



* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 3644/2014 and I.A. 6706/2024

IN THE MATTER OF:

.....PLAINTIFFS

versus

.....DEFENDANTS

(Through: Mr. Vikas Kumar Bharti, Adv for D-1.)

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT



PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The instant civil suit has been instituted by the plaintiff, seeking for the relief of a preliminary decree for partition and appointment of a Local Commissioner to suggest the mode of partition; for a final decree for separation of shares be passed over the suit property and for consequential reliefs.

2. It is seen that the plaintiffs are daughters of late Shri Nar Shardul Mittal and Smt Ram Dulari and that the defendants are their sons; accordingly, the parties stand related as sisters and brothers.

3. It is the case of the plaintiff that their parents, formerly resident of 15/60, Punjabi Bagh, New Delhi-110026, practiced the Hindu religion and that the parties to the present suit are therefore governed by Hindu law. As per the plaint, Smt Ram Dulari died on 02.02.2009, and that on the death of Smt Ram Dulari, her assets devolved into the possession of late Shri Nar Shardul Mittal. Subsequently, late Shri Nar Shardul Mittal died on 27.11.2011, and that he died intestate, and that at the time of his death the defendants were residing at 15/60, Punjabi Bagh, and in occupation of the suit property. Late Shri Nar Shardul Mittal was a self-acquired proprietor of extensive movable and immovable assets and that particulars of those assets are set forth in the plaint, including *inter alia* the residential house at 15/60 Punjabi Bagh, plots at Hakim (Punjab), units in mutual funds, bonds, shares (demat and physical), bank accounts, fixed deposits and other specified movables.

4. As legal heirs, the plaintiffs claim joint ownership of the assets left by late Shri Nar Shardul Mittal and Smt Ram Dularim and that possession of joint property by one co-owner is, in law, deemed possession on behalf of all



co-owners. Their case is that each plaintiff is entitled to a one-fourth share in the assets left by the deceased parents, and that the aggregate value of such assets is estimated at not less than Rs. 40 crores. Their grievance seems to be that multiple family meetings were convened between December 2011 and January 2013 to effect partition, and that a registered legal notice dated 25.02.2013 and subsequent correspondence (including a meeting on 27.04.2014) requesting partition, but that the defendants declined to effect partition.

5. Their further grievance seems to be that an alleged handwritten Will has been asserted by the defendants (*via* communication dated 02.05.2014), but that the said Will is not admitted to be a legally executed testamentary document, and that the plaintiffs disavow its validity.

6. The defendant no. 1 and no.2, while they have filed their respective statements, have taken the broad position that late Shri Nar Shardul Mittal did not die intestate.

7. According to them, the last Will and Testament executed by late Shri N.S. Mittal in June 2008 was located pursuant to a family search of the papers of the deceased, and that the existence and contents of the Will were known to all the legal heirs.

8. Immediately after the demise of late Shri N.S. Mittal, a family meeting was convened on 17.12.2011 at which an undertaking/agreement was executed and recorded among the legal heirs (including plaintiff no.2 and the defendants), in the presence of senior relatives Shri Vijay Kumar Gupta and Shri Ram Nath Gupta. By that undertaking it was unanimously agreed that a Will, whether signed or unsigned, handwritten or typed, if found among the papers of the deceased, would be accepted and acted upon



by all the parties as the last wish of the deceased. Further, it was agreed that assets not disposed of by the Will would be distributed equally among the legal heirs. Consent of plaintiff no.1, who was not physically present, was obtained by telephone during the said meeting.

9. A joint search of the deceased's room and the steel almirah was conducted in accordance with the family agreement, and that the Will dated June 2008, in the handwriting and signature of the testator, was found and read out at a family meeting held in January 2012 at the residence of Shri Ram Nath Gupta. Photocopies of the Will were made, and copies were supplied to all the legal heirs on that occasion. The original Will was retained in safe custody by Shri Vijay Kumar Gupta (stated to be the mamaji of the parties) with the consent of the parties.

10. An inventory of movable valuables (including certain gold bangles, small cash sums, and other items) discovered in the almirah was prepared at the time of the joint search and was signed by plaintiff no.2 and the defendants. The papers and documents relating to each legal heir were segregated and stored in boxes and returned to the almirah, which was then locked; the keys were entrusted to Shri Vijay Kumar Gupta for safekeeping.

11. The case of the defendants is that the plaintiffs have retracted from the family agreement and the undertaking dated 17.12.2011, and have refused to give effect to the Will, and thus, the plaintiffs have not come to Court with clean hands. The defendant's case seems to be that the plaintiffs are not entitled to 1/4th share in the property in view of the Will and the family agreement, and that the plaintiffs' entitlement is limited to such bequests as are contained in the Will and as agreed in the family understanding of 17.12.2011.



12. Against the same, the separate replications came to be filed, denying the assertion of the Defendants that late Shri N.S. Mittal had executed a valid Will in June 2008. The Plaintiffs contend that the deceased father died intestate and that the alleged document styled as a Will is false, fabricated, not dated, not attested in conformity with Section 63 of the Indian Succession Act, 1925, and contains interpolations, cuttings and alterations. The Plaintiffs emphasize that no probate of the said document has been sought or obtained, and that reliance thereon is legally misconceived. They also deny the “family understanding” or “undertaking” dated 17.12.2011. It is asserted that Plaintiff No.1 never signed any such undertaking, and that Plaintiff No.2 was compelled to sign under duress and as a precondition to access her own papers from the almirah of late Shri N.S. Mittal. It is further submitted that the so-called undertaking bears no witness signatures, was drafted by the son of Defendant No.1, and cannot be accorded legal sanctity.

13. They also state that no Will was discovered during the joint search of the almirah conducted after the demise of late Shri N.S. Mittal. The story subsequently advanced by the Defendants that a Will was later found and handed over to the maternal uncle, Shri Vijay Kumar Gupta, is described as suspicious, unexplained, and without corroboration. The Plaintiffs allege collusion between the Defendants and the said relative, noting also that the original has not been produced despite being in their possession or control. They assert that the properties alleged to have been purchased for them were acquired from their own resources, and even if certain assistance was provided during the father’s lifetime, such acts would not disentitle the Plaintiffs from their lawful share in the estate.

14. The declarations dated 21.01.2003, said to have been executed by the



Plaintiffs relinquishing rights in the Punjabi Bagh property, have been described as forged, fabricated, and unenforceable. It is contended that such relinquishment, even if assumed, required registration under the Registration Act, 1908, which was never done, and they also seek for a forensic examination of the said documents.

15. With respect to taking care of the parents, they assert that the plaintiffs, also contributed to their care and attended upon them during illness and hospitalization. They further contend that the jewellery, valuables, gold and silver articles, shares, debentures, bonds and mutual funds of the deceased parents are in possession of the Defendants, who are obliged to render accounts.

16. Heard Mr. Sudhir Nandrajog, learned counsel appearing for the plaintiffs, and Mr. Vikas Kumar Bharti, learned counsel appearing for defendant no.1.

17. None appears for defendant no.2 despite the matter is called out in the second round, as was rightly apprehended by the plaintiff by way of I.A. 19054/2025.

18. The brief background of the facts, as has been noted hereinabove, indicates that the plaintiffs and the defendants are Class-I legal heirs of late Shri Nar Shardul Mittal, who passed away intestate on 27.11.2011.

19. The present civil suit has accordingly been instituted by the plaintiffs seeking partition of the movable and immovable assets and properties left behind by late Shri Nar Shardul Mittal, the father of the parties.

20. At the outset, both defendants contested the suit by filing their respective written statements. However, *vide* order dated 23.09.2021, the Local Commissioner recorded that defendant no. 1 did not wish to lead any



evidence.

21. Learned counsel appearing for defendant no. 1 reaffirms this position and submits that defendant no. 1 admits the claim set up by the plaintiffs in the present civil suit. It may be noted that, by order dated 06.07.2018, this Court had framed the following issues:-

“i. Whether the Plaintiffs are entitled to the partition of the estate/movable and immovable assets of Late Shri Nar Shardul Mittal and Smt Ram Dulari Mittal? If so, to what extent? (OPP)

ii. Whether the alleged WILL purportedly executed by Shri Nar Shardul Mittal is valid and enforceable. If so, to what effect? (OPD)

iii. Whether the Documents dated 17th December, 2011, and the Declaration dated 21st January, 2003, are legally valid and enforceable? (OPD)

iv. Whether the Plaintiffs are guilty of suppression and concealment of material facts? (OPD)”

22. The father of the parties, late Shri Nar Shardul Mittal, was married to Smt Ram Dulari Mittal. From this marriage, four children were born, namely: (i) Braham Tej Mittal (son), (ii) Bhumitra Jindal (daughter), (iii) Param Tej Mittal (son), and (iv) Dr. Smriti Goel (daughter). It is thus evident that the parties to the present proceedings are siblings.

23. Late Shri Nar Shardul Mittal passed away intestate on 27.11.2011. The properties claimed to be in his name are enumerated in paragraphs 11 to 16 of the plaint. For ease of reference, paragraphs 11 to 16 are reproduced below:-

“11. That before the death of the aforesaid late Shri N.S. Mittal, he had acquired enormous properties from his personal earnings/self-acquired properties, both moveable and immovable. He held the properties in his individual name as also in the name of N.S. Mittal (HUF). Insofar as the plaintiffs are aware, late Shri N.S. Mittal left the following properties, both moveable and immovable:

i) Entire residential house bearing No. 15/60, Punjabi Bagh, New Delhi.



ii) Plot No.60 and 61 having an area of 227.5 sq. yards each in village Hakim, Tehsil Phagwara, Distt. Kapurthala, Punjab.

iii) Units in various mutual funds.

iv) Debenture/Bonds of various companies.

v) Shares in various listed and unlisted companies in demat form with M/s Alankit Assignments Ltd. IE/13, Ground Floor, Jhandewalan Extn. New Delhi-15, vide Client ID No.10429623 in the name of Nar Shardul Mittal c/o N.S. Mittal HUF, 15/60, Punjabi Bagh. New Delhi and vide Client ID No. 10242799 in the name of Nar Shardul Mittal, 15/60, Punjabi Bagh, New Delhi-110026.

vi) Physical form shares in various companies listed as well as unlisted.

12. That late Shri N.S. Mittal was operating and/or having accounts in various banks. The details of some of which are:

vii) S.B. Account No.0275010081795 in the name of N.S. Mittal (HUF), United Bank of India, Asaf Ali Road, New Delhi.

viii) Savings Bank Account No.0275010081787 in the name of Mr. Nar Shardul Mittal in United Bank of India, Asaf Ali Road, New Delhi.

ix) Savings Bank Account in Andhra Bank. Connaught Place, New Delhi.

x) Savings Bank Account No.00911000132977 in the name of Mr. Nar Shardul Mittal in HDFC Bank, Punjabi Bagh, New Delhi.

xi) Savings Bank Account No.03271000038682 in the name of Mr. Nar Shardul Mittal in HDFC Bank, Paschim Vihar, New Delhi.

xii) NSS Account No. 15492 in the name of Mr. Nar Shardul Mittal, Post Office at Parliament Street, New Delhi.

xiii) Fixed deposits in HDFC Bank, Punjabi Bagh and Paschim Vihar, New Delhi and SBI, Mayapuri Vihar Ph-I, Delhi-110091.

xiv) Saving Bank Account No.30703206273 with State Bank of India, Mayapuri Vihar Phase-I, Delhi-91.

13. That besides, the above late Shri N.S. Mittal had also acquired Gold, 135 Ginnies of 10 gram each, Silver approximately 60 kg, Silver Ornaments, Household Goods, Car, 7 Air Conditioners, Refrigerators, TV, Furniture, Fixtures etc. Late Shri N.S. Mittal was also holding a licensed Webley Scot Revolver. It is also believed that late Shri N.S. Mittal possessed substantial amount of cash in the household when he breathed his last.

14. That late Shri N.S. Mittal was also in possession of the jewelry of the mother of the plaintiffs namely late Smt Ram Dulari. Besides the jewelry he was also in possession of stocks, shares, bonds (both demat as well as physical form), fixed deposit receipts and her income tax and wealth tax returns. Mother of the plaintiffs late Smt Ram Dulari possessed huge gold and diamond jewelry sets when she had died. All that jewelry was possessed by late Shri N.S. Mittal.

15. That late Shri N.S. Mittal was also pursuing land acquisition case



before the reference court to grant compensation in lieu of acquisition of Rajouri Garden land. The relevant documents and papers pertaining to the said case was in possession of late Shri N.S. Mittal at the time of his death. The said case is required to be pursued and all his legal representatives are required to be substituted in the said case and the amount of compensation awarded by the competent court of law is also required to be distributed equally amongst all the legal heirs of late Shri N.S. Mittal. Similarly, late Shri N.S. Mittal was an assessee under the provision of the Income Tax Act, 1961 and Wealth Tax Act in his individual capacity as well as Karta of HUF. Income Tax and Wealth Tax Returns are required to be filed by the accountable persons j.e. the parties to the present suit, but no effort have been made by the Defendants to either file such returns, or to give access to the Plaintiff or to give documents and information required to file such returns, though the Plaintiffs requested the Defendants to cooperate in the matter to avoid non-compliance and its consequences etc. Mother of the Plaintiffs was also an assessee under the provisions of Income Tax Act, 1961. After her demise, returns pertaining to the assets left by her are also required to be filed.

16. That late Shri N.S. Mittal was also operating lockers in the banks and was in possession of the keys of the same at the time of his death. Similarly, late Smt Ram Dulari mother of the plaintiffs was also operating bank lockers in several banks and late Shri N.S. Mittal was having the keys of the said lockers.”

24. The relationship of the parties remained undisputed during the trial. However, it was contended by defendant no. 1 that late Shri Nar Shardul Mittal had executed an undated Will, which has been marked as Mark A (PDF page 4 of the defendants’ documents).

25. The plaintiffs, in order to substantiate their case, have led evidence through affidavits Ex. PW1/A and Ex. PW2/A. The burden of proof, as required to establish their entitlement, has been fully discharged by the plaintiffs.

26. Even in the course of cross-examination, no inconsistency has emerged regarding the entitlement of the parties to the estate of the deceased, late Shri Nar Shardul Mittal. In view of the aforesaid, Issue No. 1



is decided in favour of the plaintiffs, holding that they are entitled to partition of the estate, both movable and immovable, left behind by late Shri Nar Shardul Mittal and Smt Ram Dulari Mittal, to the extent of one-fourth share each.

27. With respect to Issue No. 2, the burden lay upon defendant no. 1, who had propounded the alleged Will in his favour. It is noted, however, that defendant no. 1 has given up his challenge. Defendant no. 2, on the other hand, has not adduced any cogent evidence to substantiate the plea of the Will. The affidavit Ex. D2W-1/A does not form part of the pleadings.

28. Further, the said facts stand admitted by defendant no. 2 in the examination dated 15.05.2023.

29. The document claimed to be the Will has not been produced in its original form. No attesting witness has been examined to establish its due execution. The document itself bears no date (though it is alleged to be of June, 2008) and, upon a bare perusal, reflects multiple cuttings, corrections, and pasted slips. While the typed copy of the said document has been placed on record containing its textual contents, the purported original Will is not possible to be reproduced in view of the multiple strike-offs and the illegible handwriting. The Court has, however, thoroughly examined the impugned Will.

30. The Supreme Court in *Apoline D'Souza v. John D'Souza*¹, observed that the execution and attestation of an unprivileged will must be proved strictly in accordance with the statutory scheme (Sections 63 and 68 of the Indian Succession Act, 1925). Overwriting, cuttings, and other material irregularities in the will, absence or unsatisfactory evidence of attesting



witnesses, unexplained manner of production of the document, and other suspicious circumstances were held to be matters of substance which can vitiate proof of execution. A mere formal or registered character of the document would not, by itself, remove such suspicion. Where the propounder fails to discharge the onus of proving due execution and to remove the surrounding suspicious circumstances, the document cannot be acted upon as a valid will. The relevant portion of the said decision reads as under:-

“13. Section 68 of the Evidence Act, 1872 provides for the mode and manner in which execution of the will is to be proved. Proof of attestation of the will is a mandatory requirement. Attestation is sought to be proved by PW 2 only. Both the daughters of the testatrix were nuns. No property, therefore, could be bequeathed in their favour. In fact one of them had expired long back. Relation of the testatrix with the respondent admittedly was very cordial. The appellant before us has not been able to prove that she had been staying with the testatrix since 1986 and only on that account she was made a beneficiary thereof. The will was full of suspicious circumstances. PW 2 categorically stated that the will was drafted before her coming to the residence of the testatrix and she had only proved her signature as a witness to the execution of the will but the document was a handwritten one. The original will is typed in Kannada, although the blanks were filled up with English letters. There is no evidence to show that the contents of the will were read over and explained to the testatrix. PW 2 was not known to her. Why was she called and who called her to attest the will is shrouded in mystery. Her evidence is not at all satisfactory in regard to the proper frame of mind of the testatrix. There were several cuttings and overwritings also in the will.”

31. For the aforesaid reasons, the document fails to satisfy the statutory requirements of Section 63 of the Indian Succession Act, 1925 and is tainted with manifestly suspicious features; consequently, it cannot be accepted as a legally valid testamentary disposition.

32. It is thus evident that there is not even an iota of evidence to establish

¹ (2007) 7 SCC 255



a validly executed Will in favour of the defendants to the exclusion of the plaintiffs.

33. Accordingly, Issue No. II is decided against the defendants and in favour of the plaintiffs. In view of the findings on Issue No. II, Issues Nos. III and IV are also liable to be, and are hereby, decided against the defendants and in favour of the plaintiffs.

34. Consequently, a preliminary decree is passed, declaring that the parties are entitled to one-fourth share each in the estate of late Shri Nar Shardul Mittal, as detailed in paragraphs 11 to 16 of the plaint.

35. The Registry is directed to draw up the decree sheet accordingly.

36. Accordingly, Mrs. Anuradha Mishra (M. No. 9971391034, E-mail: advanuradhamishra09@gmail.com) is appointed as Local Commissioner for the purposes of valuation of the properties and their division by metes and bounds. The remuneration of the Local Commissioner is quantified at ₹5,00,000/-, which shall be borne initially by the plaintiffs, subject to reimbursement by the parties in proportion to their respective shares in the suit properties.

37. List the matter on 22.09.2025 before the learned Joint Registrar for taking further necessary steps in accordance with the extant rules.

38. Thereafter, list the matter before the Court on a date to be fixed by the learned Joint Registrar.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 3, 2025/aks/sp