

24.04.2024

Present: Sh. Yashwant Gehlot, Ld. Counsel for plaintiff along with plaintiff.
None for defendant no. 1 and 3.
Defendant no. 2 to 4 are already declared *ex-parte* vide order dt. 03.02.2020.
Sh. Sant Prakash, Proxy counsel for Sh. Praveen Singh, Ld. Counsel for defendant no. 5.
Sh. Ravi Ranjan, Proxy counsel for Sh. Kanak Pandey, Ld. Counsel for defendant no. 8.
None for other defendants.

PW1, PW2 and PW3 are present.

At request, passover for 11:00 AM.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 24.04.2024

At 11:17 AM

Present: Sh. Yashwant Gehlot, Ld. Counsel for plaintiff along with plaintiff.
Sh. Jatin Yadav and Sh. Sanjeev Kumar, Proxy counsels for Sh. Arvind Vashist, Ld. Counsel for defendant no. 1 and 3.
Defendant no. 2 to 4 are already declared *ex-parte* vide order dt. 03.02.2020.
Sh. Praveen Singh, Ld. Counsel for defendant no. 5.
Sh. Ankit Sharma, Ld. Counsel for defendant no. 6,7, 9 and 10.
Sh. Ravi Ranjan, Proxy counsel for Sh. Kanak Pandey, Ld. Counsel for defendant no. 8.
Sh. Sh. D K Shrivastav and Ms. Vineeta Kumar, Ld. Counsel for defendant no. 11, 12 and 13.
None for other defendants.

1. PW1, PW2 and PW3 are present.

2. Matter is listed for PE and clarification about impleadment of all defendants as necessary/proper parties.
3. Submissions heard on behalf of all parties. Record perused.
4. Briefly stated, present suit for *partition, declaration, recovery, permanent and mandatory injunction* filed on behalf of the plaintiff claiming 1/5th share in the suit property i.e. F093, Dharampura, Najafgarh, New Delhi-110043 admeasuring 80 sq. yards (hereinafter referred as the “*suit property*”). It is averred that, Late Sh. Suresh Chander was absolute owner of the suit property and died intestate and issueless on 19.03.2018 leaving behind his wife Smt. Usha Devi, plaintiff, three brothers and two sisters.
5. It is further averred that, Smt. Usha Devi has also left for heavenly abode on 19.09.2018 intestate and issueless. Hence, plaintiff and defendant no. 6, 7, 9 and 10 are entitled for all movable and immovable property left by Late Smt. Usha Devi being LR of her late husband. It is further averred that, after the demise of Late Smt. Usha Devi, defendant no. 5 withdrawn the entire amount lying in saving Bank account of Late Sh. Suresh Chander at Canara Bank for Rs. 12,79,648/-. It is further averred that, thereafter defendant no. 5 withdrawn Rs. 9,59,220.83/- from the account of Late Smt. Usha Devi on 09.01.2019 totaling to Rs. 22,38,870/- (round off). Thus, by way of present suit, plaintiff is also seeking partition of the said amount in 5 equal portions. It is further averred that, Late Sh. Suresh Chander and Late Smt. Usha Devi have expired intestate and issueless but defendant no. 1 and 8 are claiming as their adopted son and daughter without any valid document. It is further averred that, there are certain deposits which are still lying with defendant no. 13 and accordingly, he shall be restrained to transfer the said account.
6. *Per contra*, Ld. Counsel for defendant no. 6, 7, 9 and 10 submits that they are in support of the claim made by the plaintiff and may be

transposed as plaintiff on. 2 to 5 as main dispute is with defendant no. 1, 5 and 8 only.

7. At this stage, Ld. Counsel for plaintiff submits that, he has no objection in case defendant no. 6, 7, 9 and 10 are transposed as plaintiff no. 2 to 5.

8. Since, plaintiff is the '*dominus litus*' and defendant no. 6, 7, 9 and 10 have identical interest with the plaintiff and infact claiming the same right as of plaintiff being LR of Late Sh. Suresh Chander, **defendant no. 6, 7, 9 and 10 are now transposed as plaintiff no. 2 to 5.**

9. Ld. Counsel for defendant no. 11, 12 and 13 submits that, they have already released all death benefits of Late Sh. Suresh Chandra in favour of her wife Usha Devi, detail of which is already mentioned in their WS. It is further submitted that, at the time of filing of suit these defendants were holding two PLIs (Postal Life Insurance) in favour of deceased Sh. Suresh Chandra and further undertake to release maturity amount, if any as per the direction of this court only. It is lastly submitted that, defendant no. 11, 12 and 13 may be deleted as they have nothing to do with the subject matter of the present suit as same pertains to be partition only.

10. At this stage, Ld. Counsel for plaintiff submits that, defendant no. 11,12 and 13 may be deleted from the array of the parties, however, liberty may be given to call them as summoned witness if required, at appropriate stage.

11. Submissions heard. Request allowed.

12. In view of above, **defendant no. 11, 12 and 13 stands deleted from the array of parties. Plaintiff is at liberty to call defendant No. 11, 12 and 13 as summoned witness if required, at appropriate stage.**

13. Since, present suit has been filed for *partition, declaration, recovery, permanent and mandatory injunction* qua the suit property inherited by Late Smt. Usha Devi from her late husband Sh. Suresh Chander

as well as death benefits/deposit of Late Husband and wife, actual matter for adjudication before this court is that whether LR of Late Sh. Suresh Chander would be entitled for above property/death benefits in 1/5th share being LR of late husband of deceased Smt. Usha Devi or whether Mr. Rahul and Ms. Preeti are entitled for entire share as claimed by them or whether Mr. Mahesh Kumar has withdrawn amount/deposit/death benefits of Late Smt. Usha Devi and if affirmative whether he has any right, title or interest on the same.

14. As such, defendant no. 2 to 4 are not necessary party to the present dispute. Plaintiff has no objection if defendant no. 2 to 4 deleted from the array of party. Hence, **defendant no. 2 to 4 stands deleted from the array of parties accordingly. Thus, as per deletion there would be 5 Plaintiffs (Ram Kumar, Raj Bala, Ram Kishan, Premwati and Raj Kumar) and 3 defendants (Rahul, Mahesh Kumar and Preeti)**

15. **Plaintiff is directed to file amended memo of parties accordingly.**

16. In view of above, issues as framed by Ld. Predecessor of this court vide order dt. 19.01.2023, needs modification and same stands modified as follows:-

1. *Whether Mr. Rahul (defendant no. 1) and Ms. Preeti (defendant No. 3) have any right, title or interest upon suit property and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi? If Affirmative, in what capacity? **Onus is upon defendant No. 1 and 3***
2. *Whether Mr. Mahesh Kumar (defendant no. 2) has withdrawn amount/deposit/death benefits of Late Sh. Suresh Chander and Late Smt. Usha Devi? If affirmative, whether he has any right, title or interest on the same? **Onus is upon plaintiff and defendant No. 2***
3. *Whether plaintiffs are entitled for decree of declaration qua all the movable/immovable properties and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi for 1/5th share? **OPP***
4. *Whether plaintiffs are entitled for decree of partition qua all the movable/immovable properties and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi as per their share? **OPP***

5. *Whether plaintiff is entitled of permanent and mandatory injunction qua movable/immovable properties and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi? **OPP***

17. Accordingly issue no. 1 to 5 as framed vide order dated 19.01.2023 **stands modified**. Since defendant no. 11 and 13 already undertaken to not release any fund/death benefit of Late Sh. Suresh Chander and Late Smt. Usha Devi until specific direction of this court, issue no 6 is not required any adjudication **hence, strike off**. **Issue no 7 & 8 would remain same**. For the purpose of clarification, final issues to be adjudicated in present matter are reproduced as follows:

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1. *Whether Mr. Rahul (defendant no. 1) and Ms. Preeti (defendant No. 3) have any right, title or interest upon suit property and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi? If Affirmative, in what capacity? Onus is upon defendant No. 1 and 3*
2. *Whether Mr. Mahesh Kumar (defendant no. 2) has withdrawn amount/deposit/death benefits of Late Sh. Suresh Chander and Late Smt. Usha Devi? If affirmative, whether he has any right, title or interest on the same? Onus is upon plaintiff and defendant No. 2*
3. *Whether plaintiffs are entitled for decree of declaration qua all the movable/immovable properties and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi for 1/5th share? **OPP***
4. *Whether plaintiffs are entitled for decree of partition qua all the movable/immovable properties and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi as per their share? **OPP***
5. *Whether plaintiff is entitled of permanent and mandatory injunction qua movable/immovable properties and/or death benefits/deposit of Late Sh. Suresh Chander and Late Smt. Usha Devi? **OPP***
6. *Whether the plaintiff is also entitled for pendente lite and future interest, if so, at what rate and for what period? **OPP**.*

7. *Relief?*

18. **Ahlmad is directed to made endorsement in order dated 19.01.2023 accordingly.**

19. At this stage, Ld. Counsel for contested parties submit that, they are likely to rely upon the pleadings and evidence already on record.

20. PW1 is present, further party cross-examined by Ld. Counsel for defendant no. 5.

21. At this stage, it has been submitted by both parties that, there is a possibility of settlement between the parties and matter may be referred to the Mediation Centre.

22. In view of joint request, case is referred to the Mediation Centre, Dwarka Court, New Delhi. Parties to appear before the Mediation Centre, Dwarka Court, New Delhi on **08.05.2024 at 12:30 PM.**

23. To come up before this court for mediation report and further proceedings/PE on **21.08.2024.**

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 24.04.2024