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

+ **CS(OS) 1000/2024, I.A. 48391-48392/2024**

POONAM GILL

.....Plaintiff

Through: **Mr. Pankaj Vivek, Advocate**

versus

MRS NIRDOSH GILL & ORS.

.....Defendants

Through: **None**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 16.12.2024

I.A. 48392/2024 (for exemption)

1. The plaintiff shall file legible, clearer and certified copies of exempted documents, compliant with practice rules, before the next date of hearing.
2. The plaintiff shall file true translated copies of documents filed in vernacular before the next date of hearing.
3. The application for exemption from filing originals is allowed, subject to the plaintiff granting inspection of the original documents filed, as and when required to do so as well as at the stage of carrying out admission/denial of documents.
4. The application stands disposed of.

CS(OS) 1000/2024

5. This is a suit filed for declaration, partition and rendition of accounts and recovery.



6. It is stated that the plaintiff, defendant no. 2 and defendant no. 3 are the children of late Sh. Jaswant Singh Gill and defendant no. 1 is the widow of late Sh. Jaswant Singh Gill.

7. The suit has been filed with respect to the estate enlisted at paragraph '20' of the plaint which reads as under:

“20. That Sh. Jaswant Singh Gill died intestate on 26.11.2019. At the time of his demise, the coparcenary was possessed of following movable and immovable properties:

Sl.No.	Property details	Held in the name of
1.	Half undivided share of second floor, E- 31 2nd Floor, Hauz Khas Market, New Delhi measuring around 1800 Sq. ft.	Sh. Jaswant Singh Gill
2.	Half undivided share of second floor, E- 31 2nd Floor, Hauz Khas Market, New Delhi measuring around 1800 Sq. ft.	Mrs. Nirdosh Gill (Defendant no. I)
3.	Half un-divided share in the Mezzanine Floor measuring	Mrs. Nirdosh Gill (Defendant no. I)
4.	SSDM Mahabir Hospital, Opp. Khalsa College Veterinary Hospital, Ram Tirath Road, Amritsar, Punjab.	Sh. Jaswant Singh Gill
5.	1/883, Circular Road, opp. Medical College, Beauty Avenue, Phase 3, Amritsar 143001	Mrs. Nirdosh Gill (Defendant no. I)
6.	Agricultural land in Village Rakh Jhita, Amritsar	Sh. Jaswant Singh Gill
7.	1800 sq. yds. of land in Vallah, Sultanwind, Distt. Amritsar, Punjab	Sh. Jaswant Singh Gill
8.	A 250 sq. yard plot in Phagwara, Punjab.	Sh. Jaswant Singh Gill



9.	25% share 1ll a partnership firm named “Lovely View Hostel” which owned a residential immovable property used as hostel in the vicinity of Lovely Professional University, Phagwara, Punjab	Sh. Jaswant Singh Gill
10.	HUF Jaswant Singh Gill & Family	Sh. Jaswant Singh Gill
11.	SBI bank account bearing account number 0000003069706513 and IFSC Code SBIN0000748 143002008 Balance as on 30.04.2013 IS Rs. 2,99,096/-	Sh. Jaswant Singh Gill
12.	Yes Bank Customer ID: 338252	Sh. Jaswant Singh Gill
13.	HDFC Bank account bearing account number 01151000026216 and IFSC Code HDFCOOOO115 Balance as on 31.03.2013 Rs. 6,084.85/-	Sh. Jaswant Singh Gill
14.	Joint Bank Account SIB account no. 13286 at Indian Overseas Bank, R.K. Puram, New Delhi- 110066.	Mr. Jaswant Singh Gill and Mrs. Nirdosh Gill (Defendant No.1)
15.	Oriental Bank of India bearing account no. 19431131000078 and IFSC Code ORBC0101943	M/s SSDM Hospital

.....”
(Emphasis supplied)

8. Learned counsel for the plaintiff states that late Sh. Jaswant Singh Gill unfortunately passed away on 26.11.2019 intestate.

8.1 He states that the plaintiff is entitled to 1/4th share in the personal estate of late Sh. Jaswant Singh Gill.

8.2 He states that the plaintiff is also entitled to 1/4th share in the immovable properties which are coparcenary in nature, as a co-parcener. He



states that the assets (movable and immovable) enlisted at paragraph '20' of the plaint are subject matter of this suit.

8.3 He states that the plaintiff is not in power and possession of any documents which evidence that the movable and immovable assets enlisted in the plaint at paragraph '20' are coparcenary in character. He states that plaintiff relies upon the averments made in the plaint to substantiate the plea of coparcenary character of these assets.

8.4 He states that after the death of late Sh. Jaswant Singh Gill, the plaintiff had executed a registered General Power of Attorney ('GPA') dated 26.12.2019 in favour of defendant no. 3 for better management of the estate.

8.5 He states that the said GPA contains reference to immovable estate owned by late Sh. Jaswant Singh Gill in the State of Punjab. He states that details of the property enlisted at serial no. '6', '7' and '8' of paragraph '20' of the plaint have been garnered from the GPA.

8.6 He states that defendant no. 3 has relied upon the said GPA and sold immovable properties without renditioning accounts to the plaintiff for her 1/4th share in the said properties. In this regard, he states that land at serial no. 6 i.e., Village Rakh Jhita, Amritsar has been sold by defendant no. 3 and plaintiff's share has not been accounted for and paid over. He states that the plaintiff has since cancelled the GPA vide registered deed of cancellation dated 16.10.2024.

8.7 He states that though the plaintiff has placed on record the Income Tax Returns ('ITR') of a Hindu Undivided Family ('HUF') known by the name of 'Jaswant Singh Gill and Family', the plaintiff contends that the said HUF is only a smaller portion of a coparcenary of late Sh. Jaswant Singh Gill.



He states that the coparcenary is distinct from this HUF. He states that the coparcenary by itself does not have any name and is a creature of law. He states that the HUF is a small subset of the coparcenary.

8.8 He states that qua the properties enlisted at serial nos. '2', '3' and '5' (i.e., the Hauz Khas property) at paragraph '20' of the plaint though the title is standing in the individual name of defendant no. 1, Mrs. Nirdosh Gill the said properties are liable to be considered as a coparcenary property. He fairly states that the plaintiff does not have any documents to show that the funds used for the purchase of the said properties were provided by any alleged coparcenary. He also admits that the said property does not find mention in the ITR filed by the HUF.

8.9 He similarly admits that property enlisted at serial no. 5 (i.e., Circular Road Amritsar) at paragraph '20' of the plaint as per the title deed is in the individual name of defendant no. 1 and this property does not find mention in the ITR filed by the HUF.

8.10 He further admits that no title document qua immovable property enlisted at serial no. 4 (i.e., SSBM Hospital) of paragraph '20' of the plaint has been placed on record. He admits that this property also does not find mention in the ITR filed by the HUF.

8.11 At this stage, learned counsel for the plaintiff has also handed over a copy of the sale deed dated 03.12.2015 to state that one-half of the mezzanine floor of E- 31, Hauz Khas Market, New Delhi is owned by late Sh. Jaswant Singh Gill. He states that this property has not been pleaded in the plaint but the title deed shows that it belonged to late Sh. Jaswant Singh Gill. He states that the plaintiffs right in this property be protected. The plaintiff is directed to have the said sale deed placed on record.



8.12 He states that though there is no documentary evidence to show that the properties standing in the name of defendant no. 1 is coparcenary or the SSDM Hospital property is a coparcenary property, however all these facts will be proved at trial.

Analysis and Findings

9. In the plaint, property standing in the personal/individual name of defendant no. 1 and a third-party entity M/s SSDM Hospital have been included. The process of suit proceedings cannot be initiated unless the plaintiff satisfies this Court that she has a cause of action in her favor with respect to suit properties wherein the recorded title is standing in the name of third parties. At paragraph '20', the plaintiff has included at serial no. '2', '3', '5' and '15' properties which admittedly are not standing in the name of late Sh. Jaswant Singh Gill. Similarly, the property at serial no. '4' does not stand in the name of late Sh. Jaswant Singh Gill or his HUF but in the name of a third-party entity.

10. This Court is prima facie of the view that the present suit filed for the relief of partition qua personal estate of late Sh. Jaswant Singh Gill is maintainable. The suit is also maintainable for the partition of the HUF known as 'Jaswant Singh Gill and Family' which is a legal taxing entity with a Permanent Account Number ('PAN') AAAHJ8440B.

10.1 The partition of the properties owned by Jaswant Singh Gill and Family HUF would be governed by Section 6 of Hindu Succession Act, 1956. And, the partition of the properties individually owned by Jaswant Singh Gill would be governed by Section 8 of Hindu Succession Act, 1956.



10.2 The properties at serial no. '2', '3', '4', '5' and '15' of paragraph '20' of the plaint are neither the personal estate of late Sh. Jaswant Singh Gill nor part of the assets owned by Jaswant Singh Gill and Family HUF.

10.3 This Court is, at a loss to appreciate the contentions of the plaintiff qua the existence of an alleged coparcenary separate from Jaswant Singh Gill and Family HUF. This Court is unable to appreciate the submission of the plaintiff that there exists a coparcenary, which owns assets (movable and immovable) in addition to the assets owned by Jaswant Singh Gill and Family HUF. The said submission of the plaintiff is unknown to law and divorced from the facts of this case.

10.4 In law, late Jaswant Singh Gill could have owned two (2) kinds of property i.e., personal and coparcenary. The character of the properties owned by 'Jaswant Singh Gill and Family HUF' is in law known as coparcenary and governed by Section 6 of the Hindu Succession Act, 1956 ('the Act of 1956'). The properties owned by Jaswant Singh Gill in his individual name are his personal properties and governed by Section 8 of the Act of 1956. The properties owned by 'Jaswant Singh Gill and Family HUF' are distinct and separate. The identity of the said properties owned by the HUF is recorded in the ITRs of the said HUF and thus discernable.

10.5 The properties enlisted at serial no. '2', '3', '4' and '5' of paragraph '20' of the plaint find no mention in the ITRs of the HUF. Learned counsel for the plaintiff also admits that these properties do not belong to the HUF known as 'Jaswant Singh Gill and Family'.

10.6 Thus, on its own showing, the plaintiff has no cause of action qua the immovable properties independently held by defendant no. 1 i.e., Mrs. Nirdosh Gill in her personal name. Defendant no. 1 admittedly owns half



undivided share of second floor, E- 31, Hauz Khas Market, New Delhi (Serial No.2 Property) and half undivided share in the Mezzanine floor E- 31, Hauz Khas Market, New Delhi admeasuring about 1800 square yards (Serial No.3 Property). Similarly, the plaintiff, has no case qua the property bearing no. 1/883, Circular Road, opp. Medical College, Beauty Avenue, Phase 3, Amritsar, 143001 (Serial No.5 Property) where the title is standing in the individual name of Mrs. Nirdosh Gill.

10.7 Late Jaswant Singh Gill owned half share in the 2nd floor and half share in the mezzanine floor of the Hauz Khas property. The Hauz Khas property was on rent. The rental income from the Hauz Khas property has been assessed to Income Tax as late Sh. Jaswant Singh Gill's personal income, as is evident from the individual ITR of late Sh. Jaswant Singh Gill filed with the plaint.

10.8 Thus, it is evident the Hauz Khas property is the personal property of late Sh. Jaswant Singh Gill and the Mrs. Nirdosh Gill i.e., defendant no. 1 herein and therefore the plaintiff has no cause of action qua defendant no. 1's 50% share in this property.

10.9 Similarly, the plaintiff in the plaint admits that the property enlisted at Serial no. 4 i.e., SSDM Mahabir Hospital, Opp. Khalsa College Veterinary Hospital, Ram Tirath Road, Amritsar, Punjab is a property standing on the land owned by the maternal aunt of the plaintiff. The averments of the plaintiff that since the building constructed thereon was built by late Sh. Jaswant Singh Gill it would make the said property part of the estate of late Sh. Jaswant Singh Gill is a bald averment unsubstantiated from documents. In the absence of any documents, the said property cannot be considered to be a coparcenary property. Similarly, the enlisting of the bank account of



M/s SSDM Hospital at serial no. '15' of paragraph '20' is without any basis. The plaintiff has no cause of action qua the Hospital or its bank account. The said Hospital does not find any mention in the ITR of the HUF.

Suit registered only with respect to properties at Serial no. 1, 6 to 14 of para 20 of the plaint

11. Thus, for the present, this suit is being registered only qua the share claimed by the plaintiff in the estate of her father i.e., late Sh. Jaswant Singh Gill in his half undivided share of second floor, E- 31, Hauz Khas Market, New Delhi (Serial No.1 Property) and the half undivided share mezzanine floor, E- 31, Hauz Khas Market, New Delhi (Not mentioned in the plaint) and the properties enlisted at Serial nos. '6' to '9' and '10' to '14' at paragraph '20' of the plaint.

11.1 In this regard it is noticed that though the particulars of the land enlisted at Serial nos. '6', '7' and '8' is not in compliance with Order VII Rule 3 Code of Civil Procedure, 1908 ('CPC'), however, since there is a reference to these lands in the GPA dated 26.12.2019, the suit is being entertained at this stage qua the said estate.

11.2 The plaintiff shall ensure that the particulars of the land enlisted at Serial nos. '6', '7' and '8' compliant with Order VII Rule 3 CPC are filed with appropriate site plans prior to the next date of hearing. The plaintiff is obliged to give these particulars failing which the plaint is liable to be rejected.

12. Let the plaint be registered as a suit. Issue summons to defendant nos. 1 to 3 qua the properties enlisted at serial nos. 1, 6 to 14 enlisted at paragraph 20 of the plaint through all modes. Affidavit of service be filed within one (1) week.



12.1 The summons shall indicate that the written statements must be filed within thirty (30) days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.

12.2 The plaintiff is at liberty to file replication(s) thereto within thirty (30) days after filing of the written statements. The replication(s) shall be accompanied by affidavit(s) of admission/denial in respect of the documents filed by the defendants, failing which the replication(s) shall not be taken on record.

12.3 It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

12.4 Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

13. The present suit has been filed by the plaintiff through Special Power of Attorney (SPA) Mr. Sachin Kumar Sharma. Learned counsel for the plaintiff states that the plaintiff has no relationship with Mr. Sachin Kumar Sharma, who is a mere acquaintance of the plaintiff.

14. The plaint contains assertions which are not based on documents. Mr. Sachin Kumar Sharma, the SPA has no personal knowledge of the facts pleaded. Thus, considering the controversy and the nature of assertions made in this plaint wherein the plaintiff has alleged that funds used for buying the assets enlisted at paragraph 20 of the plaint came from a coparcenary nucleus, this Court deems it appropriate that the plaintiff shall file her personal affidavit in support of the pleadings within a period of four (4) weeks.



15. Further, the plaintiff is directed to appear in person before this Court on the next date of hearing for recording of her statement in support of the averments made in this plaint qua the existence of the alleged coparcenary and the flow of funds in purchase of the suit properties as pleaded in this plaint.

16. Learned counsel for the plaintiff states that the plaintiff will be available to appear in person after two (2) months.

17. At request, list before the learned Joint Registrar (J) on **20.02.2025**.

18. List before Court on **14.04.2025**.

I.A. 48391/2024 (Application on behalf of the plaintiff seeking ex-parte ad-interim injunction)

19. Issue notice to the defendants through all modes. Reply be filed within thirty (30) days. Rejoinder, thereto if any, be filed within thirty (30) days thereafter.

20. In the facts noted hereinabove the plaintiff has made out a prima facie case with respect to properties enlisted at serial no. 7 to 14 of paragraph 20 of the plaint. In addition, plaintiff has made out a prima facie case with respect to the 50 % share held by late Sh. Jaswant Singh Gill in the Hauz Khas property.

20.1 Until the next date of hearing, defendant nos. 1 to 3 are directed to maintain status quo qua title and possession qua immovable properties enlisted at Serial nos. 7 and 8 of paragraph 20 of the plaint.

20.2 So also, defendant nos. 1 to 3 are directed to maintain status quo with respect to the 50% share of late Sh. Jaswant Singh Gill in 2nd floor and mezzanine floor of E- 31, Hauz Khas Market, New Delhi, until the next date of hearing. It is clarified that this injunction will not in any manner interdict



defendant no. 1 from dealing with her individual 50% share in the said property.

20.3 The defendants are also directed to maintain status quo qua share of late Sh. Jaswant Singh Gill in the partnership firm known as 'Lovely View Hotel' enlisted at serial no. 9 of para 20 of the plaint, until the next date of hearing.

20.4 The defendants are also directed to maintain status quo qua the bank accounts enlisted at serial no. 11 to 14 of paragraph 20 of the plaint, until the next date of hearing.

21. Order XXXIX Rule 3 CPC compliance be done within ten (10) days. Affidavit of service be filed within ten (10) days.

22. It is reiterated for clarity that there is no stay operating qua the immovable properties standing in the individual name of defendant no. 1, which includes the property at Hauz Khas and Amritsar. And, there is no stay of the property known as SSDM Mahabir Hospital, Amritsar.

23. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 16, 2024/msh/sk

[Click here to check corrigendum, if any](#)