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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 406/2024, I.A. 11158/2024, I.A. 11158/2024**

SAKSHI KHARBANDA & ANR. Plaintiffs

Through: Mr. Rajat Aneja, Ms. Alka Dwivedi,
Mr. Rishabh Jain, Advs..

versus

ALKA ARORA ALIAS RITA SETHI & ANR. Defendants

Through:

**CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

ORDER

% **16.05.2024**

I.A. 11159/2024 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

CS(OS) 406/2024

1. The present suit has been filed seeking partition, declaration, rendition of accounts and permanent injunction with following prayers;

“To pass a DECREE OF DECLARATION in favour of the Plaintiffs and against the Defendants, hereby declaring the 3 daughters to be the owners of the Suit Properties [mentioned in Para 2 (i) to 2 (iv) above] in terms of the three registered Wills dated 16.05.2018 left behind by their deceased mother, Smt.Puran Devi, and to declare them as owners in terms thereof;

B. To pass a PRELIMINARY DECREE OF PARTITION thereby ascertaining the respective shares of the 3 daughters herein in respect of the Suit properties as mentioned in Para 2 above of the Plaint, in terms of the Wills dated 16.05.2018, and to further pass a FINAL



DECREE OF PARTITION thereby directing the partition of the suit properties as mentioned in Para 2 (i), (ii) and (iv) above, by metes and bounds, and for the said purpose, to appoint a Local Commissioner to suggest the mode of partition, and to put the 3 daughters in possession of the respective portions of the said suit properties, in terms of the Wills dated 16.05.2018; however, in the eventuality of the partition by metes and bounds not taking place for whatever reason, to direct the sale of the said properties at the best available market price and to divide the proceeds realized therefrom in equal shares amongst the 3 daughters herein;

C. To pass a *DECREE OF DECLARATION* in favour of the Plaintiffs thereby declaring that the Plaintiff No. 1 and 2 are the exclusive respective owners of the Property bearing No. B-31, Mahendru Enclave, G.T. Karnal Road, Near Gujranwala Town, Delhi - 110009 (comprising of the Ground Floor and First Floor with roof rights thereon, upto sky), in terms of the Will dated 16.05.2018 left behind by their deceased mother, Smt. Puran Devi;

D. To grant a *DECREE OF PERMANENT INJUNCTION* in favour of the Plaintiffs and against the Defendants, their agents, servants, family members, legal representatives, authorized representatives or anybody acting on their behalf thereby restraining them from selling, alienating, transferring, creating any third party rights or encumbering the Suit Properties, as mentioned in Para 2 (i) to 2 (iv) above, in any manner whatsoever; and to further restrain the Defendants and their family members from obstructing the ingress and egress of the Plaintiffs and their family;

E. To pass a *DECREE OF RENDITION OF ACCOUNTS* thereby directing the Defendant No. 2 to render true, correct and complete accounts of the rent, income, money and profits derived from the Sarojini Nagar Shop since the date of death of Smt. Puran Devi, i.e. 24.04.2021, and to pay the respective shares of the Plaintiffs No. 1 and 2 with effect from 24.04.2021 till realization, including pendent lite and future, alongwith interest @ 18% per annum thereon;

F. To award the entire costs in favour of the Plaintiffs and against the Defendants; ”



2. Mr. Rajat Aneja, learned counsel for the plaintiff submits that Sh. Kem Chand Arora, the father of the plaintiffs and defendant No.1 owned the following properties;
 - i. Property No. C-136, comprising in Khasra No. 355/3, situated at Mahendru Enclave, G.T. Karnal Road, Near Gujranwala Town, Delhi - 110009 (Village - Malik Pur Chhaoni, Delhi; plot of land admeasuring 100 square yards); and
 - ii. Residential Plot No. 2111, Sector 4 - Part 2, Urban Estate, Karnal, Haryana- 132001 (land admeasuring approx. 172 square yards).
3. Late Smt. Puran Devi, mother of the plaintiffs and defendant No.1 owned the following properties;
 - iii. Property No.B-31 (Ground Floor and First Floor with roof rights thereon, upto sky), comprising in Khasra No. 351, situated at Mahendru Enclave, G.T. Karnal Road, Near Gujranwala Town, Delhi – 110009 (Village - Malik Pur Chhaoni, Delhi; plot of land admeasuring 130 square,yards); and
 - iv. Shop No. 147, Rear Side, Ground Floor, situated at Sarojini Nagar Market, New Delhi – 110023 (admeasuring 17' X 10', being the 50% undivided owner).
4. It has been submitted that besides these immovable properties, Late Smt. Puran Devi left behind certain moveable properties comprising of liquid assets in the form of FDR's Bank Accounts etc. in which the plaintiffs were nominees. It has been submitted that mother also had a Locker with UCO Bank, Model Town –Branch, Delhi in which all the three daughters, were the nominees.
5. Learned counsel submits that late Sh. Khem Chand Arora died



intestate on 28.08.2014 leaving behind two immovable properties referred to as Mahendru Enclave, G.T. Karnal Road, Near Gujranwala Town, Delhi - 110009 property and Urban Estate, Karnal, Haryana property.

6. Learned counsel submits that on intestate death of Sh. Khem Chand Arora, the aforesaid these properties mentioned in para (i) and (ii) devolved upon all his Class I legal heirs, comprising of his widow late Smt Puran Devi and the three daughters- plaintiffs and defendant No.1 in equal shares of one-fourth each.
7. Learned counsel further submits that Late Smt Puran Devi expired on 24.04.2021 leaving behind her two immovable properties exclusively owned by her as mentioned in para (iii) and (iv) and referred as the Mahendur Enclave Property No.2 and Sarojini Nagar Shop. Learned counsel submits that late Smt. Puran Devi left behind three registered Will all dated 16.05.2018 whereby she bequeathed her two exclusive properties in favour of the beneficiaries mentioned herein and also bequeathed her one fourth undivided share, which she had acquired by way of inheritance on the death of her husband Sh. Khem Chand Arora, in favour of Plaintiff No.1 and 2 only.
8. Learned counsel submits that now despite being the Will left by late Smt. Puran Devi, the defendant No.2 who is the husband of the defendant No.1 is not raising disputes with respect to the partition of one of the properties referred to the Sarojini Nagar.
9. Learned counsel submits that in fact, the defendant No.2 is the owner



of the 50% share of the Sarojini Nagar.

10. Let the plaint be registered as a suit.
11. Summons be issued to the defendants by all permissible modes, which shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons.
12. The defendants are directed to file affidavit of admission/denial against the documents filed by the plaintiff, failing which the written statement shall not be taken on record.
13. The plaintiff is at liberty to file replications thereto within fifteen days of filing of the written statements, which shall be accompanied by affidavits of admission/denial, in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.
14. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
15. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
16. Provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 be complied with within one week.
17. List before the Joint Registrar on 16.07.2024.

I.A. 15456/2023 (under Order XXXIX Rules 1 & 2)

18. The present application has been moved under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking the following orders:

“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to pass an ex-parte ad-interim injunction in favour of the Plaintiffs and against the Defendants, their servants, agents, heirs, successors, executors, administrators, nominees etc. or anybody



claiming on their behalf; from selling, alienating, transferring, disposing of, creating any third party rights or encumbering the Suit properties as mentioned in Para 2(1), 2(i1) and 2(iv) of the accompanying Complaint, i.e., the Suit properties bearing No. C-136, comprising in Khasra No. 355/3, situated at Mahendru Enclave, G.T. Karnal Road, Near Gujranwala Town, Delhi - 110009; Residential Plot No. 2111, Sector 4 - Part 2, Urban Estate, Karnal, Haryana - 132001; and Shop No. 147, Rear Side, Ground Floor, situated at Sarojini Nagar Market, New Delhi - 110023 during the pendency of the accompanying Suit, and in the light of the facts and circumstances explained hereinabove.”

19. Learned counsel for the plaintiff submits that in advertently, last page of application comprising only prayer clause only left to be filed.
20. Let it be brought on the record.
21. The Court has perused the prayer clause in the Court itself.
22. Issue notice to the defendants through all permissible modes upon taking steps by the petitioner.
23. List the application before the Court on 16.07.2024

DINESH KUMAR SHARMA, J

MAY 16, 2024

Pallavi