

IN THE COURT OF SH. MANISH SHARMA
ADDITIONAL DISTRICT JUDGE -01 WEST DISTRICT
TIS HAZARI COURTS
DELHI

Civ DJ No. 238/18

Sh. Subhash Diwan
S/o Late O.P. Diwan
R/o B-4/1, Shop No.2, Ramesh Nagar,
In front of Metro Pillar no.369,
West Delhi, Delhi

At Present:
7/125, Ground Floor,
Subhash Nagar,
New Delhi.

... Plaintiff

Versus

1. Sh. Sunil Diwan
S/o late O.P. Dewan
R/o In front of Metro Pillar no.369,
B-4/1, Shop No.1, Ramesh Nagar,
West Delhi, Delhi.

2. Smt. Sudha Lamba (**deleted vide order dated 25.07.2019**)
D/o late O.P. Dewan
W/o Sh. Varinder Lamba
R/o WZ-37, Sardapuri
Ramesh Nagar,
New Delhi.

... Defendants

SUIT FOR PARTITION AND PERMANENT INJUNCTION

Date of Filing Plaint	: 24.02.2018
Date of Reserving Judgment	: 05.10.2021
Date of Judgment	: 05.10.2021

J U D G M E N T

Plaintiff filed the instant suit against Defendants seeking partition and permanent injunction.

Relevant facts as set out in the Plaint are as follows:

Parties to the list are the surviving legal heirs of late O.P. Dewan (father) and late Smt. Chander Kante Diwan (mother), who died intestate on 02.04.2001 and 10.02.2006 respectively and, as such, they become co-owners and co-sharers of the property bearing Shop no.B-4/1 Shop No.1 and B-4/1 Shop No.2, Ramesh Nagar, West, Delhi (for short the 'Suit Property') having 1/3rd undivided share each.

Father of the parties used to run advertising business in the suit property and, later on, plaintiff and defendant no.1 also joined the business. After demise of their father, they jointly ran the business for some time, thereafter they mutually divided the shop. Defendant kept the bigger portion and corner of the shop i.e. B-4/1, shop no.1, Ramesh Nagar, West Delhi, Delhi measuring 10'X8' whereas, the plaintiff got possession of the smaller portion i.e. B-4/2, Shop No.2, Ramesh Nagar, West Delhi, Delhi measuring 7'X7'. Plaintiff requested the defendant to partition the suit property by metes and bounds, but it was of no avail. Plaintiff has prayed for passing of preliminary and final decree of partition by metes and bounds in respect of the suit property.

Case of the Defendants:

2. Defendants have contested the suit and filed joint written statement, wherein they admitted the relationship between the parties and that their father was absolute owner of the suit property. They also admitted 1/3rd share of the plaintiff in the suit property. As per their version, plaintiff had agreed, vide MOU dated 28.06.2012, to transfer his 1/3rd share in defendant no.1's favour in lieu of settlement of accounts of Karms Advertising Agency Pvt Ltd, a company jointly started by them.

Defendants has also filed a counter claim separately wherein they stated that the defendant no.2 has relinquished her share in the suit property in favour of defendant no.1 and, thus, he is entitled to 2/3rd share in the suit property. In addition to this, the defendant no.1 claimed the remaining 1/3rd share in the suit property as the plaintiff has agreed to transfer his share in favour of defendant no.1. During course of proceedings, Ms.Sudha Lamba, the defendant no.2 was deleted from the array of parties vide order-dated 25.07.2019 as she claimed no share in the suit property. She desired that her share may be given to the defendant no.1 for which she has also executed a registered Relinquishment Deed dated 10.11.2017 in his favour

Replication

3. Plaintiff filed replication to the written statement of defendants wherein he has reiterated and reaffirmed the contents of the plaint as true and correct and denied the averments made in the written statement and counter claim.

4. During course of the proceedings, Ms. Sudha Lamba, one of the LRs of late Sh. O.P. Diwan (earlier arrayed as defendant no.2) appeared on 05.10.2021 and made statement to this effect:

“I am one of the LRs of deceased Late Sh. O.P. Diwan, who was my father. After his death, his properties devolved upon his three LRs namely Subhash Diwan, Sunil Diwan and myself. I have voluntarily and out of my free will relinquished my 1/3rd share of the suit property i.e. shop bearing no.B-4/1, Shop No.1 and B-4/1, Shop No.2, Ramesh Nagar, West, Delhi in favour of my younger brother namely Sunil Kumar Diwan, defendant herein out of love and affection. I shall not claim any right relinquished in favour of Sunil Kumar Diwan vide Relinquishment Deed dated 10.11.2017. I have no objection if the preliminary decree is passed in accordance with my statement. I have read my statement. This is true and correct.”

5. Heard learned counsel for the parties and perused the record.

6. The defendant no.1 admitted that parties to the list are surviving legal heirs of late Sh. O.P. Diwan, and their father was absolute owner of the suit property. He has also admitted 1/3rd share of the plaintiff in the suit property. It is averred that the plaintiff and the defendant no.1 jointly started a company. The plaintiff has agreed to transfer his share in the suit property in lieu of settlement of accounts of M/s Karma Advertising Agency Pvt Ltd. with the defendant no.1. Since the dispute raised by the defendant no.1 qua shares of the company or rendition of accounts is not a matter of partition, it has no bearing in passing of the preliminary decree. Plaintiff's 1/3rd share in the suit

property has not been transferred yet. Moreover, the share of the parties in the said company is not the ancestral property belonging to the father and, as such, it's a separate dispute between the parties.

7. In view of the above, preliminary decree of partition of suit property i.e. shop bearing no.B-4/1, Shop No.1 and B-4/1, Shop No.2, Ramesh Nagar, West, Delhi is passed, whereby the plaintiff, defendant no.1, and defendant no.2, being class-I legal heirs of late Sh. O.P. Dewan are entitled to $\frac{1}{3}^{\text{rd}}$ share each in the aforesaid suit property. Since Ms.Sudha Lamba has relinquished her $\frac{1}{3}^{\text{rd}}$ share in favour of the defendant no. 1, Sh. Sunil Kumar, is held entitled to $\frac{2}{3}^{\text{rd}}$ share in the suit property. Preliminary decree sheet be prepared accordingly.

8. Parties are directed to suggest modes of partition of the suit properties either by metes and bounds or by other modes on the next date of hearing i.e. 20.11.2021.

Announced in open Court
today i.e. 05th October, 2021. (Manish Sharma)
Additional District Judge-01, West
Tis Hazari Courts, Delhi