



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 07th February, 2024

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Pronounced on: 14th May, 2024

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CS(OS) 366/2020

REKHA OBEROI



..... Plaintiff

Through: Mr. Neeraj Gupta, Advocate.

versus

AMIT OBEROI



..... Defendant

Through: Mr. Sanjay Rathi, Ms. Nirmala Rathi,
Ms. Jaanvi Rathi & Mr. Deepak
Khatri, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 1470/2022 (u/Order XII Rule 6 r/w Section 151 of CPC, 1908):

Historically, human relations have proved to be too frail to withstand Familial scuffle over property rights, even though one of the party is none other than the son, who owes his existence to his mother.



1. It is an unfortunate case where a mother in her hay days of life, is compelled by the alleged ill treatment at the hands of her own daughter-in-law and son, whom she singlehandedly brought up after having lost her husband at a young age, and to seek peace and security of *Home* by filing this suit for partition against her son.
2. The **facts in brief** are that plaintiff, wife of late Shri Parveen Oberoi has filed a suit for partition against Sh. Amit Oberoi, her son (defendant) claiming 50% share in Property No. 2/81, Punjabi Bagh, West, New Delhi, in portion admeasuring 472.22 sq. yards (*hereinafter referred to as “suit property”*) having inherited the same from the said property from her mother-in-law Smt. Savitri Devi who was the Sole and absolute owner of the Suit property.
3. Smt. Savitri Devi had entered into a Memorandum of Family Settlement dated 13.05.1998 with her two sons, daughter/ Smt. Anu Batra and her husband Sh. Indersain wherein the parties mutually agreed for division of the suit property in the manner described therein. The portion of the property in question, which is defined as the suit property, was agreed to come to the share of Shri Praveen Oberoi, husband of the plaintiff.
4. Shri Parveen Oberoi unfortunately expired on 12.09.2000, leaving behind the plaintiff/wife, defendant/son and one daughter Ms. Pallavi as the legal heirs. Pertinently, Ms. Pallavi has already executed a Relinquishment Deed dated 18.01.2010, relinquishing her share in favour of the plaintiff and the defendant.
5. By way of present application, the applicant/plaintiff seeks Judgment/Decree in her favour on the basis of the admissions.
6. **It is submitted in the application** that the plaintiff has filed the Suit



for Partition, Permanent Injunction and the Rendition of Accounts against her son, the defendant herein in respect of the suit property.

7. It is submitted that the defendant and his wife have been harassing the plaintiff and given beatings to her in her old age for which the plaintiff has made various complaints against him. The apology letter has also been written by the defendant. It is further asserted that the defendant in his Written Statement has taken a contrary stand, but in his affidavit of admission/denial, has admitted the Settlement Deed dated 13.05.1998 executed by the Grandmother in favour of all the family members and also the Relinquishment Deed dated 18.01.2010 executed by Ms. Pallavi/ daughter in favour of the plaintiff and the defendant. The plaintiff and the defendant, therefore, have become entitled to 50% share each in the suit property.

8. On the basis of aforesaid admissions, the plaintiff seeks a decree of partition entitling the plaintiff as well as the defendant to 50% share each in the suit property.

9. **The present application has been contested by the defendant by way of his Reply**, wherein he has claimed that the present Suit is an endeavour by the plaintiff to grab the suit property as she only has a right to reside but has no legal right, title and interest of any kind in the suit property. The defendant is the owner and in possession of the suit property. Therefore, in the absence of right, title and interest in the suit property, the plaintiff is not entitled to any partition.

10. It is further submitted that the relief sought by way of present Suit by the plaintiff is barred under *Sections 34 and 41(h)(i)(j) of the Specific Relief Act, 1963* as she has not sought any relief of declaration of her rights in her



favour and in the absence of the same, the Suit deserves to be dismissed.

11. It is further asserted that *no proper court fee* has been paid and the Suit has not been valued properly for the purpose of payment of court fee. Because of the deficit court fee, the Suit of the plaintiff is liable to be rejected outrightly.

12. Furthermore, it is also asserted that there is *no cause of action* disclosed in the Plaint and this is only an endeavour to grab the suit property of the defendant to whom the suit property belongs exclusively.

13. The defendant has submitted that the Family Settlement on which the plaintiff has relied, is not a legal document in the eyes of law and of no evidentiary value, it being inadequately stamped. An unregistered document intending to transfer the property, has to be by way of a registered document. The deed of Settlement was only notarised on 13.05.1998 and does not confer any right, title and interest in favour of the plaintiff.

14. Moreover, Shri Parveen Oberoi, husband of plaintiff, had died during the lifetime of his mother, Smt. Savitri Devi. Smt. Savitri Devi died intestate, leaving behind the suit property. By virtue of Sections 15 and 16 of the Hindu Succession Act, 1956, the said property devolves upon the sons, daughters or the son/ daughter of pre-deceased children. This implies that the defendant and his sister, Ms. Pallavi got a share in the suit property and not the plaintiff. The plaintiff being the daughter-in-law of Smt. Savitri Devi does not inherit any share as Late Shri Parveen Oberoi was never vested with any right, title and possession in the suit property.

15. Ms. Pallavi *vide* Relinquishment Deed dated 18.01.2010 has relinquished the share inherited by her in the suit property from her grandmother, Smt. Savitri Devi which would come only to the share of the



defendant as no relinquishment can be made in favour of the plaintiff who was not the co-owner in the suit property in the first place.

16. The plaintiff, being the mother of the defendant and Ms. Pallavi, does not get any right, title and interest in the suit property. Therefore, there is no admission made by the defendant in the Written Statement which can entitle the plaintiff to a judgment on admission. The present application is liable to be dismissed with heavy costs.

17. **Submissions heard and record perused.**

18. Before embarking on the merits of the Application, it would be relevant to refer to the decision of the Division Bench of Delhi High Court in Vijay Myne vs Satya Bhushan Kaura, (2007) 142 DLT 483 (DB) explaining the scope of Order XII Rule 6 of CPC. It was observed that as the purpose of Order XII Rule 6, CPC is to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. **It is to enable the Court to pronounce the judgment based on an admission, when the admissions are sufficient to entitle the plaintiff to get the decree.** *“The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case.”* In order to pass a judgement on admissions, the Court has to scrutinize the pleadings in detail and conclude that the admissions are unequivocal, unqualified and unambiguous. Further, the Court is also required to ignore vague, evasive and unspecific denials as well

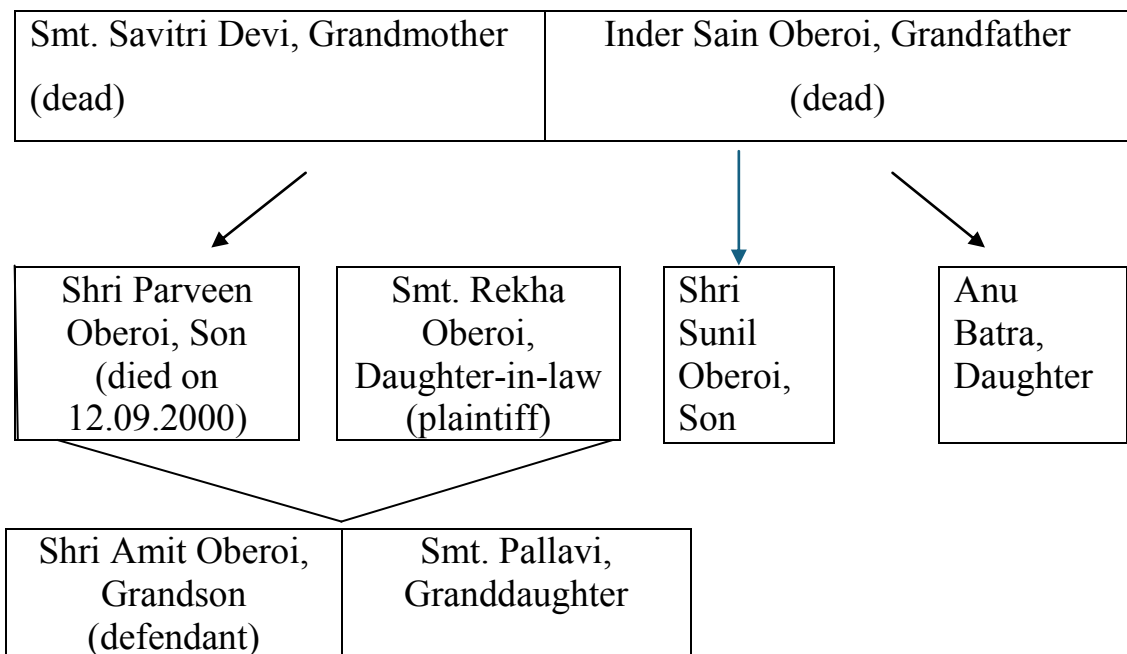


as inconsistent pleas taken in the written statement and replies.

19. 18. In the light of these observations, the facts of the present case may be considered.

20. 19. To succinctly state the facts, the suit property was originally owned by Smt. Savitri Devi wife of Sh. Inder Sain Oberoi, Smt. Savitri Devi and Sh. Inder Sain Oberoi had two sons namely Shri Parveen Oberoi and Shri Sunil Oberoi and one daughter Anu Batra. Shri Parveen Oberoi, predeceased his mother and was survived by his wife(plaintiff) and son(defendant) and one daughter, Smt. Pallavi, who is not a party to the suit.

21. The Pedigree of the family is as under: -



22. Smt. Savitri Devi, with her foresightedness, in an endeavour to avoid any disputes in future, entered into a duly notarised Family Settlement dated 13.05.1998 to which she, her husband Shri Inder Sain Oberoi, their two sons, namely, Shri Parveen Oberoi & Shri Sunil Oberoi and the daughter



Smt. Anu Batra, were the parties. The plaintiff/Rekha Oberoi also signed the said Deed as a Witness.

23. According to that Deed of Settlement, Shri Parveen Oberoi, who was in possession of the portion shown in “yellow” of the property in question, (which is the suit property) was stated to be its absolute owner. The second half of the suit property, in which Smt. Savitri Devi along with her husband Shri Inder Sain Oberoi were residing, was stated to be in her ownership but after the demise of herself and her husband, the second son Shri Sunil Oberoi was to become the absolute owner of the said portion. The daughter, Smt. Anu Batra was excluded from any right, title and claim in the suit property.

Validity of a Deed of Family Settlement when Parties to the Deed are not co-owners:

24. At the outset, it may be observed that a Family settlement is essentially entered into between the family members having a share in the property.

25. **Halsbury's Laws of England**, Vol. 17, Third Edition, at pp. 215-216 defined a family arrangement as *an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving-its honour.... Family arrangements are governed by principles which are not applicable to dealings between strangers.*

26. Further in Sahu Madho Das and others v. Pandit Mukand Ram and another, AIR 1955 SC 481 explains the basic eligibility for parties to enter into a Family Settlement as under:



"It is well settled that compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property, under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary."

27. The aforesaid principle were analysed and upheld by the Apex Court in Kale & Others vs Deputy Director Of Consolidation, 1976 3 SCC 119.

28. Applying the aforesaid principles, it is abundantly clear that Smt. Savitri Devi was admittedly the exclusive owner of the suit property. There could not have been. A family settlement with the family members who had no share in the suit property. So being the case, irrespective of the nomenclature given by the parties, it becomes significant to ascertain the true nature of this document, for which its contents may be considered.

29. The relevant part of the Family Settlement dated 13.05.1998 reads as under:

"Whereas Smt. Savitri Devi wife of Shri Inder Sain Oberoi is the absolute owner y bearing house No.2, Road Noe.Sl, Punjabi Bagh, New Smt. Savitri Devi & Sh. Inder Sain Oberoi have three Children, all of whom are married and settled.

Shri Parveen Oberoi alongwith his family member is



staying and occupying the portion of house no.2. Rpad No.81, Punjabi Bagh, New Delhi shown in yellow in the site plan of house No.2, Road No.81, Punjabi Bagh, New Delhi (attached) NOW THIS DEED WITNESSES and the parties agree as follows;

1. Shri Parveen Oberoi who is residing and occupying the portion of house No.2, Road No.81, Punjabi Bagh, New Delhi as shown in yellow in the attached site plan of House No.2, Road No.81, Punjabi Bagh, New Delhi becomes absolute owner of the portion including, the terrace upto sky high of the said portion marked yellow in the attached site plan which will be deposited in MCD for mutation under his name Shri Parveen Oberoi shall have all the rights to appear and act in all the offices of the Municipal Corporation of Delhi, Delhi Vidyut Board....

2. Smt. Savitri -Devi wife of Shri Inder Sain Oberoi and Shri Inder Sain Oberoi son of Late Shri Jagat Ram Oberoi are residing and occupying the portion of House .No.2, Road No.81, Punjabi Bagh, New Delhi as shown in Red in the attached site plan of House No.2, Road No.81, Punjabi Bagh, New Delhi. Smt. Savitri Devi remains absolute owner of the portion including, race of the said portion marked red Hi in the attached site plan Savitri Devi will keep on receiving, the rent from shops of which she re absolute owner. She will also have all the rights to rent out, alter, reconstruct, mortgage, sell the part of red portion of the property retained by her. Other parties to this settlement Shri Praveen Kumar Oberoi son of Sh. Inder Sain Oberoi, H/o Smt. Rekha Oberoi F/o Amit Oberoi and Pallavi Oberoi including their heirs, executors; administrator or legal representatives s off have no rights/claims/whatsoever on the portion occupied by Smt. Savitri Devi as shown red in plan.

3. Only after the demise of both Smt. Savitri Devi wife of Shri Inder Sain Oberoi and Shri Inder Sain Oberoi son



of Sh. Jagat Ram, Sh. Sunil Oberoi son of Smt. & Shri Inder Sain Oberoi, Rio 2/81, Punjabi Bagh, New Delhi shall become the absolute owner of the portion presently occupied and owned by Smt. Savitri Devi & Shri Inder Sain Oberoi, as shown in red in the site plan attached....

5. Smt. Anu Batra wife of Shri Ashok Batra d/o Smt. Savitri Dev, and Shri Inder Sain Oberoi including her heirs, executor, administrators or legal representatives shall have no rights/claims whatsoever either in part or in full, on the property bearing house No.2, Road No.81, Punjabi Bagh, New Delhi...".

30. From the narration in the Family Settlement, it is evident that all the family members decided the portions of the property of which they would eventually become the owners, after the demise of Smt. Savitri Devi. There can be no Family Settlement between the family members who were not the co-owners and had no right, title and interest in the suit property. If it is accepted as an intention and an instrument to transfer the respective shares in the name of respective members, then it was a document creating rights in the immovable property which could not have been effected by way of the unregistered Deed of Settlement, as has been rightly contended by the defendant. At best, it can only be termed as an expression of intent of Smt. Savitri Devi in regard to division of property in question.

31. By virtue of this Family Settlement, the rights of Smt. Savitri was intended to be extinguished, in favour of her two sons. Such a transfer of title requires compulsory registration. Since this Family Settlement was only a notarised document, it could not have the effect of creating interest, right and title in favour of the two sons as had been stated therein.



32. Therefore, the defendant has rightly taken the objection that the Settlement Deed which was in the nature of transfer of shares in favour of the two sons, required compulsory registration to be effective. The Family Settlement Deed did not have the effect of conferring right, title and interest in the suit property in favour of the two sons. Therefore, it has to be necessarily held that this Settlement Deed is not a document of transfer.

Family settlement in the nature of a Will:

33. Even though the Family Settlement as discussed above, was not a Deed of partition, but by its tone and tenor it can be construed as an expression of intention of Smt. Savitri Devi to bequeath her property in the manner stated therein. It is a document in the nature of a Will and satisfies all the ingredients of a Will under Section 2(h) of the Indian Succession Act, 1925. It is signed by Smt. Savitri Devi and is also witnessed by all the family members and also by the plaintiff. The Document, though termed as a Family Settlement, was indeed in the nature of the Will and may be so considered to observe that the half share of the second son Sh. Sunil Oberoi has devolved upon him who has acquired the absolute rights.

34. However, even by considering this document as a Will, the plaintiff still may not be able to get any benefit. Shri Praveen Oberoi, who was the beneficiary under this Document, unfortunately, predeceased his mother. The Document did not stipulate on whom the suit property would devolve in case of demise of the beneficiary. *Section 105 of the Indian Succession Act, 1925* states that if a legatee under a Will pre-deceases the Testator, then the legacy as was intended to fall in his share, lapses and falls into the residue of the Testator's property. This implies that the suit property which was intended to go to the share of Shri Parveen Oberoi, vested in Smt. Savitri



Devi at the time of her demise, and she died intestate in respect of the suit property.

Right of widow of predeceased son in the estate of the mother in law:

35. Since the suit property was owned by a woman, it shall devolve in accordance with *Sections 15 and 16 of the Hindu Succession Act, 1956*. It reads as under:

“15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother ...

16. Order of succession and manner of distribution among heirs of a female Hindu.—*The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate’s property among those heirs shall take place according to the following rules, namely:—*

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously ...”

36. According to these Sections, on the demise of a woman, the property devolves firstly upon the sons & daughters (including the sons and daughters of the deceased children) and the husband.

37. In the recent judgement of *Sachidhanandam vs E. Vanaja and Ors*, 2023 SCC OnLine SC 1448, the Apex Court has held that on a combined



reading of Sections 15 & 16 of the Hindu Succession Act, 1956, it is manifest that the widow of a pre-deceased son does not have any right to receive a share in the property of her mother-in-law.

38. In the present case, since Shri Parveen Oberoi had died prior to the demise of Smt. Savitri, the suit property to the extent of Shri Praveen Oberoi's share devolves upon the son and daughter i.e. defendant and his sister, Ms. Pallavi. **Therefore, plaintiff, the widow of Shri Parveen Oberoi (predeceased son), does not inherit any property in terms of Sections 15 and 16 of the Hindu Succession Act, 1956.**

Defendant's admission of the Relinquishment Deed:

39. Having held that the plaintiff Smt. Savitri is not entitled to a share in the suit property through her mother in law, as per Sections 15 & 16 of the Hindu Succession Act, 1956, it becomes germane to determine if she received any share in the suit property through any other instrument of transfer.

40. Pertinently, Ms. Pallavi, the daughter of the plaintiff, had inherited half share in the suit property (equivalent to the defendant) from her grandmother, Smt. Savitri Devi. She admittedly executed a Relinquishment Deed dated 18.01.2010 with respect to her share in the suit property in favour of the plaintiff and the defendant. The defendant in his Admission and Denial of Documents, has admitted to the execution of the Relinquishment Deed dated 18.01.2010. Moreover, the defendant has also signed the said Deed along with the plaintiff in the capacity of *releasees*.

41. However, the defendant again made an endeavour to deny any rights to the plaintiff, his mother under the relinquishment Deed by asserting that



since the plaintiff was not a co-owner in the suit property, the Relinquishment Deed dated 18.01.2010 is only valid qua relinquishment of the share in favour the defendant. The defendant has not challenged the valid execution or the contents of the Relinquishment Deed dated 18.01.2010, but only that by way of the Relinquishment Deed, the plaintiff does not get any share as she had no pre-existing right.

42. The admission of the execution of Relinquishment Deed dated 18.01.2010 is unequivocal; however, it has to be ascertained if the plaintiff would be entitled to any share under it.

Nature and scope of the Relinquishment Deed:

43. The heading and the language used in the Relinquishment Deed indicates a release or a relinquishment of the share Ms. Pallavi in favour of the plaintiff and the defendant. However, the plaintiff is not a co-owner in the suit property and therefore it cannot be a relinquishment but creation/gift of property in the name of her mother/plaintiff.

44. The Apex Court in *Sahu Madho Das* (supra) observed that courts strongly *lean in favour of family arrangements that bring about harmony in a family and do justice to its various members- and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which. One set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and, simple from him or her, or as a conveyance for consideration when*



consideration is present

45. In *Hari Kapoor vs South Delhi Municipal Corporation*, 2019 SCC OnLine Del 11153 it was observed that a Deed of Release is an instrument by which one co-owner releases his interest in a specified property as a result of which there would be an enlargement of the share of the other co-owners. The releasee should also have a legal right in the property and the release deed would operate to enlarge that right. **This Court held that the share cannot be released in favour of one who has no rights in the property as a co-owner.**

46. A Coordinate Bench of this Court in *Tripti Kaushik vs Sub Registrar VI-A*, 2020 SCC OnLine Del 2748 had laid down a test to determine whether an instrument can be considered as a Release/Relinquishment Deed as under:

“a. In determining whether the document is a release or Gift/Conveyance, the nomenclature used to describe the document or the language which the party may choose to employ in framing the document, is not a decisive factor. What is decisive is the actual character of the transaction intended by the executants;

b. Determination of the nature of the document is not a pure question of law;

c. Where a co-owner renounced his right in a property in favour of the other co-owner, mere use of word like ‘consideration’ and ‘transfer’ would not affect the true character of the transaction;

d. What is intended by a Release Deed is the relinquishment of the right of the co-owner;

e. Co-ownership need not be only through inheritance, but can also be through purchase;

f. Where the relinquishment of the right by the co-owner is only in favour of one of the co-owner and not



against all, the document would be one of Gift/Conveyance and not of “release”.”

47. In view of judgements analysed above, the actual character of the Relinquishment Deed dated 18.01.2010 has to be determined. The relevant portion of the Deed dated 18.01.2010 reads as under:

“THAT WHEREAS Shri Parveen Oberoi was the absolute owner of BUILT-UP PORTION AREA MEASURING 472.22 SqYds., part of Free-hold Property built on residential Plot of land bearing No on Road. No.,81 total area measuring 633.33 Sq.Yds., in the layout plan of Refugees Co-operative Housing Society Ltd., situated in the approved colony known as PUNJABI BACH, New Delhi-110026 on the basis of Family Settlement dated 13.05.1998, duly attested by Notary Public, Delhi. and whereas aforesaid Shri Parveen Oberoi died intestate on 12.09.2000, at Delhi, and he has been left behind the following legal heirs and successors.

<i>SI. NO</i>	<i>NAME</i>	<i>RELATIONSHIP</i>
<i>1.</i>	<i>SMT.REKHA OBEROI</i>	<i>WIFE</i>
<i>2.</i>	<i>SHRI. AMIT OBEROI</i>	<i>SON</i>
<i>3.</i>	<i>MISS.PAELAVI OBEROI</i>	<i>DAUGHTER</i>

AND WHEREAS undivided 1/3 rd share each in the said BUILD UP PORTION AREA MEASURING 472.22 sqyds. hold Property built on residential Plot of land bearing No.2, on Road No.81, total areas, measuring 633.33 Sq.Yds., in the layout plan of Refugees Co-operative Housing. Society Ltd., situated in the approved colony known as PUNJABI BAGH, New Delhi-110026, devolved upon the above named legal heirs and successors upon the demise of Shri. Parveen Oberoi.

AND WHEREAS now out of natural love and affection



*the Releasor has decided to release, relinquish and surrender all her shares, rights, title and interests to the extent of her 1/3rd undivided share of the above mentioned **BUILT-UP PORTION AREA. MEASURING 472.22 Sq yds., part of Free-hold Property built on residential Plot of land bearing No.2, on Road No.81, total area measuring ,633.33 Sq.Yds., in the layout plan of Refugees Co-operative. Housing Society Ltd., situated in the approved colony known as PUNJABI BAGH, New Delhi- 110026, in favour of (1) Smt. Rekha Oberoi & (2) Shri Amit Oberoi, the releases.***

2. That the Releasor have been left with no right, title, claim and interest in tile said Portion of the Property and the Releasees have become its absolute joint owners and they will hereafter be fully competent to sell, transfer, gift. Mortgage, lease out and alienate the same to anyone in any manner they like.”

48. The Full Bench of the Madras High Court in Chief Controlling Revenue Authority, Referring Officer vs Rustorn Nusserwanji Patel, 1967 SCC OnLine Mad 46 held that the nomenclature given to the instrument is not decisive nor is the language which the parties may choose to employ in framing the document. The particular nature of the rights created by the instrument and the actual nature of the transaction are what matter.

49. From the perusal of the contents of the Relinquishment Deed dated 18.01.2010, it is evident that Ms. Pallavi gave her share equally in favour of mother and brother. This Deed certainly relinquishes 50% of her share in favour of the defendant.

50. Apropos, the remaining 50% of Ms. Pallavi's share could not have been relinquished in favour of the plaintiff as the latter was never a co-owner in the suit property. Be that as it may, the Relinquishment Deed in



favour of Smt. Rekha Oberoi/ Plaintiff can be construed as a **Gift Deed** executed by the daughter of the plaintiff i.e. Ms. Pallavi in favour of her mother.

51. **Section 122 of the Transfer of Property Act, 1872 defines a Gift** as under:

“Section 122: “Gift” defined.—“Gift” is the **transfer of certain existing moveable or immovable property made voluntarily and without consideration**, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is till capable of giving,

If the donee dies before acceptance, the gift is void”

52. Further, as per **Section 5 of the Transfer of Property Act, 1872** a transfer is *an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself*. Furthermore, Section 123 of the Act, 1872 provides that *for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses*.

53. Therefore, it can be concluded that through the registered Instrument i.e. Deed dated 18.01.2010 Ms. Pallavi has voluntarily transferred/gifted 50% of her share in the suit property in favour of the plaintiff without any consideration. The Deed has been signed by two witnesses Shri Kishan Gopal Oberoi and Shri Sooraj Kumar. Further, the Deed has been signed by the plaintiff and defendant establishing their acceptance.

54. The Relinquishment Deed, though registered, registered at the office



of the Sub-Registrar IIA, Punjabi Bagh on 18.01.2010, has been executed on Non-Judicial Stamp paper worth Rs. 100. **Therefore, the Relinquishment Deed dated 18.01.2010 to the extent of Ms. Pallvai's share transferred to the plaintiff, in its substantive form, is Gift Deed executed in her favour. Therefore, based on the admissions of the defendant, the plaintiff is entitled to 25% share (50% of Pallavi's share) in the suit property through this registered instrument.**

55. The plaintiff and defendant are entitled to the following shares in the suit property:

Parties	Share in the suit property
Plaintiff/ Smt Rekha (1/2 share of 50% share of Ms. Pallavi.)	1/4
Defendant/ Amit Oberoi Oberoi (1/2 share of the suit property inherited from Smt. Savitri Devi + 1/4 share of the suit property i.e. 1/2 of the share of Ms. Pallavi in the suit property.)	3/4

56. Before parting, it is essential to note that though the Relinquishment Deed, which has been interpreted as Gift Deed qua the share of the plaintiff is not sufficiently stamped. To avoid any controversy in future as immovable property is for posterity, it is directed that the plaintiff/ Defendant, whosoever is in possession of the original Deed, shall file the Original Relinquishment Deed dated 18.01.2010 within seven days before the Joint Registrar, who shall impound and forward it to the Collector/Registrar of Stamps for payment of the deficit Stamp duty on it,



and shall accordingly return the duly stamped document to this Court within three months.

57. A preliminary Decree of Partition is hereby passed. Accordingly, the present Application under Order XII Rule 6 of the Code of Civil Procedure, 1908 is hereby disposed.

Parting Note:

58. Prior to enactment of the Hindu Succession Act, 1956, several limitations were in place under the Customary law against the right of a Hindu woman to acquire, hold or dispose her properties. The Hindu Women's Right to Property Act, 1937 was the initiation of recognition of a woman's right to property which gave her limited estate in property. Under the Act, 1937, the widows received the same interest as her husband in his joint property and widows were also included as heirs to her husband's property in the same manner as son.

59. However, the path breaking ameliorative and progressive legislation was the Hindu Succession Act, 1956 wherein under Section 14 of the Act, absolute right of Hindu woman to the estate was recognized in any property acquired by her before or after the commencement of the Act, 1956. While this might come across as an inevitable change in the circumstances today, but it was indeed a monumental amelioratory stride towards woman empowerment.

60. Based on the recognition of her absolute rights on her property, the Act, 1956 further established the scheme of intestate succession of a woman's estate under Section 15 & 16 of the Hindu Succession Act, 1956. The property of a female Hindu dying intestate devolves the following



order under section 15(1) Act, 1956:

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
- (b) secondly, upon the heirs of the husband;*
- (c) thirdly, upon the mother and father;*
- (d) fourthly, upon the heirs of the father; and*
- (e) lastly, upon the heirs of the mother.]*

61. The estate of a Hindu Woman dying intestate, devolves upon her children and husband. In case a child predeceases her, the share of the predeceased child devolves upon the son or daughter of the predeceased child, to the exclusion of the spouse of the predeceased person.

62. While under the Class I to the Schedule under Hindu Succession Act, on demise of a Hindu Male, the wife and children of a predeceased son are recognised as heirs. However, when it comes to the rules of succession as expounded in Section 15 of the Act, 1956 in regard to a Female, the predeceased daughter or son are not treated at par with the surviving son and daughter; instead of the benefit going to the all his/her legal heirs of the predeceased daughter or son, it gets limited to the children alone to the exclusion of the spouse of the pre-deceased child. The result being that the children of such pre-deceased child alone take the benefit of the estate of their grandmother, who has died intestate.

63. The consequence, as in the present case, is that a widowed daughter-in-law who may have served her mother-in-law during her lifetime and also taken care of her children, suffers a rude shock to realise that despite being a member of her matrimonial family, she gets no protection of property and is vulnerable to being shown the door by her own children at



an age when she actually needs the security of property.

64. **While the intention of the legislature under Section 15(1) of the Act, 1956 may have been bona fide; however, the present case is demonstrative of how Section 15(1) of the Act,1956 unfortunately, works against the woman herself i.e. the widow of a pre-deceased son.**

65. Merely because a case appears to be hard, it cannot permit the invocation of a different interpretation of a statutory provision which is otherwise impermissible. *It is now a well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous* as observed by the Apex Court in *Omprakash vs Radhacharan*, (2009) 15 SCC

66. This Court, therefore, has no option but to interpret Section 15 of the Act, 1956 as it exists, even if it is unjust towards the plaintiff.

66. As a matter of fact, above case is not an isolated incident in our Society. Therefore, it needs to be acknowledged and highlighted that axiomatically, a provision intended to benefit one woman (deceased woman), is working to the disadvantage of another woman (widow/ daughter in law); it is an anomaly in the legislation, which needs rectification.

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67. List on 03.09.2024 for consideration of Final Decree.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 14, 2024
S.Sharma