

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

+ **RFA No.79/2004**

% **5th March, 2012**

RADHA KRISHAN BHARDWAJ

@ Rakesh Kumar Sharma

..... Appellant

Through: Mr. Sandeep Bajaj, Adv.

versus

ISHWAR DUTT SHARMA

..... Respondent

Through: Mr. J.S.Sinha with

Mr. Vikas Malhotra with

Mr. M.P.Sahay, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal(RFA) filed under Section 96 of the Code of Civil Procedure, 1908(CPC) is to the impugned judgment of the Trial Court dated 22.9.2003 dismissing the suit for partition and possession filed by the appellant/plaintiff.

2. The disputes in the present case pertain to the property originally owned by Sh. Chhidu Singh, father of the respondent/defendant and grandfather of the appellant/plaintiff. This property is a plot of land

admeasuring 126 sq. yds. along with construction thereupon. Out of the 126 sq. yds, the front portion of 72 sq. yds. was constructed so far as the ground, first and second floors, and on the remaining 54 sq. yds. portion (which is the back portion) there was construction only of the ground floor. Sh. Chhidu Singh died on 14.12.1973, and before his death he had executed a total of four Wills, the last of which was the Will dated 27.7.1973, with its amendment dated 27.9.1973. This Will is not in dispute between the parties, and the parties agree that late Sh. Chhidu Singh had executed this Will dated 27.7.1973 along with the amendment dated 27.9.1973.

3. The parties thereafter had also admittedly signed an untitled document on 24.12.1977. This document is signed not only by both the parties to the suit, but also by their late mother-Smt. Ram Devi. This document dated 24.12.1977 is actually a decision of one Sh. Sohan Lal Sharma to whom parties had referred their disputes for settlement. In fact Sh. Sohan Lal Sharma was designated in the Will dated 27.7.1973 for resolving any dispute between the parties. Sh. Sohan Lal Sharma was thus a referee/umpire (wrongly referred to by the trial Court as an arbitrator) and his decision was accepted by the parties by signing the document dated 24.12.1977. By this admitted document dated 24.12.1977, there was, what is said to be an 'amendment' to the Will dated 27.7.1973, and as amended

on 27.9.1973. The dispute between the parties is as to what exactly is the nature of this amendment for the requirement as to the registration i.e. the dispute is actually a technical dispute inasmuch as the appellant/plaintiff claims that this document dated 24.12.1977 ought to have been registered under Section 17 (1)(b) of the Registration Act, 1908, but having not been registered, the same cannot create any rights in view of Section 49 thereof.

4. After as many as 24 years (no less) of the parties having executed this document dated 24.12.1977, suddenly the appellant/plaintiff woke up and claimed rights which were in effect a challenge to the document dated 24.12.1977. It was firstly argued that the document dated 24.12.1977 required registration inasmuch as when this document allowed construction to be made and enjoyed by the respondent/defendant over the 54 sq. yds. back portion (which had till then been only constructed upto the ground floor) the same created a right, title and interest over the property in excess of ₹100/-. The object of challenging this document was that the plaintiff/appellant claimed that as per the fourth Will dated 27.7.1973 with its amendment dated 27.9.1973 he had an equal right in the entire land of 126 sq. yds. and therefore the respondent/defendant should be denied the right to construct over and above the constructed ground floor on the back/southern portion of 54 sq. yds.(and which rights were given to

defendant/respondent by the document dated 24.12.1977 signed/accepted by all the parties), as the same would be a negation of his equal right in such construction over and above the ground floor back portion on 54 sq. yds.

5. To the argument on behalf of the appellant/plaintiff of invalidity of the document dated 24.12.1977 on account of lack of registration of the same, the respondent/defendant countered that the document in question did not require any registration inasmuch as the same did not create any rights for the first time but was only a document which recorded an existing right under a family settlement or the document dated 24.12.1977 only recorded a clarification of that portion of the last Will dated 27.7.1973, executed by late Sh. Chhidu Singh along with its amendment on 27.9.1973, which pertained to the rights of the parties in the different parts of the whole property and the land of 126 sq. yds. on which the property was situated.

6. The Trial Court has decided this issue by holding that this document dated 24.12.1977 did not require registration because the same only contained a recital of what had already been agreed and the document did not create a right, title and interest for the first time. The relevant observations of the Trial court in this regard read as under:-

“If, the Memorandum of Understanding dated 24.12.1977 Ex.D-1 is examined in the light of aforesaid judgments, it seems that the document in question a merely recital of what has already taken place cannot be held to declare any right, thus, the same was not required registration.

Another point argued on behalf of the defendant that assuming for the sake of argument deed dated 24.12.77 falls within the mischief of Section 17(1)(b) and Section 49 of the Act, even then the said document can still be taken consideration for the collateral purpose to ascertain the factum and nature of the possession of the parties over the suit property, more so, when the document is an admitted document.

To support his contention, Ld. counsel for the defendant referred the citation as reported in 2003(4) SCC 161 in the matter of Bondar Singh & Ors. vs. Mihal Singh, wherein Their Lordships were pleased to make the following observations:-

“Registration Act, 1908-S.17- Unstamped and unregistered sale deed. Though does not convey title to the vendee and not admissible in evidence, can be looked into for collateral purposes.”

On perusal of the aforesaid judgment, it is manifestly clear that under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. It is true the Memorandum of Understanding dt. 24.12.1977 is an admitted document. Further more, Mr. Sohan Lal, Arbitrator appointed by the testator himself in the Will Ex.PW1/8 with a view to settle the dispute or confrontation, if arises between the parties on the vacation of the second floor of the suit property by their tenant.

If the arrangement of compromise is one under which a person having an absolute title to the property transfers his title in some of the items thereof to the others, the formalities prescribed by law have to be complied with, since the transferees derive their respective title through the transferor. If, on the other hand, the parties set up competing titles and the differences are resolved by the compromise, there is no question of one deriving title from the other, and therefore the arrangement does not fall within the mischief of s.17 read with s. 49 of the Registration Act as no interest in property is created

or declared by the document for the first time. As pointed out by this Court in Sahu Madho Das' case, it is assumed that the title 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 in view of the law laid down by the Hon'ble Supreme Court in Roshan Singh's case (supra).

It needs to be noticed that no objection certificate with regard to the Memorandum of Understanding was also signed by the parties to the suit apart from Late Smt. Ram Devi. Therefore, I have no hesitation to hold that the Memorandum of Understanding Ex.D-1 does not fall within the mischief of Section 17 read with Section 49 of the Registration Act as no interest in property is created or decided by the document for the first time. So, issue no. (ii) is accordingly decided in favour of the defendant and against the plaintiff.”

7. Learned counsel for the appellant/plaintiff has once again before this Court very vehemently stressed the fact that the document dated 24.12.1977 was invalid for want of registration and thus the appellant/plaintiff was entitled to half ownership interest in the entire suit property, including the back portion of 54 sq. yds., because as per the appellant/plaintiff para 4 of the last Will dated 27.7.1973 specifically mentioned equal co-ownership of the parties in the total plot area of 126 sq. yds. i.e. the right of each party to 63 sq. yds. of land, and thus entitling the appellant/plaintiff to maintain the suit for partition as the plaintiff/appellant had equal right in the construction to be made over and above the ground floor construction in the back portion of 54 sq. yds.

8. Before stating anything further, one needs to very strongly

stress the fact that for as many as 24 years no challenge was laid by the appellant/plaintiff to this admitted document dated 24.12.1977, and surely, 24 years is an extremely long period of time. Therefore, having accepted the document for as long as 24 years, then to thereafter file a suit disputing the validity of the document dated 24.12.1977, is in my opinion, dishonest to say the least. Not only is the dishonesty apparent from the fact that the document dated 24.12.1977 has been challenged after 24 years, it is also apparent from the fact that the challenge is, in effect, only a technical challenge as to the invalidity of the document dated 24.12.1977 on the ground of want of registration. Also, the so-called reason, of the document dated 24.12.1977 causing unequal division of the suit property and which was not intended by the Will dated 27.7.1973, as amended on 27.9.1973, is a contrived and a false self-serving reason. This is because, to understand that the division of the property was roughly equal, we have to go back to the year 1973/1977. In 1973/1977 a third floor i.e. a floor above the ground, first and second floor, was not permitted. On the subject plot of 126 sq. yds., construction and rights as existing were basically equally divided by giving the plaintiff two constructed floors built over 72 sq. yds. i.e. two flats built over land of 72 sq. yds. i.e. constructed area of 72 sq. yds. for one floor plus 72 sq. yds. for the second floor being a total of 144

sq. yds. and to the defendant ground floor constructed over the 126 sq. yds. plot, i.e. the defendant getting in fact a lesser constructed area. During 1973/1977 the construction above second floor not being permitted, ground floor was slightly costlier than the floors above. Thus though the defendant got lesser constructed area the value of such constructed area must be approximately in and around the value of the two floors given to the plaintiff considering the fact that the defendant also got the unconstructed area above the ground floor back portion (lesser valuable than front portion) and which he had to construct if he so wanted at his own cost. I, therefore, do not think that there is any merit in the plea of alleged unequal division as pleaded by the plaintiff for the first time after 24 years, considering that no division is division exactly equal either to the last sq. yd. or to the last rupee.

9. In my opinion, the arguments as have been urged on behalf of the appellant/plaintiff are misconceived and the appeal is bound to fail. The entire object and concept of a family settlement is to put a quietus to the simmering dispute between parties. Courts have repeatedly upheld family settlements inasmuch as the object of the family settlement is to bring peace in the family. Unless and until strictly prohibited by law, in considering the family settlement on account of the same being void for

lack of registration, Courts have taken a liberal and pragmatic view to enforce the family settlement, in the interest of peace not only of the family but society as such, inasmuch as, family is very much a unit of the society. One such judgment holding so is the judgment of the Supreme Court in the case of *Roshan Singh Vs. Zile Singh, AIR 1988 SC 881*. Looking at the issue from this perspective, and including with respect to the language of the document dated 24.12.1977, it is quite clear that the document dated 24.12.1977 did not require registration. This I say so for two reasons.

The **first** reason is that in the last Will dated 27.7.1973 and as amended by the amendment dated 27.9.1973, besides mentioning the equal co-ownership of the land, there was specific division with respect to the constructed portion and denial to the appellant/plaintiff of any right on the entire ground floor portion including in the back portion of 54 sq. yds. and grant to him of only the existing construction on the first floor and second floor in the 72 sq. yds. front portion. Once there is a specific division with respect to the constructed portions, it is implicit that parties were to take only those rights in satisfaction of what is set out in the Will. The appellant/plaintiff only got the existing constructions on the 1st and 2nd floors and which were only on the front portion of 72 sq. yds. i.e nothing else including in the vacant space over the ground floor portion of 54 sq.

yds. falling at the back/south of the plot It is in fact because of an alleged ambiguity of an entitlement to the construction over the back portion of the ground floor, that the need had arisen to enter into the document dated 24.12.1977. This document dated 24.12.1977 therefore only is a clarification to the existing position mentioned in the Will dated 27.7.1973, as amended on 27.9.1973. There is no dispute that so far as the aspects of the entire ground floor construction of the property being owned by the respondent/defendant by the last Will dated 27.7.1973 and the amendment dated 27.9.1973, and also the rights of the appellant/plaintiff with respect to the ownership of the first floor and second floor if found in the Will dated 27.7.1973, and as amended on 27.9.1973, remains unaffected by the document dated 24.12.1977. There was definitely a grey area with respect to whether the ground floor on the entire portion of 126 sq. yds. which fell to the share of the respondent/defendant, would or would not include the entitlement to construct on the back portion of the constructed ground floor in the 54 sq. yds. and hence the need for clarification (called as an amendment) by the document dated 24.12.1977. Looking at it in this manner, surely, document dated 24.12.1977 is, in fact, only a clarification of what is stated in terms of existing rights as per the Will dated 27.7.1973, as amended on 27.9.1973, and there were no rights which were created for

the first time. An endeavour after as long as 24 years thus to unsettle the settled position under an admitted document of 24.12.1977 was accordingly rightly disallowed by the Trial Court by dismissing the subject suit and holding that the document dated 24.12.1977 did not require registration.

The **second** reason is that the document dated 24.12.1977 in its last para specifically records that the ‘amendments’ have been made in accordance with the consent of all the parties, and thus surely, the consent showed an existing agreement entered into, before the document dated 24.12.1977 was signed showing that the document did not create rights but recorded rights which were already agreed upon under a family settlement. The document dated 24.12.1977 thus did not create rights for the first time and hence did not require registration. This last para of the document dated 24.12.1977 also notes that complete peace in the family has been restored i.e. reference to an existing fact prior to the signing of the document dated 24.12.1977. The trial Court was thus justified in taking the document dated 24.12.1977 as recording an existing family settlement and that it was not a partition deed.

10. The Supreme Court in the recent judgment in the case of *Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249* has held that it is high time that actual costs be awarded. The

Supreme Court has observed that unless actual costs are imposed a dishonest litigant will take unnecessary benefit of the false litigation. Earlier a Division Bench of three Judges of the Supreme Court in the case of *Salem Advocates Bar Association Vs. Union of India*, (2005)6 SCC 344 in para 37 had observed that it is high time that actual costs be imposed. I am also empowered to impose actual costs by virtue of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*. Considering the facts of the case where the respondent/defendant has been forced into litigation after as many as 24 years of the issues having been resolved by means of an admitted/signed document, I consider the present to be a fit case to dismiss the appeal with costs of ₹40,000/- which I assess as actual costs.

11. In view of the above, the appeal is dismissed with costs of ₹40,000/-. Trial Court record be sent back. Costs be paid within a period of 4 weeks from today.

VALMIKI J. MEHTA, J

MARCH 05, 2012
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