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

Pronounced on 3rd December, 2014

+ **CS(OS) 3054/2012**

URMIL AND OTHERS

..... Plaintiffs

Through Mr. Rajat Aneja, Advocate &
Ms. Rashmi Verma, Advocate

versus

SAVITRI DEVI

..... Defendant

Through Mr. Ashok Gurnani, Advocate

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CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

G.P. Mittal, J. (Oral)

CS(OS) 3054/2012 & I.A.18517/2012(O.XXXIX Rule 1 & 2 CPC)

1. This suit for partition has been filed by the Plaintiffs against the Defendant with the averments that Late Shri Tek Chand was the owner of property bearing no.C-2, Shivaji Park, West Punjabi Bagh, New Delhi measuring 438 sq. yds. The property was purchased by the earlier said Late Shri Tek Chand from its previous owner for valuable consideration on the basis of two sale deeds dated 19.07.1962 and 20.07.1962 duly registered in the office of the Sub-Registrar. It is averred that said Late Shri Tek Chand during his life time executed a

Will dated 02.04.1986 and on the basis of the said Will, the three Plaintiffs and the sole Defendant who are the four daughters-in-law of Late Shri Tek Chand became owners of the property in equal shares. Thus, it is the case of the Plaintiffs that each of the Plaintiff is entitled to 1/4th share in the property. Similarly, Defendant is also entitled to 1/4th share and the property may be partitioned by metes and bounds.

2. In the written statement, the Defendant has not disputed that Late Shri Tek Chand was the absolute owner of the earlier said property or that he had executed a Will dated 02.04.1986 bequeathing the said property in equal shares to the three Plaintiffs and the Defendant. In para 5 of the written statement, the Defendant averred as under:

“5. That the contents of para 5 of the plaint do not require any comments, however, it is correct to suggest that the parties are in possession of respective portions of the property in as much as no partition of any kind whatsoever including by metes and bounds of the property in question has taken place. At present the property is in possession of the following persons as under:

i) Ground floor of the same was and is in possession of Sh. Babu Ram including that of Ms. Urmila Plaintiff no.1 and Smt. Savitri Devi.

In addition thereto, Sh. Babu Ram is in possession of one Shop on the ground floor shown in red colour in the site plan.

However, it is relevant to mention here that Sh. Babu Ram has constructed one unauthorised room on the ground

floor of the property which is shown in red colour in the site plan filed along with present written statement and as a result thereof, it is necessary that the unauthorised construction is to be removed before a partition of the property can be effected, however, it is without prejudice to other plea raised by the Defendant that the suit for partition is not maintainable because it does not cover all the properties belonging to the family which are still to be partitioned such as the assets belonging to M/s Tek Chand & Sons and other assets acquired out of the funds and assets of the firm.

ii) First floor was and is in possession of Sh. Ram Niwas including Ms Santosh-Plaintiff no.2.

iii) One servant quarter on the first floor was and is in possession of Smt. Savitri Devi.

iv) Second Floor is and was in possession of Sh. Jai Bhagwan including that of Ms Sunita-Plaintiff no.3.”

3. Today, the suit was listed for framing of issues. The learned counsel for the Plaintiffs pointed out that no issue arises on the basis of pleadings of the parties and a preliminary decree for partition is liable to be passed. The prayer is opposed by the learned counsel for the Defendant. The learned counsel for the Defendant while referring to the preliminary objections in the written statement has submitted that there were other properties of Late Shri Tek Chand in the shape of his share in a partnership firm in respect of which a Civil Suit CS(OS).89/2013 has been filed by Savitri Devi against the other partners of the partnership firm. It is urged that the Plaintiffs herein

have placed an obstacle in partition of the partnership firm's property which was earlier bequeathed by Late Late Shri Tek Chand in favour of his four sons making their share in the partnership firm equal *i.e.* 25% to each of the four sons, although three sons of Late Shri Tek Chand were also partners in the partnership firm.

4. The learned counsel for the Defendant has referred to the judgment of the Calcutta High Court in *Rajendra Kumar Bose v. Brojendra Kumar Bose, 1923 (77) Indian Cases (Calcutta High Court)* to urge that all the property of joint family should be included in the suit to claim partition. The judgment cited is not applicable to the facts of the present case as the property, subject matter of the suit is not a joint family property at all. Learned counsel for the Defendant referring to *Himani Alloys Limited v. Tata Steel Limited, (2011) 15 SCC 273* has further submitted that judgment on admission is always in the discretion of the Court and since the Plaintiffs are not acting equitably, they are not entitled to the judgment.
5. I have considered the ratio of this judgment. The same also does not apply to the facts of the instant case. In fact, today the case was listed only for settlement of issues. A perusal of the Will dated 02.04.1986 which is admitted by the Defendant clearly shows that property

bearing no.C-2, Shivaji Park, West Punjabi Bagh, New Delhi was bequeathed in favour of four daughters-in-law i.e. the partition claimed in the instant suit. Of course, in para 2 of the Will, Late Shri Tek Chand also dealt with his share in the partnership firm M/s Tek Chand & Sons, 38 Rama Road, Shivaji Marg Industrial Area, New Delhi. But admittedly, the Plaintiffs and the Defendant were neither the partners in the said partnership firm nor any of them has been given any interest in the said partnership firm. The testator has separately dealt with those properties in paras 1 and 2 of the Will, English translation of which is extracted hereunder:

“01. I had a house at No.C-2, Shivaji Park, New Delhi-26. I have built this house from my own earning. Nobody else has legal hold over this house. I believe this house, after my death, will get partitioned equally between the wives of my four sons, i.e. Smt. Savitri Devi w/o Sh Ram Phal; Smt. Santosh w/o Sh. Ram Niwas; Smt. Urmila w/o Sh Babu Ram; and Smt. Sunita w/o Sh Jai Bhagwan.

02. I am also partner with M/s Tek Chand & Sons, 38, Rama Road, Shivaji Marg Industrial Area, New Delhi-110015. I Have had 35 per stake in the aforesaid firm. My sons, Sh Ram Phal, Sh Ram Niwas and Sh Babu Ram have also had had stakes in the aforesaid firm, who have had 25 per cent, 20 per cent and 20 per cent, respectively. I expect my staked share shall get divided according to this proportion, after my demise. Sh Ram Niwas will have 5 per cent; Sh Babu Ram will have 5 per cent and Sh Jai Bhagwan will have 25 per cent. In this manner, my four sons will get equally responsible in holding stakes with the aforesaid firm M/s Tek Chand & Sons. Aside, the capital I have invested in the firm should get quadrupled so that one share should be

apportioned between Rajesh and Sh Rajender, sons of Sh Ram Phal, and the remaining other three shares should go to Sh Ram Niwas, Sh Babu Ram and Sh Jai Bhagwan.”

6. Thus, it is evident that no issue arises on the basis of the averments made in the written statement. The Plaintiffs are therefore, entitled to a preliminary decree of partition.
7. I hereby pass a preliminary decree of partition in respect of property bearing no.C-2, Shivaji Park, West Punjabi Bagh, New Delhi holding that the three Plaintiffs and the Defendant are entitled to equal share i.e. 25% each in respect of the property bearing no.C-2, Shivaji Park, West Punjabi Bagh, New Delhi.
8. The parties may suggest the mode of partition of the suit property by submitting their suggestions within four weeks.
9. List on 07.05.2015.

DECEMBER 03, 2014
pst

G.P. MITTAL, J