

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd November, 2021

+ **C.R.P. 9/2021**

**PRADEEP GOYAL DECEASED THROUGH LRS
& ORS.**

..... Petitioner

Through: Mr. B.P. Aggarwal, Advocate (M-9811244148)

versus

**SMT SARLA GOYAL DECEASED THROUGH LRS
& ORS.**

..... Respondents

Through: Ms. S.C. Singhal, Advocate (M-9810061558)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present petition has been filed challenging the impugned order dated 23rd October, 2020 passed by the Ld. ADJ-01, South District, Saket, New Delhi (*hereinafter "Trial Court"*) in *CS No.6875/2016* titled "*Shri Pradeep Goyal & Ors. v. Sarla Goyal & Anr.*" By the impugned order, the application under Order XII Rule 6 CPC filed by the Petitioners has been dismissed by the Trial Court.
3. The said application had been filed in the suit for partition instituted by the legal heirs of Late Sh. Dharam Pal Goyal and Late Smt. Sarla Goyal. The said couple had four children, namely, Sh. Pradeep Goyal, Smt. Neera Aggarwal, Smt. Rekha Gupta and Sh. Sanjay Goyal. Sh. Pradeep Goyal has already passed away during the pendency of the litigation, and Sh. Sanjay

Goyal is the pre-deceased son. The application sought a judgment on admissions to be passed in respect of the immovable assets of Smt. Sarla Goyal, in view of fact that the four legal heirs are admitted to be owning a share of 25% each in the moveable assets of Late Smt. Sarla Goyal. The application has been dismissed by the Trial Court on the ground that a piecemeal decree ought not to be passed. Further, the Trial Court noted that the Plaintiffs have neither amended the plaint nor disclosed the entire movable and immovable assets in question. Thus, the Plaintiffs ought not to be permitted to pick and choose a part of the claim. The impugned order dated 23rd October, 2020 reads as under:

“ An application under order 12 rule 6 CPC has been filed by the plaintiff seeking decree on the basis of admissions made by the defendant in the written statement. In the plaint the stand of the plaintiff is that the defendant no.2 is not entitled to any share in the properties of deceased Sarla Goyal and the present application under order 12 rule 6 CPC has been filed claiming that the defendant no.2 is entitled to 1/4th share as stated by him in his written statement and counter claim. The plaintiff is seeking a decree by way of application under order 12 rule 6 CPC on the averments which is contrary to his pleadings.

During the arguments, counsel for the plaintiff was asked to either amend his plaint admitting the share of defendant no.2 or to make a statement admitting the share of defendant to be 1/4th in the properties of Late Sarla Goyal.

The defendant has claimed his share to be 1/4th in the properties of Late Sarla Goyal. The plaintiff only wants its shares be divided 1/4th and rest of the pleadings. He does not wish to amend. Moreover, it is claimed by the defendant that there are

more movable properties of Late Sarla Goyal which need to be divided, hence plaintiff cannot pick and chose a part claim. The interest of plaintiff is already protected by order of Ld. Predecessor of this court.

The present application of the plaintiff under order 12 rule 6 CPC is hereby dismissed. The plaintiff has raised a contrary stand in his application to his pleadings. Dismissed accordingly.

Be listed for PE on 18.02.2021.”

4. Mr. Aggarwal, Id. Counsel appearing for the Petitioners/Plaintiffs (*hereinafter “Plaintiffs”*) submits that since there is no dispute in respect of the assets listed in Schedule C, which is the admitted asset list of Smt. Sarla Goyal and the share of 25% to each branch is also acknowledged and hence the decree qua the said assets is liable to be passed. He further submits that if there are any other immovable properties of Smt. Sarla Goyal, the decree *qua* 1/4th share can also be passed in respect of the said property.

5. On the other hand, Mr. Singhal, Id. Counsel for the Respondents/Defendants (*hereinafter “Defendants”*) highlights the order dated 28th January, 2021 passed by this Court, wherein after taking a similar stand at the time of admission, directions were issued to the Ld. Counsel for the Plaintiffs for filing of an affidavit disclosing the details concerning both, movable and immovable assets of Smt. Sarla Goyal. Mr. Singhal, Id. Counsel points out that the affidavits which have been filed by the Plaintiffs are completely misleading and contrary to the written statement filed by Sh. Pradeep Goyal. He specifically points out to the affidavit of Plaintiff No.1- Sh. Kalpana Goyal, wife of Sh. Pradeep Goyal, wherein she claims that the status of the demat account in the name of Smt. Sarla Goyal is not known to her. However, in the written statement, Sh. Pradeep Goyal had clearly

admitted that he was the nominee in respect of the demat account of Smt. Sarla Goyal, as also in respect of the account with Punjab National Bank, and that the same has been encashed. Mr. Singhal, thus, submits that the Petitioners have not come to the Court with clean hands and are not disclosing all the facts.

6. Insofar as the legal position in respect of Order XII Rule 6 CPC is concerned, there is no doubt that even a part-decree can be passed by the Court in respect of which the claim of the Plaintiff is admitted. However, the passing of such a decree is discretionary in nature. The Court can definitely take into account the conduct of the parties and the manner in which the litigation is panning out.

7. In the present case, the four legal heirs/ their respective families and their respective families are before the Court seeking partition *qua* the assets of their parents. In respect of the immovable property in Soami Nagar, New Delhi, there is an alleged Will dated 23rd November, 1993 which is relied upon by one of the parties. Thus, the decree is sought in respect of only the movable properties of Smt. Sarla Goyal.

8. Insofar as the stand of Sh. Pradeep Goyal in his written statement is concerned, in response to paragraphs 23A to 23K of the written statement filed by the Defendant No.2(i) to (iii), the following is stated in the written statement:

“23A to 23K. In reply to paras 23A to 23 K of the written statement the plaintiffs repeats and reiterates each and every statement made in paras 23A to 23K of the plaint and disputes and denies anything contrary thereto or inconsistent therewith. It is submitted that the plaintiff No.1 being the

nominee of Late Smt. Sarla Goyal has got the amount of Rs.5,17,941/79 transmitted to his account from the Saving Bank Account of Late Smt. Sarla Goyal with Punjab National Bank as per the procedure of the Bank. It is further submitted that the plaintiff No.1 was the nominee of demat Account No.10375684 with Standard Chartered Securities and after the death of Smt. Sarla Goyal, entire Stock Holding was transmitted in the Account of plaintiff No.1 as per the procedure prescribed. As far as the locker with Punjab Nation Bank, the same was surrendered by Late Smt. Sarla Goyal during her life time on dated 30.08.2007. It is denied that jewellery of more than Rs.60,00,000/- was left by Smt. Sarla Goyal. It is submitted that in case the said jewellery is lying with defendants No.2 (I) to (III), they are liable to surrender for dividing the same.

9. The order dated 28th January, 2021 passed by this Court is clear to the effect that the affidavit has to disclose if any of the parties had sold or transferred any assets of Smt. Sarla Goyal. In the said affidavit, a clear incorrect statement is being made by Plaintiff No.1/Smt. Kalpana Goyal as regards the status of the demat account of Smt. Sarla Goyal not being known to her. Paragraph 4 of the said affidavit filed by Smt. Kalpana Goyal is set out herein below:

“4. That the status of the demat account in the name of late Smt. Sarla Goyal is not known, therefore letters through e-mail dated 05.03.2021 and 30.06.2021 had been written to the bank seeking information

relating to the status of the said account, but no reply has been received from the bank.”

10. The averments in the replication to the written statement filed on behalf of Plaintiffs before the Trial Court, and in the affidavit filed on behalf of the Plaintiff No.1 in compliance with order dated 28th January, 2021 are clearly in contradistinction with each other. It is clear that the affidavit filed by the Plaintiff No.1 is not truly disclosing all the correct facts before the Court. Sh. Pradeep Goyal admitted to have been the nominee of the demat account and also admitted to have received the benefits therefrom. Considering that the suit is at the stage of trial, Smt. Kalpana Goyal ought to have made a fair disclosure with respect to the demat account and the proceeds therefrom, as also the account with the Punjab National Bank. Clearly, this Court is of the opinion that there is a withholding of all the correct facts, in respect of assets of Smt. Sarla Goyal by Plaintiff no.1 Smt. Kalpana Goyal. Thus, evidence ought to be adduced to ascertain all the movable and immovable assets of the deceased persons, which are to be partitioned. Any decree at this stage in respect of some part of the assets would be inequitable as the Petitioners' disclosure regarding amounts already received by them has not yet been made. Under such circumstances, this Court is not inclined to interfere with the impugned order dated 23rd October, 2020.

11. Accordingly, the petition, along with all pending applications, is dismissed.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 23, 2021

Rahul/AD