



\$~14

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

+ **CS(OS) 730/2023**

SMT. SUSHMA PUNDIR @ CHOPRAPlaintiff

Through: Mr. Ajay Sharma, Mr. Abhishek Raj
Sharma, Mr. J.K. Nayyar and Mr.
Ansh Garg, Advocates with plaintiff
in person

versus

SH. KAMAL KISHORE CHOPRA & ORS.Defendants

Through: Mr. Hirandra Kumar and Mr. Anurag
Aggarwal, Advocates for D-1 and 2
along with D-1 and D-2 in person
D-3 in person
Ms. Avni Singh, Panel Counsel for
GNCTD and Ms Prapti Singh,
Advocate for D-4

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **12.11.2024**

CS(OS) 730/2023

1. The present suit for partition by metes and bounds, possession, declaration and mesne profits has been filed with respect to property bearing B-210, Prashant Vihar, Rohini, Delhi-110085 ('suit property').
2. The plaint mentions that late Smt. Kamlesh Chopra was the 50% absolute owner of the suit property vide registered sale deed dated 13.11.1998.
3. Learned counsel for plaintiff states, on instructions, that the plaintiff does not dispute that defendant no. 2 herein is the other 50% owner of the suit property by virtue of the sale deed dated 07.10.1998. He states that plaintiff admits that she has no right, title or claim in the said 50% share owned by defendant no. 2. He states that any ambiguity in the plaint qua this



stand is hereby clarified. He states that the plaintiff herein does not challenge the 50% rights of defendant no. 2 in the suit property.

3.1 He states that in the legal notice dated 08.08.2023, the plaintiff has claimed plaintiff's share in the 50% of the suit property, which was owned by her mother i.e., late Smt. Kamlesh Chopra.

3.2 He states that, therefore, the relief of 1/3rd share prayed for at prayer clause (a) in the plaint may accordingly be read as 1/3rd share in the 50% of the suit property, which was owned by late Smt. Kamlesh Chopra.

4. The statement of the learned counsel for the plaintiff on behalf of the plaintiff, who is present in person in Court is taken on record. It is accordingly, clarified that the claims of the plaintiff in the present suit are only qua 50% of the share held by late Smt. Kamlesh Chopra in property bearing no. B-210, Prashant Vihar, Rohini, Delhi-110085. The plaintiff has no claims in the 50% ownership rights of defendant no. 2 in the present proceedings.

5. Defendant no. 3 as well is present in Court along with the plaintiff. She states that her interest is not adverse to the plaintiff and they both have common interests in the suit. She as well agrees with the submissions of the plaintiff. The statement of defendant no. 3 is taken on record.

6. Defendant no. 2 is, however, a proper party since she is a 50% undivided owner in the suit property.

7. Learned counsel for the plaintiff states that with respect to late Smt. Kamlesh Chopra's 50% ownership right in the suit property, the plaintiff and defendant no. 3 do not admit to the validity of the registered Will dated 28.09.2005 propounded by defendant no. 1, to contend that the said 50% ownership right in the suit property of late Smt. Kamlesh Chopra devolved



upon defendant no.1

8. The parties state that with respect to the 50% share of late Smt. Kamlesh Chopra, issues may be framed and matter be put to trial. Therefore, with consent of the parties the following issues are being framed:

- i. Whether the Will dated 28.09.2005 was validly executed by late Smt. Kamlesh Chopra? OPD-1
- ii. In case, defendant no. 1 fails to prove issue no. (i) then whether the plaintiff is entitled to mesne profits w.e.f. 15.07.2023? If yes, at what rate.
- iii. Relief and costs

9. Learned counsel for the defendant no. 1 fairly concedes that in case the defendant no.1 fails to prove issue no. (i) then the property will devolve by intestate succession on plaintiff, defendant no. 1 and defendant no. 3 in three (3) equal shares of 1/3rd each. The said statement of defendant no. 1 is taken on record and he is bound down to the same.

10. Since the issue no. (i) is the principal issue and the onus to prove the said issue lies on defendant no. 1, the parties agreed that evidence will be commenced by defendant no. 1.

Alternate Issue proposed by Plaintiff

11. At this stage, learned counsel for the plaintiff has proposed another issue that 'whether late Smt. Kamlesh Chopra could have executed the registered Will dated 28.09.2005?'.

11.1 He states that the said issue is being proposed on the contention that the suit property though standing in the name of late Smt. Kamlesh Chopra was not purchased by her out of her own personal funds and in fact it was her husband i.e., late Shri Somdutt Chopra who purchased the said property



and provided for the sale proceeds.

11.2 He states that though there are no documents on record which show any flow of funds from late Shri Somdutt Chopra to late Smt. Kamlesh Chopra for purchase of the 50% share in the suit property; he however, relies upon the pleadings wherein it has been averred that late Sh. Somdutt Chopra had sold flat no. C-30, Indraprastha Apartments, Sector-14, Rohini at the contemporaneous time and utilized the proceeds of the said flat for purchasing the 50% share of the suit property in the name of late Smt. Kamlesh Chopra.

12. This Court has considered the submissions of the learned counsel for the plaintiff and is of the view that the said submissions are without any merit.

13. Late Sh. Somdutt Chopra during his lifetime has never asserted that the 50% share in the suit property standing in the name of late Smt. Kamlesh Chopra belonged to him.

13.1 There is no relief of declaration sought in this plaint to the effect that the suit property belongs to late Sh. Somdutt Chopra.

13.2 Even if such a relief would have been sought, the said relief would have not been maintainable as there are no documents evidencing that the suit property was purchased with the funds of late Sh. Somdutt Chopra. The stage of filing documents is also over. This plea that the funds were provided by late Sh. Somdutt Chopra is a bald averment and is not sufficient to cast any cloud on the title of late Smt. Kamlesh Chopra. The pleas being raised are contrary to the registered documents.

13.3 Further, in view of Section 14(1) of the Hindu Succession Act, 1956, the property standing in the name of late Smt. Kamlesh Chopra would be her



absolute property. The plaintiff also admits that there was no other immovable property which was owned by late Smt. Kamlesh Chopra.

13.4 Thus, the submission of the plaintiff that late Smt. Kamlesh Chopra could not have executed a valid Will with respect to the immovable property which stands in her name is contrary to law. The right of the title holder to make a bequest with respect to the immovable property standing in the name of the title holder is a statutory right conferred on Hindus under Indian Succession Act, 1925.

13.5 The present suit has been filed on the premise that the suit property stands in the name of late Smt. Kamlesh Chopra and the plaintiff claims herself to be the legal heir of late Smt. Kamlesh Chopra. In fact, even in the legal notice dated 08.08.2023 issued by the plaintiff prior to filing the suit there is no assertion that the suit property belongs to late Shri Somdutt Chopra. In fact, in the notice the plaintiff categorically admits that late Smt. Kamlesh Chopra was the absolute owner of the 50% share in the suit property.

13.6 Therefore, the issue proposed by the plaintiff cannot be framed as a issue to be determined in the present suit and is hereby rejected.

14. The parties shall file their list of witnesses within two (2) weeks.

15. Defendant no. 1 will file evidence affidavit within four (4) weeks.

16. List before the learned Joint Registrar (J) for fixing the dates for recording of evidence on 17.02.2025.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 12, 2024/msh/mt/sk

Click here to check corrigendum, if any