

IN THE COURT OF SH. SHIV KUMAR
DISTRICT JUDGE -02, WEST DISTRICT:
TIS HAZARI COURTS, DELHI.

Civ DJ no. 621/20

CNR No. DLWT01-005660-2020

DLWT010056602020



Smt Dhan Devi (now deceased)
Through her legal heirs:-

- A. Sh. Sanjay
S/o Late Sh. Ratan Lal
R/o W-167, 12-Block, Harijan Colony,
Tilak Nagar, New Delhi.
- B. Sh. Khumar Pal
S/o Late Sh. Ratan Lal.
R/o W-167, 12-Block, Harijan Colony,
Tilak Nagar, New Delhi.
- C. Sh. Kishan
S/o Late Sh. Ratan Lal.
R/o W-167, 12-Block, Harijan Colony,
Tilak Nagar, New Delhi.
- D. Smt. Yashoda (Daughter of deceased)
W/o Sh. Som Pal
D/o Late Sh. Ratan Lal
R/o House no. 263, Phase-I,
Manglapuri, Delhi-110045.

E. Smt Neeru Kashyap (Daughter of deceased)
W/o Sh. Vinod Kashyap
D/o late Sh. Ratan Lal
R/o WZ-167/99, 12-Block,
Harijan Colony,
Tilak Nagar, New Delhi-110018.

F. Smt Somwati (Daughter of deceased)
W/o Sh. Jai Dev
D/o Late Sh. Ratan Lal
R/o 263, Mangla Puri,
Gali no. 4, Phase-I,
Palam Village, South-West, Delhi.

. . . Plaintiff

Versus

1. Sh. Mahavir.

S/o Late Sh. Mishri Lal
R/o B-253, J.J. Colony,
Chaukhandi Tilak Nagar,
New Delhi-110018.

2. Sh. Hukum Chand

S/o Late Sh. Mishri Lal
R/o B-253, J.J. Colony,
Chaukhandi Tilak Nagar,
New Delhi-110018.

3. Sh. Gobind

S/o Late Sh. Mishri Lal
R/o B-253, J.J. Colony,

Chaukhandi Tilak Nagar,
New Delhi-110018.

. . . . Defendants.

Date of institution of the case : 17.11.2020
Date on which reserved for judgment : 08.10.2024
Date of pronouncement of Judgment: : 04.11.2024.

SUIT FOR PARTITION
PERMANENT AND MANDATORY INJUNCTION

JUDGMENT

- (1) The present suit has been filed by the plaintiff for partition permanent and mandatory injunction.

- (2) It is averred in the plaint that late Shri Mishri Lal was the owner of the property bearing no. B-253, J.J. Colony, Chaukhandi, Tilak Nagar, New Delhi-110018 ad-measuring 25 sq. yds. built upto four floors (hereinafter referred to as the ‘suit property’).

- (3) It is further averred in the plaint that the suit property was allotted by the DDA under Resettlement Colony in the year 1978-79 to late Sh. Mishri Lal.

(4) It is further averred in the plaint that late Shri Mishri Lal died intestate and left behind the legal heirs i.e. the plaintiff and the defendants. It is further averred that after the demise of late Shri Mishri Lal, the plaintiff and the defendants are having equal share in the suit property as per law by metes and bounds.

(5) It is further averred in the plaint that the defendants in connivance with each other want to sell the suit property only with the intention to get the money by grabbing the share of the plaintiff, illegally and unlawfully without process of law. It is further averred that in the month of August, 2018, the plaintiff, asked the defendants to give her share as per law in the suit property but after that the defendants always made the false assurance on one pretext or the other.

(6) It is further averred in the plaint that in March, 2019, the plaintiff requested the defendants to give her share in the suit property but the intention of the defendants turned into malafide and the defendants in connivance with each other frequently refused to give the share of the plaintiff, in the suit property at any cost.

(7) It is further averred in the plaint that on 29.02.2020, the plaintiff had gone to the defendants and requested to give her share because she is having the right, title or interest upon her share in the suit property but the defendants became very

aggressive and violent and clearly refused to give the same in any manner.

(8) It is further averred that compelled by the circumstances and having left with no option, the plaintiff sent a legal notice dated 04.03.2020 through speed post to the defendants but despite receipt of the same, defendants neither replied nor complied the said legal notice till date.

(9) It is further averred that the suit property is situated at Delhi within the local jurisdiction of this Hon'ble Court and the parties to the suit also reside and work for gain at District West, P.S. Tilak Nagar, Delhi, therefore, this court has got the jurisdiction to try, entertain and adjudicate the matter in controversy.

(10) It is prayed by the plaintiff in the plaint that a decree of partition and a decree permanent injunction may be passed in favour of the plaintiff and against the defendants.

(11) In this case, defendant no. 2 & 3 were served on 16.12.2020 but despite service none appeared on behalf of defendant no. 2 & 3, therefore they were proceeded ex-parte and their right to file written statement was closed vide order dated 06.09.2021.

(12) The defendant no.1 appeared in the court on 27.11.2021 and deposed that he is a heart patient and cannot appear in the court to contest the case. Defendant no. 1 submitted that he does not want to file any reply and his above statement be considered as his reply in this case. However, he was given one more opportunity to file his reply but despite giving time, no reply has been filed on behalf of defendant no. 1 and vide order dated 10.05.2022, defendant no. 1 was also proceeded ex-part and his right to file written statement was closed.

(13) It is pertinent to mention here that during the proceedings, the plaintiff expired and vide order dated 07.09.2022, an application under order 22 rule 3 CPC was allowed and L.Rs of plaintiff were brought on record.

(14) Sh. Kishan, one of the legal heirs of the deceased plaintiff, in order to prove his case, has examined himself as PW-1 and tendered his evidence by way of affidavit Ex PW-1/A, wherein he reiterated the contents of the plaint and relied upon documents which are as follows:-

1. *Ex PW-1/1(OSR): Copy of Aadhar card of plaintiff.*
2. *Ex PW-1/2(OSR): Copy of death certificate of plaintiff.*
3. *Ex PW-1/3 (OSR): Copy of his aadhar card.*
4. *Ex PW-1/4: copy of legal notice dated 04.03.2020.*
5. *Ex PW-1/5: Copy of postal receipts (four in number)*
6. *Ex PW-1/6: Copy of site plan.*

(15) PW-2/Sh. Deepak Kumar, UDC from the office of DUSIB erstwhile DDA has appeared and deposed that he has brought the summoned record i.e. documents of allotment record of plot No. B-253 measuring 25 sq. yds. J.J. Colony, Chaukhandi, Tilak Nagar, New Delhi-18. He has also brought the demolition slip no. 696 dated 20.10.1975, in the name of Sh. Mishri Lal S/o Sh. Dori Lal and exhibited as Ex. PW-2/1 (OSR) as well as an affidavit submitted by Sh. Mishri Lal dated 26.09.1977 and the same is exhibited as Ex. PW-2/2 (OSR). PW-2 also brought one site register record mentioning the name of allottee Sh. Mishri Lal S/o Sh. Dori Lal, mentioned at serial no. 253, showing date of allotment as 20.10.1975 and DS no. 0/696 and the same is exhibited as Ex. PW-2/3 (OSR).

(16) Vide separate statement of Sh. Tajinder Singh, Id. Counsel for the plaintiff, evidence on behalf of plaintiffs stand closed.

(17) It is pertinent to mention that affidavits in respect of NOCs of the L.Rs of plaintiff i.e. L.R No. A, B, D, E & F in favour of L.R no. C have been filed on 16.12.2022 and their separate joint statement of sons and daughters have been recorded to this effect. All the above said L.Rs deposed that they have no objection, if the relief in respect of the suit property is passed in favour of their brother namely Kishan.

(18) I have heard final arguments on behalf of plaintiffs and perused the case file.

(19) In the present case, the plaintiffs are seeking partition of property bearing no. B-253, JJ Colony, Chaukhandi, Tilak Nagar, New Delhi, admeasuring 25 sq. yard built up to four floors.

(20) PW-1/ one of the L.Rs of deceased plaintiff has deposed that Sh. Mishri Lal was father of the plaintiff and he expired in the year 2002. He further deposed that the mother of the plaintiff expired on 13.01.2015. PW-1 further deposed that Sh. Mishri Lal was the owner of property bearing no. B-253, JJ Colony, Chaukhandi, Tilak Nagar, New Delhi, ad-measuring 25 sq. yard built up to four floors and the said property was allotted to him by the DDA under Resettlement Colony in the year 1978-79.

(21) PW-1 has proved the documents i.e. copy of legal notice dated 4.3.2020 Ex. PW-1/4, Postal Receipts Ex. PW-1/5 and copy of site plan Ex. PW-1/6.

(22) PW-2 Sh. Deepak Kumar, UDC from DUSIB has deposed that in the site register record brought by him, the name of allottee Sh. Mishri Lal is mentioned at Sl. No. 253, showing date of allotment as 20.10.1975 and DS No. 0/696 and the copy of the same is Ex. PW-2/3. He further deposed that the demolition slip no. 696 dated 20.10.1975 is in the name of Mishri Lal and the copy of the same is Ex. PW-2/1.

(23) PW-1 & PW-2 have not been cross-examined by any of the defendants and their testimonies have remained unrebutted and unchallenged and there is no reason to disbelieve their testimonies. In view of the above said testimonies, it is proved that the suit property was allotted to deceased Sh. Mishri Lal. The deceased plaintiff Smt Dhan Devi was the daughter of late Sh. Mishri Lal and the defendants are the sons of late Sh. Mishri Lal.

(24) The parties of the present suit are Hindu by religion and Hindu Succession Act is applicable on the parties so, the abovesaid suit property will be devolved upon the parties, by way of intestate succession, as per Hindu Succession Act, 1956. The L.Rs of deceased plaintiff Smt. Dhan Devi are her sons and daughters. The L.Rs of deceased plaintiff alongwith defendants are class -I legal heirs and are entitled to inherit estate of late Sh. Mishri Lal as per Hindu Succession Act, 1956.

(25) At the time of death of Late Sh. Mishri Lal, there were following four class-I legal heirs of the deceased and they are entitled to inherit the property of deceased in equal shares:

1. Smt. Dhan Devi /plaintiff/daughter (died during trial) (1/4th share)
2. Sh. Mahavir (defendant no. 1/son) (1/4th share)
3. Sh. Hukam Chand (defendant no. 2/son) (1/4th share)
4. Sh. Govind (defendant no. 3/son) (1/4th share)

(26) Plaintiff/late Smt. Dhan Devi has died during trial of the present case and his husband had died before filing the present suit. Smt. Dhan Devi has left behind following legal heirs:-

- A. Sh. Sanjay
S/o Late Sh. Rattan Lal
R/o W-167, 12-Block, Harijan Colony,
Tilak Nagar, New Delhi.
- B. Sh. Khumar Pal
S/o Late Sh. Rattan Lal.
R/o W-167, 12-Block, Harijan Colony,
Tilak Nagar, New Delhi.
- C. Sh. Kishan
S/o Late Sh. Rattan Lal.
R/o W-167, 12-Block, Harijan Colony,
Tilak Nagar, New Delhi.
- D. Smt. Yashoda
W/o Sh. Som Pal
D/o Late Sh. Rattan Lal
R/o House no. 263, Phase-I,
Manglapuri, Delhi-110045.
- E. Smt Neeru Kashyap
W/o Sh. Vinod Kashypa
R/o WZ-167/99, 12-Block,
Harijan Colony,
Tilak Nagar, New Delhi-110018.
- F. Smt Somwati
W/o Sh. Jai Dev
D/o Late Sh. Rattan Lal
R/o 263, Mangla Puri,
Gali no. 4, Phase-I,
Palam Village, South-West, Delhi.

(27) The above said legal heirs of late Smt. Dhan Davi are entitled to inherit the share of late Smt. Dhan Devi in the property of deceased late Sh. Mishri Lal in equal shares. So, the above said legal heirs are entitled to inherit 1/24 share each in the suit property.

(28) Now, the parties have following shares in the properties of the deceased/Late Sh. Mishri Lal .

1. L.Rs of late Smt. Dhan Devi
 - A. Sh. Sanjay
S/o Late Sh. Rattan Lal, 1/24th share
 - B. Sh. Khumar Pal
S/o Late Sh. Rattan Lal, 1/24th share
 - C. Sh. Kishan
S/o Late Sh. Rattan Lal, 1/24th share
 - D. Smt. Yashoda
W/o Sh. Som Pal, 1/24th share
 - E. Smt Neeru Kashyap
W/o Sh. Vinod Kashypa, 1/24th share.
 - F. Smt Somwati
W/o Sh. Jai Dev, 1/24th share
2. Sh. Mahavir.
S/o Late Sh. Mishri Lal, 1/4th share
3. Sh. Hukum Chand
S/o Late Sh. Mishri Lal, 1/4th share

4. Sh. Gobind
S/o Late Sh. Mishri Lal, 1/4th share.

RELIEF:

(29) In view of the above-said findings and discussions, the following reliefs have been given to the parties.

(a) A preliminary decree is passed and it is declared that the LRs of deceased plaintiff are entitled for 1/24th share each and defendant no. 1, defendant no. 2 & defendant no. 3 are entitled for 1/4th share each in Property no. B-253, J.J. Colony, Chaukhandi, Tilak Nagar, New Delhi-110018 measuring 25 sq. yds. Built upto four floors.

Preliminary decree-sheet be prepared as per rules.

**Announced in open Court
today on 04.11.2024**

(SHIV KUMAR)
DJ-02, THC (West):Delhi