



2025:DHC:4418



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

Reserved on: 28.02.2025
Pronounced on: 27.05.2025

+ **CS(OS) 3156/2015 & I.As. 1452/2020, 11778/2020, 7719/2021, 12006/2021, 17237/2021, 10308/2022, 1402/2024, 1403/2024, 4844/2024, 8347/2024, 8663/2024, 9070/2024**

MRS. PAYAL KAPOOR & ANRPlaintiffs
Through: Mr.Harish Malhotra, Sr. Adv.
with Mr.Rajeev Bahl and
Mr.Vikas Tomar, Advs. for P-2.

versus

MR. PANKAJ JAIN & ORS.Defendants
Through: Mr.Darpan Wadhwa, Sr. Adv.
with Ms.Ruby Singh Ahuja,
Mr.Varun Khanna, Mr.Vasu
Singh, Ms.Megha Dagar,
Ms.Aditi Mohan, Ms.Neelakshi
Bhadauria, Ms.Rea Bhall,
Ms.Divita Vyas, Mr.Tribhuvan
N Singh, Mr.Puru Lekhi &
Ms.Divya Gyan, Advs. for D-2
& D-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This suit has been filed by the plaintiffs, praying for the following reliefs:-

- a) *pass a preliminary decree of partition declaring her share to be one-fifth in the suit properties, as well as final decree of partition by metes and bounds of all movable and immovable properties, as detailed in the Schedules to the plaint.*
- b) *declare that late Shri D.K. Jain died intestate and the two will set up by*



- Defendant No. 1 and 2, as stated in paras 6 and 7 of the plaint, are forged, null and void.*
- c) pass a decree for rendition of accounts, preliminary and final directing the Defendants to render accounts of profits and other benefits derived by the defendants from suit properties detailed in Schedules to the plaint.*
 - d) pass a decree for mesne profits in favour of the Plaintiff and against the Defendants at a rate to be determined by this Hon'ble Court pendent lite and future till the decree of partition is fully implemented.*
 - f) issue and grant a decree of mandatory injunction against the defendants restoring the status as it prevailed at the time of death of late Shri D.K. Jain of all the shares belonging to Late Sh D.K. Jain, which have been transmitted to Defendant No. 2, as detailed in Schedule C to the Plaint and transfer/transmit the same in equal proportion to the parties to the suit;*
 - g) grant any other relief which this Hon'ble Court may deem fit and proper be also passed in favour of the Plaintiff and against the Defendants.*
 - h) Award the cost of the suit in favour of the Plaintiff and against the Defendants.”*

2. The above Suit was originally filed only by Ms. Payal Kapoor (plaintiff no.1), daughter of Late Shri D.K. Jain (hereinafter referred to as the ‘deceased’), claiming therein that the deceased, who had left for heavenly abode on 18.03.2014, leaving behind the parties to the suit as his only legal heirs, had died intestate.

3. She further challenged the Will dated 11.12.2004 of the deceased, propounded by defendant no. 2 – Ms. Usha Jain, her



2025:DHC:4418



mother, and the Will dated 13.09.2013 of the deceased, propounded by defendant no. 1 – Mr. Pankaj Jain, her brother.

4. She, on the basis of the above averments, prayed for a decree of partition, claiming 1/5th share in the estate of the deceased.

5. Later, by an Order dated 27.02.2019, the application, being I.A. No. 1140/2018, filed by the erstwhile defendant no. 4 in the suit – Ms.Priya Jain, was allowed and she was transposed as the plaintiff no.2 in the suit.

6. As far as the Will dated 13.09.2013 propounded by defendant no.1 is concerned, the defendant no.1 filed an application in the present Suit, being I.A. No. 11953/2017, stating therein that he is not pressing his claim with respect to the said Will, and has in fact, entered into a Memorandum of Oral Family Settlement reduced into writing on 17.11.2016 with defendant no. 2 in TEST.CAS. 54/2014, withdrawing his objections against the Will dated 11.12.2004, by which the entire estate of the deceased has been bequeathed by him in favour of defendant no. 2. The said application was disposed of by this Court *vide* its Order dated 14.01.2022.

7. The plaintiff no. 1/ the original plaintiff has also settled her disputes with defendant no. 2-Smt. Usha Jain, and has executed a Memorandum of Oral Family Settlement dated 09.08.2021, based on which she has withdrawn her objections against the Will dated 11.12.2004. She also moved an application in the present Suit, being I.A. 10423/2021, withdrawing her claim in the present Suit. The said application was allowed by this Court *vide* its Order dated 03.09.2021, and the plaintiff no. 1/ the original plaintiff was deleted from the array



2025:DHC:4418



of parties.

8. Therefore, the only claim remaining to be adjudicated in the present Suit was that of the plaintiff no.2-Ms. Priya Jain.

9. TEST. CAS. 54/2014, has been filed seeking grant of Probate of the Will dated 11.12.2004 left behind by the deceased, bequeathing his entire estate to the defendant no. 2 herein- his wife- Mrs. Usha Jain. In the said petition, the plaintiff- Ms. Priya Jain has filed objections against the grant of probate.

10. The learned counsels for the plaintiff no. 2 and the defendants, in the course of their submissions in TEST.CAS. 54/2014, have also submitted that if the probate of the Will dated 11.12.2004 is granted, nothing further survives in the present Suit.

11. By a separate judgment pronounced today in TEST.CAS. 54/2014, this Court has dismissed the objections filed by the plaintiff against the grant of the probate of the Will dated 11.12.2004, and has granted probate of the Will dated 11.12.2004 to the executor thereof, namely, Shri Sanjay Kalra.

12. In view of the above, nothing further survives in the present Suit.

13. The Suit, along with pending applications, is dismissed. The parties shall bear their own costs.

14. Let a decree sheet be drawn accordingly.

NAVIN CHAWLA, J

MAY 27, 2025/rv/VS