

IN THE COURT OF SH. M. P. SINGH, ADDITIONAL DISTRICT
JUDGE-03, EAST DISTRICT, KARKARDOOMA COURTS: DELHI

CS no. 1445/16

Sh. Yashvir Jain
S/o Late Sh. Chetan Lal Jain
R/o 9/3569, Old Dharampura,
Gandhi Nagar, Delhi - 110031

Also at

9/3566, Old Dharampura,
Gandhi Nagar, Delhi - 110031

..... Plaintiff

Versus

1. Sh. Brij Mohan
S/o late Sh. Chetan Lal Jain
R/o 9/3569, Old Dharampura,
Gandhi Nagar, Delhi-110031.

2. Sh. Lal Bahadur,
S/o late Sh. Chetan Lal Jain
R/o 9/3569, Old Dharampura,
Gandhi Nagar, Delhi-110031.

3. Smt. Usha Jain,
W/o Sh. Pardeep Jain,
D/o Late Sh. Chetan Lal Jain,
R/o 9/346, Gali no. 8,
Dharampura, Gandhi Nagar, Delhi-110031.

4. Smt. Nisha Jain,
W/o Sh. Sandeep Jain,
D/o Late Sh. Chetan Lal Jain,
R/o B-29/4, Gali no. 3,
Arjun Mohalla Sabzi Mandi,
Moujpur, Delhi - 110053

.....Defendants

SUIT FOR PARTITION AND PERMANENT INJUNCTION

Suit instituted on - 03.12.2015
Judgment pronounced on - 04.11.2019

JUDGMENT

1. Late Chetan Lal Jain was the owner of property no. 9/3566, Old Dharampura, Gandhi Nagar, Delhi (for short the 'suit property'). Sh. Chetan Lal Jain died intestate on 25.10.2017 and his wife passed away on 12.05.2011. They were survived by three sons namely Yashvir Jain (plaintiff), Brij Mohan Jain (defendant no. 1), Lal Bahadur Jain (defendant no. 2) and two daughters, namely, Usha Jain (defendant no. 3) and Nisha Jain (defendant no. 4). Plaintiff avers that the suit property had been purchased by his grandfather in his father's name. He states that the ownership documents of the suit property are not in his possession. According to him, such documents are lying with defendants no. 1 and 2. He states that he has not relinquished his share of the joint family property in favour of other joint owners. He alleges that the defendants are threatening to sell out the suit property. Plaintiff's legal notice dt. 05.09.2012 (Ex. PW1/2) to the defendants thereby demanding partition was of no avail. On these averments, plaintiff filed the present suit for partition and permanent injunction to restrain the defendants from selling out, transferring, alienating or parting with its possession.

2. Defendants no. 1 and 2 filed their written statement on 29.11.2016. They state that there has already been an amicable partition of the suit property as per the desire of their father; that since the lifetime of their

father, they and the plaintiff are in possession of their respective shares of the suit property; that defendants no. 3 and 4 are the married sisters and they are residing at their respective matrimonial houses; that their mother had executed a duly registered Relinquishment Deed dt. 27.07.2010 in respect of her 1/6th undivided share in favour of defendant no. 1; that plaintiff's assertions that the suit property has not been partitioned is incorrect; that in view of the Relinquishment Deed of 27.07.2010, defendant no. 1 is entitled to 2/6 share and plaintiff and defendants no. 2, 3 and 4 are entitled to 1/6 share each in the suit property; that however there has already been an amicable partition amongst the legal heirs of late Chetan Lal Jain. As regards the nature of property documents, they state that they only have a General Power of Attorney dt. 24.07.1980 executed in their father's favour. Defendants no. 1 and 2 sought dismissal of the suit.

3. Defendants no. 1 and 2 had been served on 01.01.2016. Together with the written statement they filed an application under Order VIII Rule 1 read with section 151, CPC. In their application they stated that on account of the fact that the matter had been referred to mediation centre, they could not file their written statement within the stipulated time.

4. Perusal of the record reveals that the matter was referred to mediation centre on 04.01.2016. It was received back on 04.03.2016 as unsettled. It was again sent to mediation centre on 17.05.2016 and returned as unsettled on 07.10.2016. Written statement was filed on 29.11.2016. It is clear that even after discounting the number of day when the matter was

before the mediation centre, the written statement was filed beyond the stipulated period of 90 days. The defendants stopped appearing and they were proceeded *ex parte* on 28.11.2017. Defendants no. 1 and 2 did not pursue their application under Order VIII Rule 1 read with section 151, CPC for condonation of delay in filing their written statement. Given the fact that defendants no. 1 and 2 did not pursue their aforesaid application and also the fact that Ld. Predecessor of this Court framed no issues and proceeded to record plaintiff's evidence on 04.04.2018, it is to be taken that the written statement of defendants no. 1 and 2, filed beyond the period of 90 days, had been struck off. It is being taken that the defence of defendants no. 1 and 2 is struck off.

5. Defendants no. 3 and 4 despite being served did not appear. Neither did they file their written statement. As already mentioned hereinabove, all the defendants suffered the proceedings *ex parte* on 28.11.2017.

6. In plaintiff's evidence, plaintiff (PW1) was the sole witness. He examined himself on 04.04.2018. He was not cross-examined.

7. Defendants led no evidence.

8. Arguments heard. Record perused.

9. Plaintiff (PW1) in his evidence has deposed entirely along the same lines as averred in the plaint. His evidence has gone unrebutted and unchallenged. It is not in dispute that Sh. Chetan Lal Jain and his wife have already passed away. It is also not in dispute that Chetan Lal Jain and his

wife passed away intestate. It is also not in dispute that the suit property belonged to Chetan Lal Jain. In fact, defendants no. 1 and 2 in their written statement state that they have with them a General Power of Attorney dt. 24.07.1980 executed in favour of their father in relation to the suit property. It is also not in dispute that Sh. Chetan Lal Jain and his wife were survived by three sons namely Yashvir Jain (plaintiff), Brij Mohan Jain (defendant no. 1), Lal Bahadur Jain (defendant no. 2) and two daughters, namely, Usha Jain (defendant no. 3) and Nisha Jain (defendant no. 4). Consequently, the plaintiff is certainly entitled to a preliminary decree for partition qua the suit property.

10. There is no proof of prior partition as contended by defendants no. 1 and 2 in their pleadings. There is neither any proof that mother of the parties had executed a registered relinquishment deed dt. 27.07.2010 in respect of her 1/6 undivided share in the suit property in favour of defendant no. 1. No such copy of the relinquishment deed is there on the judicial record.

11. In view of the above, the plaintiff is entitled for a preliminary decree for partition of the suit property no. 9/3566, Old Dharampura, Gandhi Nagar, Delhi. It is ordered that Yashvir Jain (plaintiff), Brij Mohan Jain (defendant no. 1), Lal Bahadur Jain (defendant no. 2), Usha Jain (defendant no. 3) and Nisha Jain (defendant no. 4) have 1/5 share each in the suit property bearing no. 9/3566, Old Dharampura, Gandhi Nagar, Delhi-31. It is also ordered hereby that till the time final decree is not drawn up, none of

the parties to the suit shall not sell off or transfer or alienate the suit property. Preliminary decree sheet for partition be drawn up.

Announced in the open Court
on 04th November, 2019

(M. P. Singh)
Addl. District Judge-03, East, Delhi
04.11.2019