

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

% *Judgment Reserved on : March 06, 2014*
Judgment Pronounced on : March 28, 2014

+ **RFA (OS) 49/2014**

RAMESH KUMAR BHAGCHANDKAAppellant

Represented by: Mr.V.P.Singh, Sr.Advocate
instructed by Mr.D.K.Rustagi,
Mr.Pankaj Gupta and
Ms.B.S.Bagga, Advocates

versus

MAHESH KUMAR BHAGCHANDKA & ORS.Respondents

Represented by: Mr.Rajiv Nayyar, Sr.Advocate and
Mr.Arvind Nigam, Sr.Advocate
instructed by Mr.Ajoy K.Roy,
Mr.Nitesh Jain and Mr.Shantanu
Tyagi, Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Vide order dated August 19, 2013 application under Order VII Rule 11 of the Code of Civil Procedure filed by respondent No.1 praying that the plaint be rejected was partially reflected upon by the learned Single Judge only on the subject whether proper court fee had been affixed on the plaint by the appellant. Holding, that in view of the pleadings in the plaint wherein the appellant had neither pleaded actual nor constructive possession of the suit properties, the appellant was required to pay ad-valorem court fee and since appellant himself has

pleaded that even as per conservative estimate the value of the properties would be ₹1000,00,00,000/- (Rupees One Thousand Crores only), hearing was deferred to enable the appellant to pay the requisite court fee within 8 weeks. Compliance not being made with the said order the plaint has been rejected vide impugned order dated December 05, 2013 while simultaneously dismissing IA No.16970/2013 filed under Order VI Rule 17 of the Code of Civil Procedure praying to incorporate pleas that the appellant was either in physical or constructive possession of several properties partition whereof was claimed.

2. Our job in appeal would thus be two-fold. Firstly whether IA No.16970/2013 was rightly dismissed and secondly to see whether the averments in the plaint would warrant ad-valorem court fees to be paid on the value of the properties being ₹1000,00,000,00/- (Rupees One Thousand Crores only).

3. The journey must thus commence by pen profiling the plaint.

4. Appellant pleaded that he and his brothers – the defendants (heirs of late brothers) were of the trading community in Rajasthan having a custom that the male children with their father would *invariably constitute Hindu Joint Family even after the father's death*. That the father of the parties Lakhi Prashad died on October 18, 2004 and during his life time he and his sons constituted a Joint Hindu Family. Various companies names whereof were disclosed in Schedule 1 to the plaint, being 60 in number, were incorporated with shareholding as per Schedule 2 (and we find that in the said Schedule shareholding only in 24 companies has been indicated). That the main companies, being 3 in number were as per Schedule 3, all of which belong to the joint family. Lands detailed in Schedule 4 and Schedule 5 were acquired in the names of different companies or members of the family. It was pleaded that

irrespective of whether the assets were individual, joint, or held by a company or a trust, they were always treating as belonging to the joint family. It was pleaded that before the father died he had expressed a wish that the brothers should separate because the businesses were becoming somewhat unmanageable. It was pleaded that such businesses and properties which were controlled by the first defendant were held out by him to be his. Immediately thereafter it was pleaded, and we refer to paragraph 18 of the plaint, that as of the date when the suit was filed the entire businesses and properties were directly/indirectly under the control of the first defendant. It was pleaded that the first defendant claims all of them to be his personal property. Seeking partition, in paragraph 37, for purposes of value of the suit qua jurisdiction it was valued at ₹1000,00,000,00/- (Rupees One Thousand Crores only) but for purposes of court fee it was valued at ₹250/- (Rupees Two Hundred and Fifty only).

5. Strikingly, there are no averments in the plaint that the appellant was in actual or constructive possession of the suit properties.

6. During arguments of the appeal learned senior counsel for the appellant had tacitly conceded to the fact that a corporate litigation was being fought on Mufassil pleadings.

7. Where issue of shareholding in a company is the bone of contention, the pleadings have to be specific with reference to what percentage of the shareholding is claimed by the plaintiff for the reason a company is distinct from its shareholders. The assets of a company belong to the company and are not the assets of the shareholder. Through the shares held, exercising control over the company, the shareholders may manage the assets of the company but no shareholder can sue for partition of the assets of a company as can be done by a partner or joint or

co-owners of a property. The plaint is a hotchpotch of pleadings intermixing the issue of shareholdings in companies and properties held in the individual names of the parties. As was observed by the Supreme Court in the decision reported as AIR 1955 SC 74 Bacha F.Guzdar Vs. CIT Bombay, a company being a juristic person is the owner of the assets in its name and a shareholder has no right over the assets of the company. He is only entitled to the dividends when declared by the company from time to time. A shareholder cannot ask a company for partition on the basis of his shareholding.

8. Vide IA No.16970/2013 prayer was made to insert in the existing paragraph 13 the averment that the plaintiff was in physical possession of agricultural land mentioned at serial No.7 in Schedule 4 of the plaint and is in constructive possession of the property mentioned at serial No.1 of the 5th Schedule of which his wife is a co-owner. That he was in constructive possession of the properties by reason of being joint owner along with his brother. The appellant also pleaded that he be permitted to insert paragraph 18A to the effect that parties enjoyed utmost faith and trust, being related by blood, and it hardly mattered in whose name a property was purchased.

9. The two amendments have been declined by the impugned order dated December 05, 2013 holding that the amendments were not bona-fide.

10. Simultaneously, since order dated August 19, 2013 was not complied with, the plaint has been rejected.

11. The lands, partition whereof is prayed for, detailed in Schedule 4 and 5 of the plaint are described as under:-

“SCHEDULE-4

List of the Land Acquired in the names of the companies or individual members of the Bhagchandka family for the purpose of real estate/development industrial purpose.

<i>Sr. No.</i>	<i>Name</i>	<i>Total Area</i>	<i>Remark</i>
1.	<i>Tosha Picture Tubes Limited</i>	<i>5.9600</i>	<i>By registered sale deed</i>
2.	<i>Alok Kumar Bhagchandka</i>	<i>0.3310</i>	<i>By registered sale deed</i>
3.	<i>Mahesh Kumar Bhagchandka</i>	<i>1.1140</i>	<i>By registered sale deed</i>
4.	<i>Parmatma India Pvt. Ltd.</i>	<i>0.6580</i>	<i>By registered sale deed</i>
5.	<i>Smt.Sunita Bhagchandka</i>	<i>0.0130</i>	<i>By registered sale deed</i>
6.	<i>Sat Sudha Pvt. Ltd.</i>	<i>1.1850</i>	<i>By registered sale deed</i>
7.	<i>Ramesh Kumar Bhagchandka</i>	<i>1.6150</i>	<i>By registered sale deed</i>

SCHEDULE – 5

Agricultural Lands admeasuring 12 bighas and 4 biswas with boundary wall, tube well, one room and other fittings in village Ghadaipur, Tehsil Mehraulli, New Delhi, Sale Deed dated 22.02.1991 executed by M/s Jai Laxmi International, B-37 Rajouri Garden in favour of Smt.Sunita Bhagchandka, Smt.Meena Bhagchandka, Smt.Ruchi Bhagchandka, Smt.Preeti Bhagchandka in respect and renovatd by the members of Bhagchandka family.

1. *Land at Gurgaon*
2. *Land at Daruheda*
3. *Land at Maneser*

4. *Land at Noida*
5. *Land elsewhere in U.P.*
6. *Land in Indore*
7. *Land in Aurangabad*
8. *Land in Kolkata*
9. *Land in Delhi*
10. *Land elsewhere in Maharashtra*
11. *Land elsewhere in Punjab”*

12. At the outset we note that as regards Schedule 5, no particulars of the lands have been detailed and it is apparent that the appellant is fishing and roving. To describe, while seeking partition, that the land is at Gurgaon, Daruheda, Maneser, Noida etc. is no description of the land. Similar is the position with respect to the land detailed in Schedule 4, where the additional problem is that three out of seven lands are in the names of companies.

13. Order VII Rule 3 of the Code of Civil Procedure mandates that where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

14. The plaint is completely silent in said regard.

15. Section 7(v)(d) of the Court Fees Act, 1870 would require ad-valorem court fee to be paid on the market value of the land where possession thereof is the subject matter of the dispute.

16. The interplay between Section 7(iv) and (v) and Article 17 of Schedule 2 of the Court Fees Act, 1870 has been a matter of debate and discussion in various judgments.

17. As was held by the Supreme Court in the decision reported as AIR 1958 SC 245 *Sathappa Chettiar Vs. Ramanathan Chettiar*, while

deciding the question of court fee the Court has to look into the allegations in the plaint to see what substantial relief has been asked for. In the decision reported as AIR 1939 Patna 274 Sital Prasad Vs. Ramdas Sah the Court cautioned that meandering with dexterous, pleadings in a suit claiming partition may actually be in the nature of a title suit and in such case ad-valorem court fee is payable. In the decision reported as ALR 1935 Lahore 59 Hari Ram Vs. Ram Ditta it was held that a property which was not joint family property would require ad-valorem court fee to be paid even if partition thereof was prayed for.

18. We need not make a cornucopia of the case law for it would be better for us to state the principle of law applicable. Where a property is admittedly joint property, possession by one joint owner has to be treated in law as possession on behalf of all and a suit for partition of such a property would not be having a claim by the plaintiff, to be put in possession of the property. The claim would be to sever the jointness by partitioning the property and allocating separated shares with possession thereof to the joint owners with reference to the share of each in the whole property. But where title is not joint and has to be established with the property standing in the name of an individual, the principle that the possession of the recorded owner would be treated in law as possession on behalf of the plaintiff would not be attracted and in such a case the plaintiff would have to first succeed on title followed by possession and hence ad-valorem court fee has to be paid.

19. In the decision reported as AIR 1934 Lahore 563 Asa Ram Vs. Jagan Nath, a view which was also taken by the Bombay High Court in the decision reported as ILR 1953 Bom. 821 Irappa Bommanappa Vs. Shankreppa Bommanappa, it was held that where the plaintiff was ousted from enjoyment of the stated joint family property and it was pleaded in

the plaint that the defendants were claiming the property to be theirs, in a suit for partition and possession, ad-valorem court fee had to be paid.

20. The reasoning of the two decisions would be the same as noted by us in paragraph 18 i.e. the plaintiff would have to first prove a joint interest in the property from which he was ousted and thereafter claim possession.

21. It is trite that the same principles govern a claim for partition and possession alleging the property to be belonging to the joint family.

22. To put it pithily : where meaningfully read the averments in the plaint would show that the plaintiff admits ouster by the defendants to keep him away from immovable property and the ouster is premised on the plaintiff's right, title or interest in the property being denied; title, right or interest has to be established and only thereupon partition claimed followed by possession. In the decision reported as 20 Cal. 762 Mohendra Chandra Ganguli Vs. Ashutosh Ganguli it was held that if it was a case of complete ouster, a claim of being a co-sharer in an immovable property and hence partition with recovery of possession as the prayer would warrant ad-valorem court fee to be paid on the plaint.

23. The plaint in the instant case is a classic instance of Mufassil pleadings in a corporate litigation. A claim for change of shareholding in companies has been intermingled with a claim for partition of immovable properties held by some companies and in the name of some individuals. The plaint overlooks the fact that a company is a distinct juristic entity vis-à-vis its shareholders and movable as also immovable properties in the name of the company belong to the company. A shareholder cannot seek partition pleading that since he holds 20% shares of a company he is entitled to a partition of the movable and immovable properties of the country and to be put in possession of 20% thereof.

24. The other immovable properties, partition whereof has been prayed for admittedly are in the names of individuals. The plaintiff admits said fact. The plaintiff admits that the recorded owners of the properties are claiming a title thereto in their own right. In other words the plaintiff admits ouster of the plaintiff.

25. The amendments prayed for are illusory and have rightly been declined by the learned Single Judge. The plaintiff being in actual possession of one immovable property, of which he is the recorded owner, would not mean that the plaintiff would be in constructive possession of the others.

26. Now, constructive possession is a matter of fact and law. It would be useless to plead that the plaintiff is in constructive possession without disclosing the facts on which it is pleaded that the plaintiff is in constructive possession. The amendment to insert further pleadings in paragraph 13 of the plaintiff to said effect are ex-facie without any material particulars; and are illusory. The insertion of paragraph 18A that parties enjoyed utmost faith and trust and it did not matter as to in whose name the properties were purchased and it was irrelevant who was in physical possession is again an illusory pleading. The said pleadings would run contrary to the pleadings in the original plaintiff wherein the plaintiff has admitted ouster when he pleads that he is being denied enjoyment of the properties in the names of the defendants who claim individual title thereto on the strength of the sale-deed in their favour and further assert a right to exclusive possession and enjoyment of the properties.

27. Besides, we cannot overlook the fact that there is no presumption of law in favour of a Joint Hindu Family. The pleadings in the plaintiff on the subject of the existence of a Joint Hindu Family are vague and would attract the law declared by the Supreme Court in the decision reported as

(2007) 1 SCC 521 Appasahep Peerappa Chamdgade Vs. Devendra Peerappa Chamdgade. We may additionally note that there are no pleadings as to the existence of a ancestral nucleus through which properties were allegedly acquired. Schedules 4 and 5 to the plaint are completely vague in relation to the description of the assets.

28. Looked at from any angle it is apparent that the suit is simply to needle his brothers.

29. Be that as it may, the plaintiff i.e. the appellant had to pay ad-valorem court fee as was held by the learned Single Judge in the order dated August 19, 2013.

30. The appeal is dismissed with costs in sum of ₹1,00,000/- (Rupees One Lakh only) to be paid by the appellant to the first respondent.

**(PRADEEP NANDRAJOG)
JUDGE**

**(JAYANT NATH)
JUDGE**

MARCH 28, 2014

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