

**IN THE COURT OF VIKAS GARG, DJ-05 (EAST),
KARKARDOOMA COURTS, DELHI.**

CS No. 3456/16

CNR No. DLET01-014566-2016

1. Shri Mansa Ram
S/o Late Shri Jhabban
R/o 35/409, Block-35
Trilok Puri, Delhi-110091.

**(expired on 09.06.2020, no additional person was substituted
as a party in his place in this case, as all the legal heirs were
already on record.)**

2. Smt. Usha Rani
W/o Shri Birpal
R/o 13/348, Block-13
Trilok Puri, Delhi-110091.

3. Shri Sunil Kumar
S/o Shri Mansa Ram
R/o 17/480, Block-17
Trilok Puri, Delhi-110091

....Plaintiffs

Versus

1. Shri Manoj Kumar
S/o Shri Mansa Ram
R/o H.No.35/409, Ground Floor
Block-35, Trilok Puri, Delhi-110091

2. Smt.Asha Rani
W/o Shri Anil Kumar
R/o 35/295, Block-35
Trilok Puri, Delhi-110091

3. Delhi Urban Shelter Improvement Board
Government of NCT, DelhiDefendants

Date of Institution : 16.12.2016
Date of Final Arguments : 13.09.2024
Date of Decision : 27.09.2024
Final decision : Preliminary Decree

**SUIT FOR PARTITION, MANDATORY AND
PERMANENT INJUNCTION.**

J U D G M E N T

1. By this judgment, the suit of the plaintiff seeking partition, as well as mandatory and permanent injunction, shall be adjudicated.

CASE OF THE PLAINTIFF AS PER PLAINT

Briefly, the essential facts required for a fair adjudication of the present suit, as presented in the plaint, are as follows:

2. The plaintiffs assert ownership of the property located at 35/409, Block-35, Trilok Puri, Delhi-110091 (hereinafter referred to as the "suit property"), inherited from the late Smt. Daya Wati. She acquired the property through a General Power of Attorney, Deed of Will, Affidavit, Agreement to Sell, and Receipt, all dated 22.10.2012. Smt. Daya Wati, who had a family consisting of her husband Mansa Ram and children Asha Rani, Usha Rani, Sunil Kumar, and Manoj Kumar (defendant no. 1), expressly

disowned defendant no. 1 and his family through a publication in the *Rashtriya Sahara* newspaper dated 24.07.2009 due to their cruel behavior.

Following her death on 29.12.2014, the plaintiffs permitted defendant no. 1 to temporarily reside on the ground floor of the suit property based on his assurance to vacate after the 'Terahvi'. However, despite repeated requests and a legal notice dated 11.08.2016 revoking his license, defendant no. 1 refused to vacate, causing wrongful loss to the plaintiffs and unjust enrichment to himself.

The plaintiffs state that they have a prima facie case, as defendant no. 1, being a licensee whose license has been revoked, has no legal right to remain in the suit property or to transfer any interest in it. They state that the balance of convenience lies in their favor and that they will suffer irreparable harm if the injunction is not granted. The plaintiffs previously filed a similar suit, which was dismissed for lack of jurisdiction; thus, they now seek redress in this Hon'ble Court. Accordingly, the plaintiffs pray for a decree of partition of the suit property, a permanent injunction restraining the defendants from creating third-party interests, a mandatory injunction for defendant no. 1 to vacate the ground floor, an award of costs, and any other relief that the Court deems fit under the circumstances.

**CASE OF THE DEFENDANTS AS PER WRITTEN
STATEMENT:-**

Briefly, the essential facts required for a fair adjudication of the present suit, as presented in the Written Statement, are as follows:

3. The defendants state that the plaintiffs' suit lacks a valid cause of action and locus standi, as all disputes regarding the estate of the late Smt. Daya Wati were resolved through an oral family settlement within 14 days of her demise on 29.12.2014. The estate comprised the property at 35/409, Trilok Puri, Delhi-95, retirement benefits amounting to approximately ₹9 to 11 lakhs, a monthly pension of ₹12,000, and jewellery worth approximately ₹7 lakhs. On 12.01.2015, a mutual agreement was reached among the parties wherein it was decided that the property would belong to defendant no. 1 and his family, while the movable assets would be allocated to plaintiff no. 3 for purchasing a new home. It was further agreed that plaintiff no. 1 would receive the monthly pension of Smt. Daya Wati for his lifetime, and the other plaintiffs voluntarily relinquished their shares in favor of their brothers. The defendants assert that this settlement has been fully acted upon, with the property currently in the exclusive possession of defendant no. 1 and the agreed-upon distributions executed.

The defendants state that the oral family settlement is

binding, preventing any partitioning of the estate and rendering the plaintiffs' suit an abuse of process. They deny all allegations of wrongdoing, including any claims of cruelty or undue pressure towards the plaintiffs, and contend that the plaintiffs have no other effective remedy except to pursue this litigation. Therefore, the defendants request that this Hon'ble Court dismiss the plaintiffs' suit with substantial costs awarded to them, alongside any other appropriate relief in light of the circumstances.

4. In this case, the Delhi Urban Shelter Improvement Board (DUSIB) was included as a party by the court's order dated 14.02.2023. However, DUSIB did not submit a written statement, lead any evidence, or cross-examine the plaintiff's witnesses. The only document submitted by DUSIB was a report indicating that, according to the site register, plot no. 35/409, Trilok Puri, Delhi, is categorized as an unallotted plot, although it remains under the management and control of DUSIB, Government of NCT of Delhi.

5. Defendant Nos. 1 and 2 failed to submit their written statement within the prescribed limitation period. As a result, the court closed their right to file the written statement, which was subsequently taken off the record as per court orders. Their defense was struck off, and no issues were framed. Despite this, the defendants cross-examined the

plaintiff's witnesses and presented their defense, owing to the plaintiffs' failure to raise timely objections at that stage.

6. During the trial, Plaintiff No. 1, Sh. Mansa Ram, the father of the remaining plaintiffs and Defendant Nos. 1 and 2, passed away. Since all of his legal heirs were already parties to the case, no additional substitution of parties was required. His legal heirs automatically stepped into his shoes and inherited his share. No objections or challenges have been raised against this on the record.

Plaintiffs' Evidence:-

7. To prove the case, the plaintiff no. 1 **Sh. Mansa Ram** testified as PW-1 and submitted his affidavit as Ex. PW-1/A during his examination-in-chief, reiterating the contents of the plaint. He relied on the following documents as part of his evidence:

1. Ex.PW1/1 to Ex.PW1/5 as photocopies of GPA, Deed of Will, Affidavit. Agreement to Seil, Receipt all dt. 26.10.2012.
2. Ex.PW1/6 as photocopy of public notice dt. 24.7.2009.
3. Ex.PW1/7 as copy of site plan
4. Mark A (colly) as four photographs
5. Ex.PW1/9 as copy of complaint dt. 21.7.2009.

6. Ex.PW1/10 as copy of complaint dt. 21.4.2016.
7. Ex.PW1/11 as a copy of electricity bill.
8. Ex.PW1/12 as a copy of my voter I-card.
9. Ex.PW1/13 as copy of notice dt. 11.8.2016.
- 10.Ex.PW1/14 and Ex.PW1/15 as postal receipts and registered post.

PW-1 was cross-examined by the learned counsel representing both defendants.

The plaintiff no. 2 **Smt. Usha Rani** testified as PW-2 and submitted her affidavit as Ex. PW-2/A during his examination-in-chief, reiterating the contents of the plaint. He relied on the already exhibited documents Ex. PW1/1 to Ex. PW1/15 as part of her evidence.

PW-2 was cross-examined by the learned counsel representing both defendants.

The plaintiff no. 3 **Sh. Sunil Kumar** testified as PW-3 and submitted his affidavit as Ex. PW-3/A during his examination-in-chief, reiterating the contents of the plaint. He also relied on the already exhibited documents Ex. PW1/1 to Ex. PW1/15 as part of his evidence.

PW-3 was cross-examined by the learned counsel representing both defendants.

Defendants' Evidence:-

8. To prove his case, the Defendant no. 1 **Sh. Manoj**

Kumar testified as DW-1 and submitted his affidavit as Ex. DW-1/A during his examination-in-chief, reiterating the contents of the Written Statement.

He was cross-examined by the learned counsel for the plaintiffs.

The Defendant no.2 **Ms. Asha Rani** testified as DW-2 and submitted her affidavit as Ex. DW-2/A during her examination-in-chief, reiterating the contents of the Written Statement.

She was cross-examined by the learned counsel for the plaintiffs.

Arguments:-

9. I have carefully considered the rival contentions of all the parties, examined the case record, and reviewed the relevant legal provisions and precedents. Learned counsel for the plaintiff argued in line with the averments made in the plaint. He emphasized that the defendants' right to file their written statements was struck off due to their failure to submit within the prescribed period of limitation. In support of his arguments, he relied on the judgment of the Hon'ble Delhi High Court in ***Chiranjee Lal & Anr. v. Bhagwan Das & Ors.***, 1991 SCC OnLine Del 356, where the Hon'ble Court observed:

“21. Issue No. 5

A contention was raised that as there exists a joint lease in respect of the plot in question from the Government and the plot cannot be divided in view of the terms of the lease deed, thus, the property in question cannot be partitioned by metes and bounds. Similar question arose for decision in *Inderjit Singh v. Tarlochan Singh*, 1991 Rajdhani LR 239 and it was held that the super structure built on a plot can be partitioned by metes and bounds according to the respective shares of the parties while keeping the plot underneath the structure as joint and no permission of the lessor is needed for effecting the partition of the building by metes and bounds. I respectfully agree with the ratio expressed in this judgment and hold that no permission is liable to be obtained from the Delhi Development Authority for partitioning the building in question according to the shares of the parties. Now the question whether physically the building could be partitioned by metes and bounds according to the shares of the parties mentioned above, could be decided only by the Local Commissioner who is to be appointed for suggesting mode of partition.”

Learned Counsel for the Plaintiff also submitted a copy of Circular No. Dir (JJR)/DUSIB/2020/D-63, which pertains to the grant of freehold/ownership rights in 45 Jhuggies.

On the other hand, Learned Counsel for DUSIB contended that the present suit is not maintainable, as the plaintiff and other defendants are not the owners of the suit property. He further argued that the suit property was never allotted to the plaintiffs and emphasized that DUSIB grants only a license in such properties, which is not heritable. In support of this

arguments, he relied on the following decisions:

1. ***Smt. Kamla Bajaj v. Sh. Rakesh Bansiwal & Ors.***, [Delhi High Court, 11.08.2010, CM (M) No. 1024/2010 & CM No. 14260/2010], where the Hon'ble High Court observed that a license is a personal privilege and is neither transferable nor heritable.
2. ***Pradeep Oil Corporation v. Municipal Corporation of Delhi & Ors.***, AIR 2011 SC 1869, and ***Shub Karan Bhubna @ Shub Karan Prasad Bub v. Sita Saran Bhubna & Ors.***, AIR 2009 SC (Supp) 2863, both decisions of the Hon'ble Supreme Court.
3. He also cited the judgment of the Hon'ble Delhi High Court in ***Wazirpur Bartan Nirmata Sangh v. Union of India & Ors.***, 103 (2003) DLT 654.

Additionally, he outlined the conditions of the license and argued that these conditions were breached in the present case.

Learned Counsel for Defendant No. 1 argued that no relief for partition can be claimed without also seeking possession, especially when the plaintiffs have asserted that Defendant No. 1 is in the possession of the suit property. He further contended that the plaintiffs based their claim of Defendant

No. 1's exclusion from the property on a newspaper publication, and therefore, a declaration should have been sought to formally establish that Defendant No. 1 has no right, title, or interest in the property.

Additionally, he argued that Mansa Ram, one of the original plaintiffs, passed away during the pendency of the suit, and no amendments were made to address the distribution of his share, nor were any issues framed in this regard.

Defendant No. 2 initially aligned her defense with that of Defendant No. 1, but later shifted her stance to support the plaintiffs' case. During her cross-examination, she retracted from her earlier position. As a result, Learned Counsel for Defendant No. 2 did not present substantial arguments, likely due to this change in Defendant No. 2's stand.

Findings:

10. **DUSIB Contentions:** As per DUSIB, the suit property cannot be partitioned as it belongs to DUSIB. Initially, DUSIB was not a party to this case, and no relief has been sought against it. However, by order dated 20.07.2022, notice was issued to DUSIB to inform the court whether it had any interest in the disputed property. Subsequently, by order dated 14.02.2023, the predecessor court, suo moto, added DUSIB as a party after DUSIB claimed control and management over the property. Despite being made a party,

DUSIB did not file a written statement, did not cross-examine the witnesses of the plaintiff or other defendants, and did not lead any evidence. DUSIB asserted that the suit property is licensed property, which cannot be partitioned, as licenses are not inheritable. It also contended that no permanent structure or multi-story buildings could be constructed on DUSIB property.

At this juncture, it is pertinent to cite the ruling of the Hon'ble Supreme Court in **Trinity Infraventures Ltd. v. M.S. Murthy**, 2023 SCC OnLine SC 738, 2023 LiveLaw (SC) 488, where the Court made the following observation:

“113. In the case on hand, the obstructionists do not claim title under any one of the parties to the litigation. They set up independent title in themselves. What was filed by Dildar-Un-Nissa Begum was only a suit for partition. In a suit for partition, the Civil Court cannot go into the question of title, unless the same is incidental to the fundamental premise of the claim.

114. Take for instance a suit filed for partition by a member of the Hindu Undivided Family. If one of the coparceners or an alienee from such coparcener, claims independent title to one of the properties bought in his individual name, it may be open to the Court while trying the suit for partition to decide whether such a property belongs exclusively to the defendant. To this limited extent, examining the title of a party to the suit schedule property is permissible even in a suit for partition.

115. But in a simple suit for partition, the parties cannot assert title against strangers, even by impleading them as proforma respondents. The strangers who are impleaded in a partition suit, may have nothing to say about the claim to partition. But they may have a claim to title to the property and such a claim cannot be decided in a partition suit.”

It is clear that this court cannot adjudicate the issue of DUSIB's ownership over the suit property in this case. There is no dispute over the principle that the rights of a licensee are not inheritable. DUSIB's contention is maintainable only if any relief is claimed against it, which is not the case here. As observed in the **Trinity Infraventures** (supra) ruling, the title in a simple partition suit cannot bind third parties. The judgment of the Hon'ble Delhi High Court in the case of **Chiranji Lal & Anr. v. Bhagwan Das & Ors.** [1991 SCC OnLine Del 356], cited by the learned counsel for the plaintiffs, is also pertinent to this matter.

Furthermore, DUSIB did not file a written statement, cross-examine witnesses, or present any defense evidence.

The Ld. Counsel for DUSIB also argued that the suit property is an illegal structure, but this issue was not under consideration in this case. If DUSIB holds ownership or any rights over the property, it may take appropriate legal action. The case laws cited by the Ld. Counsel for DUSIB are not relevant to the present facts and circumstances.

Publication in Newspaper:- In the present case, the plaintiff sought the partition of the suit property among the plaintiffs and defendant no. 2 according to metes and bounds. It was asserted by the plaintiff that defendant no. 1 is not entitled to any share, as the suit property belonged to the mother of plaintiffs no. 2 and 3, as well as the defendants. The plaintiff further claimed that the mother had disinherited defendant no. 1, Manoj Kumar, along with his wife and children, from her movable and immovable properties through a public notice dated 24.07.2009, published in Rashtriya Sahara newspaper.

Firstly, the plaintiffs have not presented any evidence to support this claim. Secondly, there is no legal provision that disqualifies defendant no. 1 from inheriting his mother's property based solely on such a publication. However, debarment from inheritance through a public notice, as claimed by the plaintiffs, has no legal effect under inheritance law. The absence of a written WILL formally disinheriting defendant no. 1 means that he remains legally entitled to his share of the deceased's property, regardless of any public notice.

Therefore, no valid ground has been established to deprive defendant no. 1 of his share in the suit property. Consequently, defendant no. 1 is entitled to a share in the property.

Defence of Defendants': The right of the defendants to file a

written statement was closed by the court on 03.04.2017, and their defense was subsequently struck off. As a result, the contents of the written statement could not be considered. However, due to the absence of any objection from the plaintiffs, the defendants were allowed to cross-examine the plaintiff's witnesses and present their defense evidence. The plaintiffs contended that such cross-examination and defense evidence could not be read without the written statement being taken on record. Interestingly, the Ld. Counsel for defendant no. 1 appeared to agree with this contention.

Even if this were not the case, the defense evidence lacks substance. In his evidentiary affidavit, defendant no. 1, Manoj Kumar, claimed that an oral family settlement was reached regarding the estate left by the deceased Smt. Dayawati, 14 days after her demise on 29.12.2014. According to this alleged oral settlement, the suit property located at H. No. 35/409, Trilokpuri, Delhi-110095, was to be given to defendant no. 1 and his family, while the movable assets, such as money in the bank and jewelry from the locker of the deceased, were to be allocated to plaintiff no. 3 to help him purchase a house for his family. It was further stated that the other parties had signed necessary documents and given no objection for the withdrawal of these assets. The settlement also purportedly provided that the monthly pension would go to plaintiff no. 1 for the

duration of his life, and that plaintiff no. 2 and defendant no. 2 had surrendered their shares.

However, defendant no. 1 failed to substantiate his defense with any documentary proof of the alleged settlement. No such documents were produced or proven in court. Furthermore, during the cross-examination of PW-1 (plaintiff no. 1), the defendants suggested that their mother had executed a registered WILL in 2014, bequeathing the ground floor of the suit property to defendant no. 1 and the first floor to plaintiff no. 3. The existence of a WILL was repeatedly emphasized during the cross-examination of PW-1 by both defendants.

Similarly, during the cross-examination of PW-2 (plaintiff no. 2), the defendants once again suggested that their mother had executed a registered WILL concerning the suit property.

In the cross-examination of PW-3, the execution of a WILL by Ms. Dayawati was again brought up.

Interestingly, while the evidentiary affidavits of DW-1 and DW-2, as well as the written statement, referred to an oral family settlement, the cross-examinations of the plaintiff witnesses advanced the narrative of the existence of a WILL. These two versions presented by the defendants are diametrically opposed. Notably, during cross-examination, DW-2 admitted that no oral family settlement took place on 12.01.2015, nor was there ever any agreement that the suit

property would go to defendant no. 1 and his family members.

Lack of Prayer for Declaration and Possession: Learned counsel for defendant no. 1 argued that the suit of the plaintiffs is not maintainable due to the absence of prayers for a declaration and possession. However, I find no merit in this contention. The argument put forth by defendant no. 1 is based on the fact that the plaintiffs did not seek a declaration of ownership, despite claiming that defendant no. 1 was debarred from the property by their mother. As discussed earlier, debarment from inheritance through a public notice, as claimed by the plaintiffs, has no legal effect under inheritance law. In the absence of a valid WILL formally disinheriting defendant no. 1, he remains legally entitled to his share in the deceased's property, regardless of any public notice. Thus, the lack of a specific prayer for a declaration in the plaint does not affect the maintainability of the partition suit, as inheritance rights are governed by statutory law, not by mere assertions of disinheritance.

The argument raised by Defendant No. 1, that no relief for possession has been claimed, is without merit. In clause C of the prayer, the plaintiffs have sought a mandatory injunction directing Defendant No. 1 to vacate the ground floor of the suit property. The plaintiffs only acknowledged Defendant No. 1's right to permissive use of the premises by virtue of a license allegedly granted by them and did not assert his legal

possession of the property. Instead, they prayed for the vacation of the suit property by Defendant No. 1. The absence of the explicit term "possession" is inconsequential in this context. It is well-established that a licensee holds no legal title or proprietary rights to the property, as a license merely allows occupation without conferring ownership.

It is also important to note that the suit for partition and the issue of possession are distinct matters. A partition suit is concerned with the division of jointly owned property among co-owners according to their respective legal shares. In the present case, the plaintiffs are seeking partition of the suit property, and the question of possession does not necessarily affect the maintainability of the suit. Once the shares are determined through partition, the issue of possession can be addressed subsequently. Therefore, the absence of a specific prayer for possession does not invalidate the suit for partition given the facts and circumstances of this case.

Plaintiff No. 1's Death: The death of plaintiff no. 1 (the father) during the pendency of the suit does not affect the maintainability of the partition suit. His legal heirs automatically step into his shoes and inherit his share in the property. Nothing adverse has been brought on record to challenge this. The partition suit remains maintainable, as the dispute over the division of the property between the remaining plaintiffs and defendants continues to exist. The

passing of plaintiff no. 1 results only in procedural adjustments, such as substitution of legal heirs, but does not undermine the partition claim. There is no force in the contention on behalf of defendant no. 1 in this regard.

Based on the above discussion, it is concluded that Plaintiff Nos. 2 and 3, along with Defendant Nos. 1 and 2, are each entitled to a 1/4th share of the suit property.

11. A preliminary decree of partition is hereby passed in favor of Plaintiff Nos. 2 and 3, and Defendant Nos. 1 and 2, with respect to the built-up property located at 35/409, Block-35, Trilok Puri, Delhi-110091. The parties are entitled to the property in the following shares:

1. Smt. Usha Rani (Plaintiff No. 2): 1/4th share
2. Shri Sunil Kumar (Plaintiff No. 3): 1/4th share
3. Shri Manoj Kumar (Defendant No. 1): 1/4th share
4. Smt. Asha Rani (Defendant No. 2): 1/4th share

Plaintiff No. 2, Plaintiff No. 3, Defendant No. 1, and Defendant No. 2 are hereby restrained and prohibited from transferring, selling, mortgaging, leasing, or otherwise disposing of or encumbering the subject property in any manner until the final resolution of this case.

12. It is hereby clarified that nothing stated herein shall bind the DUSIB, which remains at liberty to take appropriate actions as permitted by law.

13. Preliminary Decree sheet be prepared accordingly.
14. Parties are also directed to suggest ways and means by which the suit property could be partitioned by metes and bounds as per share specified in the preliminary decree.
15. Put up further proceedings on **22.10.2024**.

**Pronounced in the open court
on 27.09.2024**

**(Vikas Garg)
District Judge-05 /EAST),
KKD, Delhi/27.09.2024.**