

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

% **Date of decision: 9th December, 2016.**

+ **CS(OS) No.42/2016 & IAs No.1486/2016 (u/O 39 R-1&2 CPC),
10450/2016 (u/O 39 R-2A CPC), 13837/2016 (u/O 12 R-6 CPC) &
15306/2016 (for condonation of 9 days delay in filing replication)**

SANDEEP KOHLI & ANR **..... Plaintiff**

Through: Mr. Aaditya Vijaykumar and Ms.
Rupam, Advs.

Versus

VINOD KOHLI & ORS. **..... Defendants**

Through: Mr. Molvi Ajaj Hussain, Adv. for
D-1.
Mr. Tusar Singh, Adv. for D-2&3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs namely Mr. Sandeep Kohli and Mr. Sheetal Kohli being the sons of late Sh. S.C. Kohli have filed this suit for partition of Shop No.81 situated in Central Market, Lajpat Nagar, New Delhi and for permanent injunction restraining the defendant No.1 Mr. Vinod Kohli from alienating, encumbering, mortgaging or creating any third party rights therein. The defendants No.2&3 Smt. Namrata Wahi and Smt. Shikha Nischal are the sisters of the two plaintiffs, being daughters of Sh. S.C. Kohli.

2. The suit was entertained and while issuing summons thereof, vide *ex-*

parte ad-interim order dated 1st February, 2016, the defendant No.1 was directed to maintain *status-quo* qua possession and title of Shop No.81 Central Market, Lajpat Nagar, New Delhi.

3. It is the case of the plaintiffs:

(i) that Sh. M.L. Kohli was the owner of Shop No.81 admeasuring 243 sq. ft. Central Market, Lajpat Nagar, New Delhi vide Lease and Conveyance Deed dated 25th April, 1968 executed in his favour by the President of India;

(ii) that thought the said shop originally comprised of ground floor only and portions thereof demarcated as 81A, 81B and 81C were let out by Sh. M.L. Kohli to Mrs. Veena Chugh, Mr. Amrit Lal and Mrs. Naresh Kumari respectively but in the year 1996-1997, a basement to the property was also made and as on the date of institution of the suit, the shop comprised of basement, ground floor along with three independent shops i.e. 81A, 81B and 81C;

(iii) that the parties to this suit are some of the legal heirs of Sh. M.L. Kohli;

(iv) that after the demise of Sh. M.L. Kohli, in a settlement between all the legal heirs of Sh. M.L. Kohli, Shop No.81, Central Market,

Lajpat Nagar, New Delhi fell to the share of his sons Mr. S.C. Kohli (being the predecessor-in-interest of the two plaintiffs and defendants No.3&4) and defendant No.1 Mr. Vinod Kohli;

(v) that in accordance with the family settlement, other legal heirs of Sh. M.L. Kohli executed and registered Relinquishment Deed of their rights in the said shop as heirs of Sh. M.L. Kohli in favour of Mr. S.C. Kohli and Mr. Vinod Kohli;

(vi) that thus on the demise of Sh. M.L. Kohli and execution of Relinquishment Deed supra, Mr. S.C. Kohli, being the predecessor of the two plaintiffs and defendants No.3&4, and the defendant No.1 Mr. Vinod Kohli became owners of equal share of Shop No.81, Central Market, Lajpat Nagar, New Delhi;

(vii) that Shop No.81, Central Market, Lajpat Nagar was also substituted in the record of the Land & Development Office in the name only of Mr. S.C. Kohli and defendant No.1 Mr. Vinod Kohli;

(viii) that Mr. S.C. Kohli and defendant No.1 Mr. Vinod Kohli instituted proceedings under the Delhi Rent Control Act, 1958 for eviction of the tenants from the portions 81A, 81B and 81C of the aforesaid Shop No.81, Central Market, Lajpat Nagar, New Delhi;

(ix) that the two plaintiffs have been carrying on business from the basement portion and the defendant No.1 has been carrying on his business from the ground floor of the property;

(x) that eviction orders were passed against the tenants in Shops No.81A, 81B and 81C and possession recovered from them but the defendant No.1 Mr. Vinod Kohli only is in possession of the said shops also;

(xi) that since then, the relationship between the plaintiffs and the defendants No.3&4 on the one hand and the defendant No.1 on the other hand has become acrimonious, as the defendant No.1 has been attempting to usurp the portions got vacated from the tenants;

4. The defendants No.2&3 have supported the plaintiffs and filed affidavits of no objection also stating that they give up their shares in the property in favour of the two plaintiffs and do not want any share in the property.

5. The defendant No.1 has filed a written statement pleading:

(a) that in the settlement arrived at amongst all the legal heirs of Sh. M.L. Kohli, since the part of the asset of Sh. M.L. Kohli which had fallen to the share of the other legal heirs was lesser in value than

Shop No.81, Central Market, Lajpat Nagar, Mr. S.C. Kohli and defendant No.1 Mr. Vinod Kohli were required to pay the difference in value; though the defendant No.1 Mr. Vinod Kohli paid Rs.75,000/- in cash being his share of the said difference, Mr. S.C. Kohli being a Clerk in Central Public Works Department (CPWD) was unable to pay his share and requested defendant No.1 to pay his share of difference also stating that he will not claim any right in Shops No.81, 81A, 81B and 81C;

(b) that in the year 1990, at the time of marriage of his daughter, Mr. S.C. Kohli was again in need of money and asked the defendant No.1 for financial help; at that time, the Shops No.81, 81A, 81B and 81C, Central Market, Lajpat Nagar were finally partitioned between Mr. S.C. Kohli and defendant No.1, in which it was agreed that defendant No.1 will construct basement under Shop No.81, Central Market, Lajpat Nagar and give the same to Mr. S.C. Kohli and Shops No.81, 81A, 81B and 81C will fall to the share of defendant No.1;

(c) that since there was a great cordiality between Mr. S.C. Kohli and defendant No.1 Mr. Vinod Kohli need to record the partition in writing was not felt;

- (d) that since then Mr. S.C. Kolhi and defendant No.1 have been enjoying their respective portions of the property without any claim against each other;
- (e) that the tenants also deposited rent in the Court in the name of defendant No.1 Mr. Vinod Kohli only;
- (f) that the defendant No.1 has sales tax and Delhi Shops and Establishments Act, 1954 registration of Shop No.81, Central Market, Lajpat Nagar in his sole name only’;
- (g) that at the time of filing of the petitions for eviction against the tenants in Shops No.81A, 81B and 81C, Mr. S.C. Kohli executed General Power of Attorney in favour of the defendant No.1 knowing that he had no right, title or interest in the said shops;
- (h) that eviction petitions were filed on the ground of *bona fide* requirement of the son of defendant No.1;
- (i) denying that the plaintiffs and the defendants are in joint ownership of the property and pleading that they are owners of their respective portions;
- (j) that the mother of the plaintiff No.2 and defendant No.3 and the

stepmother of the plaintiff No.1 and the defendant No.2 is still alive but has not been made a party;

(k) that the property having already been partitioned, the question of the plaintiffs being entitled to partition thereof does not arise.

6. The plaintiffs have filed a Replication along with I.A. No.15306/2016 for condonation of nine days delay in filing thereof.

7. The delay is condoned and the Replication has been requisitioned from the Registry. However, the need to refer thereto is not felt.

8. Suffice it is to state that in the Replication, with respect to the mother / stepmother of the plaintiffs and the defendants No.2&3, it is stated that the defendant No.1 is not concerned therewith.

9. The plaintiffs filed IA No.13837/2016 under Order XII Rule 6 of Code of Civil Procedure, 1908 (CPC) pleading:

(i) that the eviction proceedings against the tenants in Shops No.81A, 81B and 81C, Central Market, Lajpat Nagar were instituted on the behalf of both defendant No.1 and Mr. S.C. Kohli, pleading that they were the co-owners thereof;

(ii) that eviction orders against the tenants in Shops No.81B and

81C were obtained on the said basis;

(iii) that the aforesaid pleadings in the eviction proceedings of the defendant No.1 himself falsify the defence of the defendant No.1 of the property having been partitioned in the year 1995 i.e. prior to the institution of the eviction proceedings;

(iv) that had the property been so partitioned, it would not have been so pleaded in the eviction petitions;

(v) that the plaintiffs along with application have filed certified copies of the pleadings in the eviction proceedings which show that the eviction petition was filed by defendant No.1 against the tenants impleading Mr. S.C. Kohli as the respondent;

(vi) that against the column "Name and Address of the Landlord" in the eviction petitions, the names and addresses of defendant No.1 as well as Mr. S.C. Kohli were given;

(vii) that in the body of the eviction petition, it was stated:

(a) that the defendant No.1 and Mr. S.C. Kohli are the owners / landlords of the shops;

(b) that the tenancy premises were required for the business

purposes of the son of the defendant No.1, as he has no other reasonably suitable business accommodation;

(c) that Mr. S.C. Kohli was impleaded as pro-forma respondent as “co-owner”.

(viii) that no mention of the partition between Mr. S.C. Kohli and defendant No.1 as pleaded herein was made;

(ix) that the notices preceding the eviction petitions were also got issued under instructions from Mr. S.C. Kohli as well as defendant No.1;

(x) that the eviction orders also described Mr. S.C. Kohli and defendant No.1 as co-owners / landlords of the property including the tenancy premises;

(xi) that the eviction orders do not record the plea of the tenants, of the defendant No.1 at any time having claimed partition between himself and Mr. S.C. Kohli of the property;

(xii) that the eviction orders record mutation of the property in the names of defendant No.1 and Mr. S.C. Kohli.

10. IA No.13837/2016 under Order XII Rule 6 CPC came up first before

this Court on 8th November, 2016 when the defendant No.1 or his counsel though served with advance copy thereof failed to appear. Accordingly, notice thereof had to be issued to the defendant No.1 for today.

11. The defendant No.1 appears with counsel today. The counsel for the defendant No.1 has no explanation for absence on 8th November, 2016 despite receipt of advance copy. Today also he seeks adjournment to file reply to the application under Order XII Rule 6 CPC.

12. I have enquired from the counsel for the defendant No.1, as to need for the reply to the application under Order XII Rule 6 CPC. Order XII Rule 6 CPC empowers the Court to, where the admissions of fact have been made, either in the pleadings or otherwise, whether orally or in writing to, either on the application of any party or of its own motion, without determination of any other question between the parties, make such order or give such judgment, as it thinks fit having regard to such admissions. It thus appears that there is no need for giving adjournment to enable the defendant No.1 to file reply to the application under Order XII Rule 6 CPC. The plaintiffs in the said application have not said and cannot say anything new. All that the plaintiff does by such application is to draw the attention of the Court to the admissions made by the opposite party and calls upon the Court

to pass an order / judgment / decree on the basis of the said admissions. When such an application only draws attention of the Court to what is already on record, there is no need to call for a reply thereto.

13. Though the conduct of the defendant No.1 of not appearing on 8th November, 2016 and today seeking adjournment is clearly dilatory and vexatious but I have nevertheless enquired from the counsel for the defendant No.1 as to what he intends to state in reply thereto.

14. The counsel for the defendant No.1 inspite of confabulating with the defendant No.1 is only able to say that opportunity to file reply to the application be given.

15. I have enquired from the counsel for the defendant No.1, whether not the defendant No.1 in the eviction proceedings pleaded and contended as has been recorded by me hereinabove.

16. The counsel for the defendant No.1 though unable to reply in the negative chooses to remain quiet.

17. I have further enquired from the counsel for the defendant No.1 that the defendant No.1 having in the eviction petitions signed and verified on 18th October, 2008 and 20th October, 2008 and duly supported by affidavit having pleaded himself and the predecessor-in-interest of the two plaintiffs

and defendants No.2&3 to be co-owners of the entire Shop No.81, Central Market, Lajpat Nagar of which the tenancy premises are a part of the property of which partition is claimed, on what basis is now in the written statement, signed and verified on 2nd July, 2016 and again supported by an affidavit is pleading of partition of co-ownership of Mr. S.C. Kohli and defendant No.1 way back in the year 1995 pleaded.

18. Again, no answer is forthcoming.

19. I have yet further enquired from the counsel for the defendant No.1, to make an election, which of the two affirmations on affidavit, whether of 18th October, 2008 and 20th October, 2008 or of 2nd July, 2016 are false.

20. No election also is being made.

21. This Court has to come down heavily on litigants as the defendant No.1 who have no regard for truth and who concoct the facts to suit their need for the time being. The defendant No.1 cannot be permitted to, for the purposes of evicting a tenant from a portion of the property describe himself and the predecessor of the plaintiffs and defendants No.2&3 as co-owners of the property and when faced with the demand of the plaintiffs and defendants No.2&3 for partition, deny and dispute such co-ownership and aver an oral partition of a date prior to the date on which co-ownership was

pleaded.

22. Though undoubtedly a plea of oral partition is required to be put to trial but when it is pitted against documents executed on oath and on solemn affirmation by the person taking the said plea of co-ownership, in my view to still put such plea to trial would amount to the Court allowing its process to be abused by the person taking such a plea and assisting him to abuse the process of the Court and the implicit delays in trial to reap unfair advantage to himself and to the prejudice of the other party. Not only has the counsel for the defendant No.1 failed to state as to what the defendant No.1, even if given an opportunity to lead evidence can prove to renege out of the situation but I am also unable to fathom any get away for the defendant No.1, even if granted such an opportunity.

23. Though undoubtedly there is no admission of the defendant No.1 in his written statement filed in this suit of co-ownership and rather the defendant No.1 in the written statement in this suit has pleaded a prior oral partition but Courts have in *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India* (2000) 7 SCC 120, *Vivek Narayan Pal Vs. Sumitra Pal* (2010) 169 DLT 443 (DB), *C.N. Ramappa Gowda Vs. C.C. Chandregowda* (2012) 5 SCC 265 and *Maj. (Retd.) Sukesh Behl Vs. Koninklijke Phillips*

Electronics 2014 SCC OnLine Del 2313 (DB) invoked the provisions of Order XII Rule 6 CPC to negate such improbable pleas which have no chance of succeeding on the face of the admitted material on record and which pleas are taken merely to lengthen litigation and to use the said time to coerce the plaintiff into settling for less than his due.

24. Not only Order XII Rule 6 CPC but Order XV CPC also requires and empowers the Court to put a suit to trial only if a material proposition of fact or law is submitted by one party and denied by the other. The plea of the defendant No.1 of oral partition of the property, though if proved can certainly defeat the claim of the plaintiffs of partition but is not found to be a material one, since the defendant No.1 who has taken the said plea has in an earlier statement on oath stated contrary thereto. Rather, the defendant No.1 has in the petitions for eviction of tenants filed by him admitted the co-ownership of the predecessor-in-interest of the plaintiffs and defendants No.2&3 and though the plaintiffs in their plaint pleaded the said admission of the defendant No.1 of co-ownership in the eviction proceedings but the defendant No.1 in his written statement has not given any explanation thereof. I have in *Ashoka Estate Pvt. Ltd. Vs. Dewan Chand Builders Pvt. Ltd.* 2009 (113) DRJ 193, *P.S. Jain Co. Ltd. Vs. Atma Ram Properties (P)*

Ltd. (2013) 205 DLT 302, *M/s. Precision Steels Vs. Reeta Salwan* (2013) 205 DLT 695, *M/s Sikka Promoters Pvt. Ltd. Vs. National Agricultural Cooperative Marketing Federation of India Ltd.* (2013) 202 DLT 49 and *Shashi Garg Vs. M/s Shitiz Metals Ltd.* 2014 SCC OnLine Del 2730 invoked Order XV of CPC to decree or dismiss the suit forthwith. The defendant No.1 cannot be permitted to play hookey in the Court.

25. IA No.13837/2016 of the plaintiffs under Order XII Rule 6 CPC is accordingly allowed and the plaintiffs are found to be entitled to the relief claimed of partition on admissions.

26. The counsel for the defendants No.2&3 today also states that the defendants No.2&3 do not claim any share in the property.

27. I have enquired from the counsel for the plaintiffs, whether the two plaintiffs wants separation of their share.

28. The counsel for the plaintiffs replies in the negative.

29. A preliminary decree for partition is accordingly passed, declaring the two plaintiffs together to be having 50% undivided share and the defendant No.1 to be having the other 50% undivided share in Shop No.81, situated at Central Market, Lajpat Nagar, New Delhi including Shops No.81A, 81B and 81C carved out therefrom.

30. The parties are left to bear their own costs.

31. Decree sheet be drawn up.

32. I have enquired from the counsel for the plaintiffs and the counsel for the defendant No.1, whether there is any possibility of division of shops by metes and bounds.

33. Both state that a Court Commissioner be appointed for the said purpose.

34. Accordingly, Mr. D.K. Rustagi, Advocate (Mob.9810033559) is appointed as a Court Commissioner to, in consultation with the parties and by visiting the property and having a plan measured to scale thereof prepared, explore and suggest the possibilities of division of the property aforesaid by metes and bounds between the two plaintiffs on the one hand and the defendant No.1 on the other hand with each having share of equal value therein.

35. The Court Commissioner to submit the report on or before 31st January, 2017.

36. The fee of the Court Commissioner is tentatively fixed at Rs.1,50,000/- besides out of pocket expenses to be borne equally by the two

plaintiffs on the one hand and the defendant No.1 on the other hand.

37. List for consideration of the report of the Court Commissioner on 14th February, 2017.

RAJIV SAHAI ENDLAW, J.

DECEMBER 09, 2016

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(corrected & released on 28th December, 2016)