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

+ **CS(OS) 640/2022 & I.A. 16901/2022 I.A. 12052/2023**

AMIT KUMAR

.....Plaintiff

Through: Ms. Chandrani Prasad, Adv. with
Plaintiff in person

versus

SMT MALA GUPTA & ORS.

.....Defendants

Through: Mr. Pranaynath Jha, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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18.09.2024

I.A. 12052/2023*(Application on behalf of Plaintiff u/o XII Rule 6 CPC)*

1. This is an application filed by the Plaintiff, Mr. Amit Kumar, who is the brother of the late Mr. Dheeraj Prakash, against Defendant No. 1 [who, is the wife of the late Mr. Dheeraj Prakash] and Defendants Nos. 2 and 3, [who, are the children of Defendant No. 1 and the late Mr. Dheeraj Prakash] under Order XII Rule 6 of the Civil Procedure Code, 1908 ('CPC') seeking a preliminary decree for the partition of four immovable properties, which are listed as under: -

- i. Property bearing no. 146P, Sector-46, Faridabad, Haryana-121010 ('Sector 46 property')
- ii. Property bearing no. 209, Sector-45, Faridabad, Haryana 121010 ('Sector 45 property')
- iii. Property bearing no. 74, Pocket-1, Jasola, New Delhi 110025 ('Jasola property')
- iv. Property bearing no. 330/A/1/2, Chauhan Mohalla, Madanpur Khadar,



New Delhi 110076 ('Madanpur Khadar property')

2. It is stated in the application that Plaintiff and Defendants have half ($\frac{1}{2}$) share each in the suit properties set out in the aforementioned serial nos. (i), (ii) and (iv) and with respect to Jasola property mentioned at serial no. (iii) it is pleaded that the Plaintiff herein has a $\frac{1}{3}$ rd share whereas Defendants hold $\frac{2}{3}$ rd share in the same.

Arguments on behalf of the Plaintiff

3. Learned counsel for the Applicant/Plaintiff states that the property bearing no. 146P, Sector-46, Faridabad, Haryana-121010 which is listed at serial no. (i) is a partly constructed property lying vacant and the same is registered in the name of the late Smt. Usha Rani, the Plaintiff's mother. She states that there exists a structure which comprises of ground and first floor and is currently under the occupation of the security guard deployed at the said property. She states that the electricity charges for the meter installed and the expenses of security guard, are presently being borne by the Plaintiff, and further the plaintiff can place on record the documents to substantiate the said claim. She states that Plaintiff is entitled to 50% share in this property.

3.1. With respect to the property bearing no. 209, Sector-45, Faridabad, Haryana, 121010 listed at serial no. (ii), she states that, this property is also a vacant plot and is standing in the name of late Sh. Surender Prakash, the father of the Plaintiff herein. She states that in this plot there is a structure comprising of ground floor and first floor, however, the same is vacant and the guard looking after Sector 46 property also keeps a check on this property. She states that Plaintiff is entitled to 50% share in this property.

3.2. With respect to the property bearing no. 74, Pocket-1, Jasola, New



Delhi 110025 listed at serial no.(iii), she states that, this property is being used as the residence of the parties to the suit. She states that Plaintiff herein is the recorded owner of this property along with late Sh. Dheeraj Prakash and Defendant no. 1, i.e., Smt. Mala Gupta, to the extent of 1/3rd undivided share each. She states that the Plaintiff herein seeks a declaration of his 1/3rd share in the aforesaid property and subsequently a relief of partition for the same.

3.3. With respect to the property bearing no. 330/A/1/2, Chauhan Mohalla, Madanpur Khadar, New Delhi-110076 listed at serial no. (iv), she states, that the said property is registered in the name of late Smt. Usha Rani. She further states that this property was rented out to tenants from time to time, and the rentals were collected by late Sh. Dheeraj Prakash. She states that to the Plaintiff's knowledge, the last tenants in the property were Mr. Ashok Bhutani and Ms. Malvi Bhutani, who have since vacated the property on or around 01.02.2023. She states that as per the knowledge of the Plaintiff, after the death of Sh. Dheeraj Prakash, the rentals were collected by his wife i.e., Defendant no. 1 and she has no objection if the said tenants are summoned before the Court for recording their statement. She states that Plaintiff is entitled to 50% share in this property.

3.4. She states that the ownership of the late Smt. Usha Rani with respect to the immovable properties mentioned at serial numbers (i) and (iv), and the ownership of the late Sh. Surrender Prakash with respect to the property mentioned at serial number (ii), have been admitted by the Defendants in their Written Statement filed in the present suit.

3.5. She states that recorded ownership of the Plaintiff herein qua his share in the property mentioned at serial number (iii) i.e., Jasola is also admitted



by the Defendants. She states that, therefore, a preliminary decree as prayed for may be passed forthwith.

3.6. She states that the Plaintiff remains bound by the statement made before this Court on 11.07.2024 with respect to the entitlement of the Defendants to seek rendition of accounts in the partnership firm 'Aggarwal Cement Store'.

Arguments on behalf of the Defendants

4. In reply, the learned counsel for the Defendants states that he does not dispute that late Smt. Usha Rani is the recorded owner of the immovable properties mentioned at serial no. (i) and (iv).

4.1. He states that Defendants also admits that late Sh. Surender Prakash was the recorded owner of the property mentioned at serial no. (ii).

4.2. He lastly states that Defendants also admits that the Plaintiff herein is the recorded owner of the 1/3rd undivided share of the property mentioned at serial no. (iii) along with Defendant no.1 and late Sh. Dheeraj Prakash, who also held 1/3rd undivided share each in the property mentioned at serial no. (iii). He states that the share of late Sh. Dheeraj Prakash has devolved upon Defendant nos. 1, 2 and 3 and Defendants herein jointly own and are entitled to 2/3rd share in the aforesaid property mentioned at serial no. (iii).

4.3. He states that, however, there existed an oral understanding made by late Sh. Surender Prakash during his lifetime, whereby the immovable properties mentioned at serial no. (i) and (ii) had to fallen to the exclusive share of late Sh. Dheeraj Prakash and the Plaintiff herein was entitled to collect the profits derived out of the partnership firm by the name of 'Aggarwal Cement Store'.

4.4. He however, fairly concedes that no registered documents were ever



executed with regard to the aforesaid oral understanding and nor there are any documents on record which would evidence the implementation of the aforesaid oral understanding. He admits that there are no documents on record that late Sh. Dheeraj Prakash exercised any proprietary rights with respect to the immovable properties mentioned at sl. nos. (i) and (ii) at Faridabad.

4.5. With respect to Madanpur Khadar property, mentioned at serial no. (iv), he states that the no rentals were collected by the Defendants after May, 2021 and the Defendants reasonably believe that the same were collected by the Plaintiff from the last tenant. He however concedes that presently the property is lying vacant and he is unable to assist the Court, as to whether the keys are in possession of the Defendants or not.

4.6. He states that it is admitted that both late Sh. Surender Prakash and late Smt. Usha Rani died intestate; and Plaintiff along with late Sh. Dheeraj Prakash were the only Class-I legal heirs of their parents.

Findings and Analysis

5. This Court has considered the submission of the parties and perused the record.

6. In the aforementioned facts, there is an unequivocal and unambiguous admission as regards the title of the suit properties in the name of late Smt. Usha Rani and late Sh. Surender Prakash. It is admitted that title documents of the suit property stand in the name of late Smt. Usha Rani and late Sh. Surender Prakash. It is further admitted that Plaintiff and defendants are the only Class-I legal heirs of late Smt. Usha Rani and late Sh. Surender Prakash and as per rules of devolution under Hindu Succession Act, 1956 Plaintiff is entitled to undivided 50% share and defendant nos. 1, 2 and 3 together are



entitled to 50% share in the entire estate (movable and immovable).

7. The defendants have sought to oppose the decree for partition on admission and sought a trial, on the sole plea that there was an oral understanding during the life time of late Sh. Surender Prakash, late Smt. Usha Rani, late Sh. Dheeraj Prakash and the Plaintiff as regards the allocation/division/partition of the immovable properties.

8. The submission of the Defendants that there was an oral understanding with respect to the allocation of property bearing no. 146P, Sector-46, Faridabad, Haryana ('Sector 46') and property bearing no. 209, Sector-45, Faridabad Haryana ('Sector 45') to late Sh. Dheeraj Prakash has no factual basis and there is admittedly no document recording the aforesaid oral understanding or evidencing the said understanding.

9. The title in Sector 46 property was standing in the name of Smt. Usha Rani till her unfortunate demise and she has admittedly not made any testamentary bequest in favour of late Sh. Dheeraj Prakash by executing a Will. Similarly, Sector 45 property was standing in the name of late Sh. Surender Prakash till his unfortunate demise and he as well has not made any testamentary bequest in favour of late Sh. Dheeraj Prakash. The defendants admit that there are no documents on record showing that late Sh. Dheeraj Prakash exercised any proprietary rights qua the said two immovable properties. As per record, the said two immovable properties continued to stand in the name of late Smt. Usha Rani and late Sh. Surender Prakash in public records. In the considered opinion of this Court, there is thus, no evidence on record to substantiate this plea of oral understanding.

10. The plea of oral understanding is vague and lacks material particulars as required under Order VI Rule 4 of the CPC. There is no evidence placed



on record by the defendants that the alleged oral understanding was acted upon by the parties. The plea is so nebulous that it cannot put to trial and it is also in teeth of the title documents of the immovable properties which continue to stand in the name of late Smt. Usha Rani and late Sh. Surrender Prakash.

11. In the facts of this case, the defendants have also failed to setup any material particulars for the reasons for entering into an alleged oral understanding with respect to the personal assets of late Sh. Surrender Prakash and late Smt. Usha Rani during their lifetime.

12. In this regard, it would be appropriate to refer to the judgment of Supreme Court passed in **Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1** wherein it was held as under:

“135. A special definition of partition has been carved out in the Explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. **In view of change of provisions of Section 6, the intendment of the legislature is clear and such a plea of oral partition is not to be readily accepted.** The provisions of Section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. **When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very**



cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.

136. The expression used in the Explanation to Section 6(5) “partition effected by a decree of a court” would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by the court. Even if partition is supported by a registered document it is necessary to prove that it had been given effect to and acted upon and is not otherwise sham or invalid or carried out by a final decree of a court. In case partition, in fact, had been worked out finally in toto as if it would have been carried out in the same manner as if affected (*sic* effected) by a decree of a court, it can be recognised, not otherwise. A partition made by execution of deed duly registered under the Registration Act, 1908, also refers to completed event of partition not merely intendment to separate, is to be borne in mind while dealing with the special provisions of Section 6(5) conferring rights on a daughter. There is a clear legislative departure with respect to proof of partition which prevailed earlier; **thus, the court may recognise the other mode of partition in exceptional cases based upon continuous evidence for a long time in the shape of public document not mere stray entries then only it would not be in consonance with the spirit of the provisions of Section 6(5) and its Explanation.”**

(Emphasis Supplied)

13. Though, the aforesaid observations have been made by Supreme



Court in the context of Section 6(5) of the Hindu Succession Act, 1956, however, the principles laid down therein lend guidance and would equally apply to test the plea of oral understanding setup by parties in succession claims under other provisions of the said Act. This would be imperative so as to expedite the adjudication of succession claims and prevent protraction of trial.

14. In the considered opinion of this Court, any bequest intended to be made by the title holder with respect to the immovable property has to be recorded by the way of testament or the transfer whether by gift/sale/relinquishment has to be by a document duly registered as per Section 17 of the Registration Act, 1908.

15. Thus, the Plaintiff is entitled to a preliminary decree for partition of the suit properties.

Preliminary decree with respect to immovable properties of late Smt. Usha Rani and late Sh. Surender Prakash.

16. In view of the aforesaid admissions a preliminary decree is accordingly passed, declaring that Plaintiff is entitled to undivided 50% share and Defendant Nos. 1, 2 and 3 together are entitled to undivided share of 50% in the following immovable properties:-

- a) Property bearing no. 146P, Sector-46, Faridabad, Haryana-121010.
- b) Property bearing no. 209, Sector-45, Faridabad, Haryana 121010.
- c) Property bearing no. 330/A/I/2, Chauhan Mohalla, Madanpur Khadar, New Delhi 110076.

Preliminary decree with respect to shares of the parties in Jasola Property

17. Plaintiff, Defendant no. 1 and late Sh. Dheeraj Prakash held undivided



1/3rd share each in this property.

18. Late Sh. Dheeraj Prakash's 1/3rd undivided share has devolved upon defendant nos. 1, 2 and 3 in equal shares.

19. Thus, as on date Defendant no. 1 holds undivided 4/9th share in this property, Defendant no. 2 holds undivided 1/9th share, Defendant no. 3 hold undivided 1/9th share and Plaintiff holds undivided 1/3rd share in this property. A preliminary decree is hereby passed declaring the shares of the parties in this property in the aforesaid ratios.

Preliminary decree with respect to movable assets

20. Learned counsel for the Defendant states that since the rights of the parties *qua* the immovable assets left behind by late Sh. Usha Rani and late Sh. Surrender Prakash stand determined, a decree in respect of the movable assets of late Sh. Usha Rani and late Sh. Surrender Prakash may also passed by this Court.

20.1. Since, it is an admitted fact that late Smt. Usha Rani and late Sh. Surrender Prakash died intestate and the Plaintiff and Defendant nos. 1 2 and 3 are only legal Class-I legal heirs, therefore, a preliminary decree is accordingly passed declaring:

- (a) Plaintiff being entitled to a 50% undivided share in the movable estate of late Smt. Usha Rani and Sh. Surrender Prakash and
- (b) Defendant nos. 1, 2 and 3 as well are together entitled to undivided 50% share in the movable estate of late Smt. Usha Rani and late Sh. Surrender Prakash.

Preliminary decree with respect to Surrender Prakash HUF

21. Learned counsel for the parties jointly made a submission that in order to enable a comprehensive settlement of the entire estate a decree may



also be passed with respect to assets of Surrender Prakash HUF. They state that the estate of Surrender Prakash HUF does not own any immovable assets and the movable assets owned by the HUF are the units of mutual fund.

22. Learned counsel for the Defendants has drawn the attention of this Court to the Income Tax return filed by the late Surrender Prakash HUF for the assessment year, 2022-23 which have been placed on record by the Plaintiff.

23. Learned counsel for the parties state that since Surrender Prakash HUF would have consisted of late Sh. Surrender Prakash and late Smt. Usha Rani and late Mr. Dheeraj Prakash and the Plaintiff herein, therefore, with the demise of late Smt. Usha Rani and Surrender Prakash and late Mr. Dheeraj Prakash the share of Surrender Prakash HUF has devolved equally upon Mr. Amit Kumar [Plaintiff] and the legal heirs of late Sh. Dheeraj Prakash (Defendant nos. 1, 2 and 3).

24. It is, accordingly, hereby declared that Surrender Prakash, HUF stands dissolved and the movable estate owned by Surrender Prakash HUF will fall to the share of the Plaintiff and Defendant nos. 1, 2 and 3 herein. Plaintiff shall be entitled to the share of 50% and Defendant nos. 1, 2 and 3 will be entitled to the share of 50% collectively.

25. It is declared that the claims, if any, of the children of the Plaintiff will be through their father i.e., the Plaintiff herein. Similarly, Defendant nos. 1, 2 and 3 have succeeded to the shares of late Sh. Dheeraj Prakash.

26. The registry is directed to pass a preliminary decree with respect to the shares of the parties in the said HUF in terms thereof.

27. With the aforesaid directions, the application stands allowed.



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Final decree of partition

28. With respect to passing of the final decree of partition *qua* the immovable properties set out at paragraph 1 of the order, the learned counsel for the Plaintiff and Defendant no.1 states on instruction from the parties to the suit that the matter be referred to the mediation.

29. Accordingly, the matter is hereby referred to mediation under the aegis of, Delhi High Court Mediation and Conciliation Centre, Delhi High Court, Shershah Road, New Delhi [“Samadhan”]. The secretariat of Samadhan is requested to appoint a senior mediator.

30. List before Delhi High Court Mediation and Conciliation Centre on **30.09.2024 at 02:30 pm.**

Rendition of accounts of the partnership firm

31. With respect to the claim of the Defendants for the rendition of accounts with respect to the partnership firm ‘Aggarwal Cement Store’, this Court on 19.07.2024 recorded the statement of Sh. Narender Prakash, who is the paternal uncle (Chacha) of the Plaintiff and late Sh. Dheeraj Prakash that the share of late Sh. Surender Prakash/late Smt. Usha Rani in the partnership firm ‘Aggarwal Cement Store’ has devolved equally upon Plaintiff and the Defendants herein. Accordingly, the Plaintiff and Defendants are also held entitled equally to the share of late Sh. Surender Prakash/late Smt. Usha Rani in the partnership firm of ‘Aggarwal Cement Store’.

32. Learned counsel for the Plaintiff states, on instruction, that the Plaintiff admits entitlement of Defendant nos. 1 to 3 with respect to receiving rendition of share held by late Sh. Surender Prakash/ late Smt. Usha Rani in the partnership firm i.e. ‘Aggarwal Cement Store’.



33. Learned counsel for the Plaintiff states that after the death of Sh. Surender Prakash in December, 2018; the Plaintiff and late Dheeraj Prakash together consented that the share of late Sh. Surender Prakash will devolve upon his wife Smt. Usha Rani and, therefore, she was inducted as a partner and she continued as a partner until her death in May, 2021 in the partnership firm, Aggarwal Cement Store. He states that after May, 2021 Defendant nos. 1, 2 and 3 are entitled to seek rendition of accounts with respect to profits of said partnership firm.

34. She states that audited accounts of the partnership firm with effect from May, 2021 has been filed and if any deficiency is pointed out in the document same will be rectified and would be supplied to the Defendants.

35. In view of the fact that Plaintiff admits that the 50% share of late Smt. Usha Rani in the said partnership firm has devolved equally upon the Plaintiff and the Defendants, therefore, the Plaintiff herein is directed to ensure that the accounts of the said partnership firm are rendered equally to the legal heirs of Mr. Dheeraj Prakash i.e., Defendant nos. 1 to 3 herein with effect from May, 2021.

36. The Plaintiff will also provide the copy of partnership deeds to the Defendants with respect to the date on which, Ms. Usha Rani and Ms. Sonia Aggarwal were inducted as a partner in the said partnership firm.

37. List before Court on 21.02.2025.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 18, 2024/hp/akt/ms