

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

+ RFA (OS) No. 55/2008

Reserved on : 26<sup>th</sup> August, 2008

% Date of Decision: September 11<sup>th</sup>, 2008

MR. MANMOHAN VERMA ..... Appellant  
Through Ms. Mala Goel with Mr. Asheesh  
K. Mishra, Advocates.

versus

LATE MS. SHEELA SHARMA  
& ORS. .... Respondents  
Through None.

**CORAM:**

**HON'BLE MR. JUSTICE MUKUL MUDGAL**  
**HON'BLE MR. JUSTICE MANMOHAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

### **J U D G M E N T**

**MANMOHAN, J :**

1. The present appeal has been filed seeking to set aside the judgment and decree dated 26<sup>th</sup> November, 2007 by virtue of which the learned Single Judge has dismissed the Appellant's suit for partition of property bearing No. E-12, Green Park, New Delhi. The

Appellant has further prayed that the partition suit filed by him be decreed.

2. The facts of the present appeal, as alleged by the Appellant, are that the Appellant's father was leading an immoral life and having a 'live-in' relationship with Respondent/Defendant No. 1. In the plaint it was averred that in lieu of ancestral properties left behind in Pakistan, the Appellant's father was allotted a large number of properties in Rohtak as well as given huge cash compensation by the Government of India. It was further alleged that by utilizing the funds realised from sale of these joint Hindu family properties, the Respondent/Defendant No. 1 had purchased benami property bearing No. E-12, Green Park, New Delhi. However, the Appellant's suit for partition was dismissed by learned Single Judge by observing as under :-

*"17. In my considered view, the first aspect to be examined is that defendant No.1 acquired title to the suit property vide sale deed dated 26.2.1959 from the Urban Improvement Housing and Construction Company (P) Limited, New Delhi. Defendant No.1 entered into a collaboration agreement on 15.2.1996 in respect of the suit property whereby she acquired monies amounting to Rs.21.10 lakh and the right to the second floor. The rights to the second floor were transferred to erstwhile defendant No.5 as noted above on 5.3.1997.*

*18. The suit has been filed solely for partition without seeking any declaration to set aside the Sale Deed executed in favour of defendant No.1. It is trite to say that the rights to an immovable property arise from a registered document. Such a registered document has been executed in favour of defendant No.1 alone. If it is the case of the plaintiff that the corpus for acquiring this property had flown from the funds of*

*HUF. In my considered view, the plaintiff was required to seek a declaration in that behalf since defendant No.1 was not stated to be a member of HUF. It is the own case of the plaintiff that defendant No.1, is a third party, alleged to be having a live-in relationship with late Shri G.C. Verma, father of the plaintiff. No such relief was prayed.*

*19.The plaintiff also did not lead any satisfactory evidence to show as to why the plaintiff was unaware of such acquisition earlier or did not take steps for years together to challenge the acquisition of the property by defendant No.1 till filing of the suit in 1998, almost 40 years after the execution of the registered document in favour of defendant No.1.*

*20.The registered owner had almost three years prior to the institution of the suit already dealt with the property. Third party rights had been created. No portion of the property vested with defendant No.1 other than the monies realised. The second floor was also transferred to the erstwhile defendant No.5, the son born from late Shri G.C. Verma who was given in adoption to the sister of defendant No.1, which adoption in a way has been accepted by the plaintiff by alleging in their replication that the same has deprived the said person of any rights in the properties. This was possibly consciously done as even if the son was illegitimate, he would have a share in various properties. Thus, on the one hand the plaintiff was seeking to take advantage of the stated adoption of the erstwhile defendant No.5 while on the other hand seeks to deprive the erstwhile defendant No.5 of the property which is now acquired for consideration from defendant No.1.*

*21.The plaintiff after being duly informed of the various rights created in favour of third parties chose not to amend the plaint or implead such third parties which would be a pre-requisite, if any relief was sought against title and for recovery of possession, which is the subject matter in the present suit. Learned counsel for the plaintiff made a valiant attempt to plead that the plaintiff had, in fact, originally impleaded defendant No.5 as a party but he was deleted from the array of parties on 9.11.1998. The said fact is true but then if the plaintiff rightly had no knowledge of these transactions earlier at the stage of the institution of the suit, such knowledge was certainly derived when a copy of the written statement of defendant No.1 was received on 6.4.1999. For the last more than 8 years, the plaintiff took no steps in this matter.*

*22.Learned counsel for the plaintiff in the alternative contends that on the demise of defendant No.1 endeavour has been made to implead the said erstwhile defendant No.5 as a party*

*and such a request under Order 1 Rule 10 of the said Code can be made at any stage of the proceedings. In this behalf learned counsel has relied upon the judgement of the Constitution Bench of the Supreme Court in Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Anr. AIR 1965 SC 271. Learned counsel contends that thus at any stage of the proceedings a party can be so added.*

*23. At a first blush the argument may seem to have some merit but on a closer scrutiny it has to be rejected for the reason that if the plaintiff does not seek to challenge the title stated to have been transferred by defendant No.1 to erstwhile defendant No.5 for 8 years after knowledge, the plaintiff cannot be permitted to bring the claim for any relief against the immovable property. This would amount to giving a license to the plaintiff to seek a relief, which would be time barred today and thus the bar of limitation would block any such relief for the plaintiff.*

*24. Learned counsel for the plaintiff, in fact, stated that if all the properties have been dealt with the plaintiff should be entitled to get a share in the monies realised by defendant No.1. That is not the relief claimed for in the suit apart, of course, from the fact that the plaintiff also does not know of any such monies lying there when a query is posed in this behalf by this Court to the plaintiff. This is just to state that apart from the legal impediment there appears to be a fruitless exercise in carrying forth this suit which primarily flows from an aggrieved son on account of his father having gone wayward.*

*25. It is not as if the plaintiff and other children of late Shri G.C. Verma have been deprived of the ancestral properties. Late Shri G.C. Verma in case of partition would have been entitled to a share in all the properties. Such properties came to be enjoyed by his wife and children. He chose to leave the company of his wife and children and settled down in USA with defendant No.1. That was his personal decision. Even if some funds flowed from him to defendant No.1 for acquisition of the suit property, the lapse of time in the plaintiff seeking any relief in the suit property and the property having been dealt with in the mean time would negate the grant of any relief to the plaintiff.*

*26. In view of the aforesaid facts there is no option but to dismiss the suit leaving the parties to bear their own costs."*

3. Learned Counsel for the Appellant, Ms. Mala Goel, reiterated

and reemphasized the fact that the Respondent/Defendant No. 1 was a 'concubine' of Appellant's father. She laid emphasis on the fact that the Respondent/Defendant No. 1 had herself filed a suit bearing CS(OS) No. 750/1999 for damages on account of similar allegations made by the Appellant but as the Respondent/Defendant No. 1 chose not to appear in the witness box and not to lead any evidence, the said suit was dismissed on 8<sup>th</sup> February, 2005. Ms. Mala Goel submitted that the Respondent/Defendant No. 1's illicit relationship stood concluded by the dismissal of the aforesaid suit filed by the Respondent/Defendant No. 1 and there was sufficient and ample evidence on record to show that the funds for acquiring the suit property were the funds belonging to the Appellant's joint Hindu family.

4. In our view, even if the aforesaid submissions are accepted, then also the Appellant would not be entitled to relief of partition as the Respondent/Defendant No. 1 had acquired title to the suit property vide registered Sale Deed dated 26<sup>th</sup> February, 1959 and a builder in pursuance to a collaboration agreement dated 15<sup>th</sup> February, 1996 had sold the flats in 1997 to third parties. Moreover, the Appellant in its suit had neither sought a declaration that the sale deed executed in 1959 was null and void nor impleaded the flat buyers to the suit.

5. We are also of the opinion that due to intervening events and long passage of time the Appellant, at the highest, could have sought a share in the monies realised by the Respondent/Defendant No. 1 by sale of the suit property. But, despite knowing the above facts, at least from the time when written statement was filed, the Appellant/Plaintiff should have amended its relief in the suit but having failed to do so it could not claim such a relief, especially in view of the fact that the same has today become barred by limitation.

6. Consequently, the present appeal being devoid of merits is dismissed but with no order as to costs.

**MANMOHAN, J**

**MUKUL MUDGAL, J**

September 11<sup>th</sup>, 2008  
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