

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

+ **RFA No.587/2010**

% **22nd February, 2012**
SANTOKH SINGH Appellant

Through: Mr. Rajat Aneja with
Mr. Vaibhav Jairaj, Adv.

VERSUS

NARENDER SINGH Respondent

Through: Ms. Kusum Lata Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

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 18.5.2010 dismissing the suit filed by the appellant/plaintiff/father against the respondent/defendant/son. The suit was a suit for possession with respect to one room and one shop in the property No. C-129, Udey Vihar, Veer Bazar, Chander Vihar, Nilothi Extension, New Delhi.

2. The facts as set out in the plaint by the appellant/plaintiff/father was that the appellant/plaintiff/father was the

owner of the suit property as the same was purchased out of his own funds and construction was also raised on the same out of his own funds. It was pleaded that the parents i.e. the appellant/father and his wife (mother of the respondent) were aged parents and they have been ill-treated by the respondent/defendant/son who has also been guilty of cruel behaviour with them. It was pleaded that the appellant/plaintiff/father has disowned and debarred the respondent/defendant/son from the suit property by getting a notice published in the newspaper.

3. The respondent/defendant/son contested the suit and pleaded that the suit property was actually purchased by the appellant/plaintiff/father from the share which the respondent/defendant had in the property no. WZ-443-E, M.S.Block, Hari Nagar, New Delhi. It was pleaded that Sh. Bood Singh, father of the appellant/plaintiff owned the property no.2599, Gali No.4, Main Bazar, Shadipur, New Delhi which was sold by Sh.Bood Singh in the year 1972-73 and sale proceeds of which property were divided equally amongst sons with their families i.e. of his elder son Sh. Baldev Singh and his younger son-Sh.Santokh Singh/plaintiff. On receiving the share from his father-Sh.Bood Singh, the appellant/plaintiff purchased the property no.WZ-443/E, M.C.Block, Hari Nagar, New Delhi admeasuring 150 sq. yds. in his own name. It was

pleaded that the sons of the appellant/plaintiff were minors at that time. It was further pleaded that the appellant/plaintiff had sold 50 sq. yds. of his Hari Nagar's property to pay his debts and had sold remaining 100 sq. yds., and out of the sale proceeds of 100 sq. yds., the appellant/plaintiff was said to have given an amount of ₹2,25,000/- to each of his other two sons namely Sh.Gopal Singh and Sh. Kuldeep Singh towards their share in the said property, however, no share was given to the respondent/defendant as he was unmarried and youngest at that point of time. The respondent/defendant thus pleaded right in the suit property which was purchased from ancestral funds i.e. funds of Sh. Bood Singh.

4. After the pleadings were completed, the Trial Court framed the following issues:-

- “1. Whether the plaintiff has no locus standi to file the present suit as alleged in the preliminary objection 4 of the written statement? OPD
2. Whether the plaint is liable to be rejected u/O.7 Rule 11 CPC as alleged in the preliminary objection 7 of the written statement? OPD
3. Whether the suit is bad for non joinder of necessary parties as alleged in the preliminary objection 8 of the written statement? OPD
4. Whether the plaintiff is entitled to vacant and peaceful possession of the suit property from the defendant as prayed for? OPP
5. Relief.”

5. The main issue is whether the suit property is an HUF property in the hands of the appellant/plaintiff or it is his individual property/self-acquired property in his hands.

6. Learned counsel for appellant/plaintiff has relied upon the judgments of the Supreme Court reported as *Commissioner of Wealth Tax, Kanpur etc. v. Chander Sen AIR 1986 SC 1753* and *Yudhishter v. Ashok Kumar AIR 1987 SC 558* to argue that even if a male Hindu receives property from his paternal ancestors, unless there exists an HUF, the property which is inherited by a male Hindu from his paternal ancestors, will be individual property/self-acquired property in his hands, of course the inheritance should be after coming into existence of the Hindu Succession Act, 1956. It is argued that since admittedly in the present case the appellant/plaintiff received from his father-Sh.Bood Singh monies in the year 1972-73, and therefore, when the appellant/plaintiff received monies from his father-Sh.Bood Singh, the monies in his hands were self-acquired property/individual property to which his children, including respondent/defendant had no right. It is argued that the fact that the appellant/plaintiff gave shares to other sons, was only in furtherance of the appellant's/plaintiff's moral obligations, and moral obligations cannot be equated with legal obligations. It is therefore pleaded that the

appellant/plaintiff being the owner of the property, the suit for possession was wrongly dismissed by the Trial Court simply because the appellant/plaintiff had not filed any document of title with respect to the suit property inasmuch as the suit property was admitted to have been purchased in the name of the appellant/plaintiff.

Learned counsel for the respondent/defendant argued in reply that the respondent/defendant was in fact a co-owner along with the appellant/plaintiff in the suit property inasmuch as the suit property was purchased from ancestral funds and also because the respondent/defendant had spent moneys for construction in the suit plot.

7. Before I proceed to decide the merits of the case, it is necessary to refer to the relevant findings and conclusions of the Trial Court, and which read as under:

“It was for the plaintiff to prove that he is exclusive owner of the suit property and he is competent to maintain the present suit against the defendant. The plaintiff has not filed any document on record regarding his title in the suit property. In the cross examination he has deposed that suit property was purchased in the year 1999. He further deposed that he is handicapped and doing no work for the last 11 years which means that in the year 1999 he was not doing any work. The only source of income to him was ₹1000/- received by him as Govt. pension for old persons and little savings of ₹20,000/- to ₹30,000/-. Thus, it is evident that the plaintiff was not having sound financial capacity in the year 1999 in order to purchase the flat.

It is also admitted by the plaintiff in his cross examination that he purchased the property No. WZ-443/E, M.S.Block, Hari

Nagar, Delhi built upon 150 sq. yards after receipt of his share from the sale proceeds of Shadipur property from his father Sh. Bood Singh. He also admits that after selling the aforesaid Hari Nagar property he paid a sum of ₹2,25,000/- each to his other two sons Gopal Singh and Sh. Kuldeep Singh towards their share in the suit property. He has also admitted that he has executed agreements dt.10.12.98 with Gopal Singh and Sh.Kuldeep Singh in this regard. He further admits that after receipt of ₹2,25,000/- each his sons Gopal Singh and Sh. Kuldeep Singh shifted to their separate accommodation and the defendant continued to live with him and his wife in the suit property. The plaintiff has admitted that he has paid ₹2,25,000/- each to his sons Gopal Singh and Sh.Kuldeep Singh in lieu of their respective shares in the property owned by him. It is therefore evident that sons of the plaintiff including the defendant had a share in the property at Hari Nagar which was sold by the plaintiff in the year 1995-96. It is also established that the plaintiff paid ₹2,25,000/- each to his other two sons Gopal Singh and Sh. Kuldeep Singh in lieu of their share in the suit property but did not pay anything to the defendant and the defendant continued to stay with the plaintiff.

The plaintiff has also admitted in his cross examination that after pay ₹2,25,000/- each to Sh. Kuldeep Singh and Sh.Gopal Sing, he purchased the suit property from the remaining amount of sale proceeds of Hari Nagar property.

The plaintiff has also failed to prove that he disowned the defendant. He has not filed any copy of notice got published in the newspaper "Punjab Kesri" dated 7.9.2009 vide which he alleges to have disowned and dishederited the defendant. No reason has been put forward for not filing the copy of the said documents.

On the other hand, the defendant has been able to prove his contentions in his evidence. Noting contradictory has come out in his cross examination. DW-1 and DW-3 have also fully supported the case of the defendant and have also not stated anything contradictory in their cross examination.

The plaintiff has, thus, failed to prove that he is exclusive owner of the suit property and has disowned his con i.e. the defendant. He has also failed to prove that the defendant has no right or interest in the suit property.

I ,therefore, hold that the defendant is entitled to half of the share in the suit property. He is in occupation of the portion shown in colour red in the site plan Ex.PW1/7 in his own right and as owner thereof. The plaintiff has no locus standi to file the present suit against the defendant."

8. In my opinion, the Trial Court has fallen into an error in holding that the suit must fail because the appellant/plaintiff failed to file title deeds of his property. Learned counsel for the appellant/plaintiff has pointed out that the pleadings, in fact, show that the respondent/defendant admits that the suit property was in the name of the appellant/plaintiff/father, and therefore, the Trial Court could not have arrived at the finding that merely because the title deeds were not filed, the suit for possession should be dismissed. In this case, I take on record the argument as urged on behalf of the appellant/plaintiff that the original title deeds of the property were taken away by the respondent/defendant, and who was having a common mess with the appellant/plaintiff at one point of time, and taking advantage of this fact, that he has the original title deeds, this objection that original title deeds of the suit property were not filed, was taken, and which amounts to a person taking advantage of his own wrong. It may also be relevant to note that the old age of the parents of the respondent/defendant, i.e. of the appellant/plaintiff/father and the mother would be another reason as to why, along with the fact of a common mess, that the respondent/defendant would have been able to take possession of the title deeds of the suit property. In any case, the said aspect of filing the title deeds is immaterial in the facts of the present case, inasmuch as the

respondent/defendant claims ownership of the suit property on the ground that the same is an ancestral property, i.e. it is purchased by the appellant/plaintiff, but from the ancestral funds.

9. In view of the judgments of the Supreme Court in the cases of *Chander Sen* (supra) and *Yudhishter* (supra), it is no longer res integra that even if the appellant/plaintiff did receive funds from his father, the same were actually individual/self-acquired in the hands of the appellant/plaintiff inasmuch as these funds were received in the year 1972-73 i.e. after passing of the Hindu Succession Act, 1956. There is absolutely no evidence on record that there ever existed any Hindu Undivided Family as is legally known between the parties, and therefore, even if the appellant/plaintiff receives ancestral funds, since the same were received after passing of the Hindu Succession Act, 1956, the respondent/defendant can have no right, title and interest in the funds which the appellant/plaintiff received from his father, or the suit property purchased from such funds.

10. Learned counsel for the respondent/defendant also argued that the respondent/defendant spent funds for construction of the property, however, considering that the respondent/defendant was just about 21 years of age (and as per his best case he had been working only for three years

prior to purchase of the suit property) and having no proved/established source of income when the construction took place, I would not believe the oral testimony of the respondent/defendant that he has spent funds on the construction of the property. Also, the appellant-father had funds from the sale of the Hari Nagar property, and which property was sold for ₹20.50 lacs. The documents being certain receipts exhibited as Ex.DW1/1 to Ex.DW1/22, contain some receipts in the name of the respondent/defendant, however, most of the receipts are only small slips of paper containing no name . I have already noted above that at one point of time both the parties were living together and having a common mess and therefore, the respondent/defendant seems to have not only taken away the title deeds of the property, but also, along with the title deeds, these receipts also would have been taken by the respondent/defendant and which are now filed as Ex.DW1/1 to Ex.DW1/22. What is really important to note is that the respondent/defendant surely could not have at the age of 21 years earned so much so as to spend money for constructing an immovable property. Of course, living with the appellant/plaintiff he would have spent time and energy towards construction including going to the market for purchase of the materials, and possibly for that reason some receipts do contain his name, however, that does not necessarily mean that

the respondent/defendant had funds with him so as to spend for construction of the suit property.

11. I may note that during the course of hearing, considering that the present dispute is a family matter I endeavoured my best to see that a settlement is arrived at. Various proposals were very fairly given on behalf of the appellant/plaintiff/father, without prejudice to his rights in furtherance of his moral obligation, for giving a portion of the property or an amount to the respondent/defendant/son, however, the respondent/defendant/son insisted that he will not take anything else less than at least 35% of the suit property besides also the only commercial portion/shop in the property (which would be approximately around 45% to 50% value of the property). Accordingly, no compromise could be arrived at.

12. In view of the above, appeal is accepted. Impugned judgment and decree dated 18.5.2010 is set aside. Suit of the appellant/plaintiff/father is decreed as against the respondent/defendant/son for one room and one shop which is in possession of the respondent/defendant/son in the suit property bearing no. C-129, Udey Vihar, Veer Bazar, Chander Vihar, Nilothi Extension, New Delhi shown in

red in the site plan filed with the plaint, Ex.PW1/7. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

FEBRUARY 22, 2012
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