defendants no. 1 and 4 the plaintiff has reiterated and reaffirmed the facts as averred

by the plaintiff in her complaint and denied the material averments of the defendants no. 1 and 4 in the written statement. The replication to the written statement of defendants no. 2 and 3 has also been filed.

10. Perusal of the record reveals that on June 1, 2011 one preliminary issue that was, 'whether this court has no pecuniary jurisdiction to adjudicate upon the present case?' was framed which vide order dated March 4, 2013 was directed to be decided along with other issues to be framed. Vide order dated May 13, 2013 following issues were framed:-

- i. Whether the plaintiff is entitled to a decree of partition as prayed for? OPP
- ii. Whether the plaintiff is also entitled to possession as prayed for? OPP
- iii. Whether this court has no pecuniary jurisdiction to adjudicate upon present matter? OPP 1 and 4.
- iv. Whether the plaintiff is guilty of concealment of true facts from the court? OPD 1 and 4
- v. Whether the suit of the plaintiff is without any cause of action? OPD
- vi. Relief.

10. In order to prove the case, the plaintiff examined herself as PW-1. The examination in chief is by way of affidavit exhibited as Ex. PW-1/A in which PW-1 has deposed to facts which is in consonance with the case as set up by the plaintiff in her plaint. PW-1 has been duly cross-examined by the counsel for the defendants. The plaintiff has relied upon and proved the following documents:-

- i. Certified copy of Will of Smt. Anar Devi in Urdu Ex. PW-1/A
- ii. Translation of Will of Smt. Anar Devi in Urdu Ex. PW-1/2(Colly)
- iii. Copy of House Tax receipt Mark-A.
- iv. Two site plans pertaining to the suit property Ex. PW-1/3 (Colly)
- v. copy of complaint dated October 29, 2009 Ex. PW-1/4.
- vi. Copy of publication Ex. PW-1/5

11. In order to prove the case, the plaintiff examined herself as PW-1. The examination-in-chief is by way of affidavit exhibited as Ex.PW-1/A in which PW-1 has deposed to facts which is in consonance with the case as set up by the plaintiff in her plaint. PW-1 has been duly cross-examined by the counsel for the defendants. The plaintiff has relied upon and proved the following documents :-

1. Certified copy of Will of Smt. Anar Devi in Urdu Ex.PW-1/A.
2. Translation of Will of Smt. Anar Devi in Urdu Ex.PW-1/2(Colly).
3. Copy of house tax receipt Mark-A.
4. Two site plans pertaining to the suit property Ex.PW-1/3(Colly).
5. Copy of complaint dated October 29, 2009 Ex.PW-1/4.
6. Copy of publication Ex.PW-1/5.

12. On behalf of the plaintiff Shri Kapil Sharma, Assistant Zonal Inspector, Shahdara South Zone EDMC has been examined as PW-2 who has proved certain documents related to the suit property pertaining to the payments of tax and the records maintained by the department.

13. In order to disprove the case of the plaintiff the defendants no. 1 and 4 has examined the defendant no. 4 as DW-1 whose examination-in-chief is by way of affidavit Ex. DW-1/1. The pith and substance of the examination in chief of DW-1 is that it is the defendant no. 1 who is the absolute owner of both the properties having purchased the same from late Smt. Nyadari Devi against consideration and on execution of usual documentation i.e. general power of attorney, sale agreement, affidavit,

receipt and Will. DW-1 has relied upon and proved the following documents:-

- i. Gen. Power Of Attorney, Agreement to Sell, affidavit receipt and Will pertaining to property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi Ex. DW-1/A to DW-1/E.
- ii. Gen. Power Of Attorney Dated February 18, 1974 Ex. DW-1/F
- iii. House tax receipts Ex. DW-1/G (Colly).
- iv. Ex. DW-1/H is stated to be an FIR however the said document is the NCR report regarding misplacing of the original documents of the house bearing no. 6/9-A, Mohalla Maharam, Shahdara, Delhi.
- v. Copy of the complainant dated August 3, 2009 to the SHO, PS Farsh Bazar Ex. DW-1/I.

14. Smt. Kusum Lata, who is the defendant no. 1 and wife of defendant no. 4 has been examined as DW-2. The examination in chief of DW-2 is by way of affidavit Ex. DW-2/A. The gist of examination in chief of DW-2 is that it is her husband i.e. defendant no. 4 who is the owner of both the properties as both the properties were sold to defendant no. 4 by her mother Smt. Nyadari Devi.

15. The defendant no. 2 Smt. Satwanti Devi has been examined as DW-3. The examination in chief which is by way of affidavit is Ex. DW-3/A. The examination in chief of DW-2 is in the lines of the case of the plaintiff.

16. Smt. Sheela Devi has been examined as DW-4. The examination in chief of DW-4 as exact replica of the examination in chief of DW-3.

17. I have heard the arguments and perused the record as well as the written submissions filed by the counsel for the plaintiff as well as defendants no.1&4. The issue wise opinion of the court is here in under.

Issue no. 1 Whether the plaintiff is entitled to a decree of partition as prayed for? OPP

17. If the suit properties belonged to the parents of the plaintiff and the defendant no. 1 to 3 and if they died intestate in such circumstances the plaintiff and the defendants no. 1 to 3 being the legal heirs/sisters would be the co-owners of the suit property and the said property would be liable to be partitioned.

18. From the averments of the plaint it has to be seen as to who was the owner of the suit property. There are two different properties; with respect to property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi in para 2 and 3 of the plaint it has been averred that Smt. Anar Devi i.e. the grandmother of the plaintiff and the defendants no. 1 to 3 was the owner of the said property. Smt. Anar Devi executed the Will dated January 19, 1960 in favour of her son (i.e. the father of plaintiff and defendants no. 1 to 3) Radhey Shyam and as Radhey Shyam expired on February 2, 1966 Smt. Anar Devi executed another Will dated February 3, 1967 in favour of her daughter-in-law i.e. the mother of the plaintiff and the defendants no. 1 to 3.

19. In the written statement of defendant no. 1 and 4 with respect to averments in para 2 and 3 of the plaint there is implicit admission as with respect to the said paragraph of the plaint in the written statement of defendant no. 1 and 4 in reply on merits it has been averred, "**2. That the contents of Para 2 are matter of record. It is respectfully**

submitted that the plaintiff has not filed any will dated 19-1-1960 along with her suit. 3. That the contents of Para 3 are matter of record."

20. From the averments in the plaint and the admission in the written statement it is proved because of admission that with respect to property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi, it was the mother of the plaintiff who was the owner of the said property and being the owner the mother of the plaintiff had all the right to dispose of the said property by way of sale even to the defendant no. 4. This aspect shall be touched upon by the Court at an appropriate stage.

21. Coming to the other property in dispute i.e. property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi in para 5 of the plaint it has been averred that Shri Radhey Shyam the father of the plaintiff was the owner of the said property and after his death the plaintiff and the defendants no. 1 to 3 became the owners of the said property by operation of law being the only legal heirs. In the written statement of defendant no. 1 and 4 it has been averred with respect to para 5 for the plaint on merits, ***"That the contents of Para 5 are denied to the extent that the plaintiff and the defendants No.- 1 to 3 have become the owners of the property bearing No.- 6/9 A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi- 110032 by operation of law as their only legal heirs of their said father. It is respectfully submitted that Late Smt. Nyadari Devi had sale out the property bearing No.- 6/9 A, Mohaal (sic) Maharam, Shahdara- 110032 on dated 18-2-1974 to the defendant No.- 4 and Late Smt. Nyadari Devi had also received the***

consideration amount from the defendant No.-4 and then executed General Power of Attorney, Sale Agreement, Receipt of Rs. 10,000/- and Will in favour of the defendant No.-4 in front of the Sub-Registrar in the presence of the plaintiff and the defendant No.- 1 to 3." There is no specific denial with respect to the averments in the plaint that with respect to the property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi it was the father of the plaintiff who was the owner of the said property therefore the averments in paragraph 5 of the plaint regarding the father of the plaintiff being the owner of the said property is deemed to be admitted by the defendants no. 1 and 4. It may be mentioned here that in cross-examination of defendant no. 1 on November 28, 2015 as DW-1, the defendant no. 4 admitted, " *My father in law was not alive, when I got married to Smt Kusumlata. It is correct that my father in law was the absolute owner of the property bearing no. 6/9/A, Mohalla Maharam Shahdara, Delhi. It is correct that as per my knowledge, my father in law had not executed any WILL prior to his death.*"

22. As it is not the case of the plaintiff that the father of the plaintiff died leaving behind any Will and it has been admitted by the defendant no. 4 that his father-in-law did not execute any Will prior to his death, therefore by operation of law the mother of the plaintiff, plaintiff and the defendants no. 1 to 3 became the co-owners of the said property and the mother of the plaintiff Smt. Nyadari Devi could not have sold the entire property to the defendant no. 4. At best Smt. Nyadari Devi could have sold to defendant no. 4 only her joint interest in the said property. As it is neither the case of the plaintiff nor that the defendants specially defendants no. 1 and 4 that Smt. Nyadari Devi sold only her joint interest in the property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas

Nagar, Shahdara, Delhi therefore the documents like Gen. power of attorney executed by Smt. Nyadari Devi in favour of defendant no. 4 dated February 18, 1974, Agreement to Sell dated March 14, 1974 executed by Smt. Nyadari Devi in favour of defendant no. 4; Mark-A, receipt of payment of · Rs.10,000 dated March 14, 1974 by Smt. Nyadari Devi; Mark-B and Will executed by Smt. Nyadari Devi; Mark-C bequeathing property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi to defendant no. 4 could not have transferred the property to defendant no. 4 as one cannot give what one does not have and Smt. Nyadari Devi was not the owner of the said property she could not have transferred the same to defendant no. 4.

23. It may also be observed that in view of the judgment of the Hon. Supreme Court in **Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana 2011(183) DLT 1**; case the above said documents have been held ineffectual in transferring any right, title or interest in favour of defendant no. 4.

24. On the basis of the section 202 of Contract Act, it could have been argued by the counsel for the defendants that as Gen. power of attorney dated February 18, 1974 with respect to property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi is coupled with interest (as the defendant no. 4 had paid · Rs.10,000/- evidenced by Mark-B) therefore the said Gen. power of attorney was irrevocable and even if on the basis of said document the defendant no. 4 could not have been said to be the owner in the classical sense of the word, the defendant no. 4 had some rights in the said property. Assuming such arguments were addressed by the counsel for the defendant no. 1 and 4 the same could have been repelled on the ground that under section

17(1)(c) of the Registration Act the receipt of consideration on account of the creation, declaration, assignment, limitation or extinction of an interest of the value of Rs.100 or upwards in an immovable property is compulsorily reasonable and as the receipt of payment of consideration amount by the defendant no. 4 to Smt. Nyadari Devi was compulsorily registerable but the receipt Mark-B is not registered in view of section 49 of the Registration Act, it would not affect the property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi in any manner with respect to its ownership or transfer and also the receipt Mark-B cannot be received as evidence of any transaction affecting the said property.

25. The end result of attraction of provisions of Registration Act would be that the general power of attorney dated February 18, 1974 on the basis of which the defendant no. 4 is asserting to be the owner of the property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi cannot be taken to be the Gen. power of attorney coupled with interest and therefore the said general power of attorney was revocable which stood revoked after the death of Smt. Nyadri Devi.

26. There is one aspect with respect to the general power of attorney dated February 18, 1974 and other documents executed by Smt. Nyadari Devi and that is in the examination-in-chief of the defendant no. 4 Ex. DW-1/1 it has been deposed to in para 3 that these documents were executed in front of Sub-Registrar indicating that these documents were registered and the examination of back page no. 3 of Gen. power of attorney dated February 18, 1974 reveals that there is the mark of the Sub-Registrar and it appears that the said document was registered on March 7, 1974 however in the written statement or in the deposition of

defendant no. 4 no details regarding the registration was given by the defendant no. 4. The defendant no. 4 has filed an NCR no. 1745/2009; Ex. DW-1/H which indicates that the documents of property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi were lost despite that defendant no. 4 did not make any effort to examine any witness from the office of Sub-Registrar where the said documents were registered and also did not make any effort to procure the copy of the certified copies from the office of the Sub-Registrar. It indicates the probability that the documents with respect to property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi which the defendant no. 4 asserts to have been executed before the Sub-Registrar were never executed so and also that these documents might be forged and/or fabricated. This observation is by way of digression and the present judgment is not affected by the said observation in any manner.

27. On the documentation that is Gen. power of attorney dated February 18, 1974, Deed of Agreement to Sell dated March 14, 1974, receipt dated March 14, 1974 and Will of Smt. Nayadari Devi the defendant no. 4 cannot claim to be the owner of the property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi for the reason that the said property did not belong to Smt. Nyadri Devi and she could not have transferred any better title in it to defendant no.4 than she herself had in it. It would also pertinent to state here that the receipt regarding payment of tax of any immovable property with any government department does not confer any right of ownership to any person whose name might have been shown to be the owner of the said property in the receipt of tax issued by the government department. The tax receipt issued by MCD and filed by the defendant no. 4 in support of the claim of the defendant no. 4 to be the owner of the property bearing

no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi is of no consequence. At best the receipts are the evidence of the fact that tax had been paid with respect to the said property with MCD and nothing more.

28. As the property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi was alleged by the plaintiff and admitted by the defendants no. 1 and 4 was that of the father of the plaintiff Shri Radhey Shaym who admittedly expired on February 2, 1966, intestate therefore the property rights devolved upon the legal heirs of Shri Radhey Shayam i.e. the plaintiff, defendant no. 1 to 3 and Smt. Nyadari Devi. As Smt. Nyadari Devi died intestate on February 4, 2004 the rights in said property devolved upon the plaintiff and the defendants no. 1 to 3. And further the said properties liable to be partitioned among them.

29. The defendant no. 4 is staking his claim over the property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi on the basis of General Power of Attorney Ex. PW-4/A, Sale Agreement Ex. DW-4/B, Affidavit Ex. DW-4/C, Receipt Ex. DW-4/D and Will Ex. DW-4/A. However, the defendant no. 4 in his cross-examination on November 28, 2015 on page no. 2 deposed, **"I am not claiming ownership in respect of this property on the basis of the alleged Will Ex. DW-1/E."**

30. It appears that in the written arguments filed on behalf of the counsel for the plaintiff there is some misunderstanding regarding the deposition of defendant no. 4 as in the written submission it has been stated by the counsel for the plaintiff that, *"...the defendant No. 4 who entered the witness box as DW-1, in his cross examination recorded on*

28.11.2015 categorically testified that he was claiming ownership in respect of the immovable property bearing No. 6/10-11, Mahalla Maharam, Vishwas Nagar, Shahdara, Delhi on the basis of the alleged Will Ex. DWI/E of late Smt. Niyadri Devi and not on the basis of the sale purchase documents Ex. DW-1/A to DW-1/D," which is contrary to the record. Be that as it may, as already discussed hereinabove in the light of the judgment of the Hon. Supreme Court in **Suraj Lamp (supra)** the ownership of an immovable property does not gets transferred on the basis of execution of Gen. power of attorney, Sale Agreement, Affidavit, receipt and Will. The General Power Of Attorney executed by Smt. Nyadari Devi; DW-1/A with respect to property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi of which Smt. Nyadari Devi was the owner does not contain any stipulation with respect to payment of any consideration for the execution of the said Gen. power of attorney. The payment of consideration for the purpose of execution of Gen. power of attorney; Ex. DW-1/A is evidenced by receipt; Ex. DW-1/D which is an unregistered document and which in view of section 17(1)(c) and section 49 of the Registration Act cannot be read in evidence implying thereby that the General Power Of Attorney; Ex. DW-1/A is without consideration which does not attract section 202 of Contract Act making the general power of attorney Ex. DW-1/A revocable and which stands revoked by the death of Smt. Nyadari Devi.

31. The documentation Ex. DW-1/A to Ex. DW-1/D in view of aforesaid discussion does not confer the status of owner with respect to property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi upon the defendant no. 4. Further, nothing turns on on the basis of Will Ex. DW-1/E as first, the defendant no. 4 in his deposition

has disowned the said document and second, Ex. DW-1/E has not been proved as per section 68 of Evidence Act.

32. In the light of discussion herein above it has to be held that with respect to property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi it has to be held that it was Smt. Nyadari Devi who was the owner of it who died intestate leaving behind the plaintiff and defendants no. 1 to 3 as the legal heirs and as this Court has held that the documents on the basis of which defendant no. 4 was claiming to be the owner of the said property could not be held to be the owner therefore after the death of Smt. Nyadari Devi the property bearing no. 6/10-11 situated at Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi is liable to be partitioned among the plaintiff and defendants no. 1 to 4.

33. The issue under discussion is decided in favour of the plaintiff and against the defendants holding that plaintiff is entitled for a decree of partition of the suit property.

Issue no. 2 Whether the plaintiff is also entitled to the possession as prayed for? OPP

31. As the suit property is liable to be partitioned, all the legal heirs of Smt. Nyadari Devi and Shri Radhey Shyam i.e. the plaintiff and the defendants no. 1 to 3 are entitled to separate possession/share in the suit property as per the final decree to be passed in this case. Issue under discussion is decided in favour of the plaintiff and against the defendants.

Issue no. 3 Whether his court has no pecuniary jurisdiction to adjudicate upon the present matter? OPD 1 and 4.

32. This issue has not been pressed by the counsel of defendants no. 1 and 4. At the same time it may also be said that defendants no. 1 and 4 have not proved that the value of suit property at the time of institution was more than the pecuniary jurisdiction of this court. The pecuniary jurisdiction of the court is dependent upon the market value and the 'circle rate' as fixed by the government for revenue purpose is not the market value. The market value of any property may be more or less than the circle rate.

Issue no. 4 Whether the plaintiff is guilty of concealment of true facts from the court? OPD 1 and 4

33. As the suit is for partition and not for injunction even if it is assumed that the plaintiff has concealed any fact from the court the plaintiff cannot be non-suited. While discussing issue no. 1 the plaintiff has found to be entitled for decree of partition for which the plaintiff has filed the present suit. In the written submission filed by the counsel for the defendants no. 1 and 4, it has not been stated and referred to clearly as to the facts which had been concealed and the same were material for the just decision of the present suit. Present issue is decided in favour of the plaintiff and against the defendants no. 1 and 4.'

Issue no. 5 Whether the suit of the plaintiff is without any cause of action.

34. In the light of discussion of issue no. 1, it cannot be said that the suit of the plaintiff is without any cause of action. Issue is decided in favour of the plaintiff and against the defendants.

Relief

In the light of the decision of the court on the issue framed the suit property i.e. property bearing no. 6/10-11 situated at Mohalla

Maharam, Vishwas Nagar, Shahdara, Delhi and property bearing no. 6/9A, situated in Mohalla Maharam, Vishwas Nagar, Shahdara, Delhi as shown in site plan Ex.PW-1/3(colly) is liable to be partitioned and the plaintiff and the defendants no. 1 to 3 are entitled to 1/4th share each in the said property.

Preliminary decree sheet be prepared in terms of the judgment.

Announced through WebEx

On 4th July, 2020
from residence

(VIJAY KUMAR JHA)
Addl. District Judge-02(East)
Karkardooma Courts, Delhi.