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IN THE HIGH COURT OF DELHI

Judgment reserved on : October 17, 2008

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Judgment delivered on : November 14, 2008

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RFA 362/2007

HARI RAM GUPTA & ANR

..... Appellants

Through: Mr. P.D.Gupta, Advocate

Mr. Kamal Gupta, Advocate

Mr. Abhishek Gupta, Advocate

Versus

MADAN LAL GUPTA

..... Respondent

Through: Mr. B.L.Chawla, Adv. for R-1

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

Hon'ble Mr.Justice J.R. Midha

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

: PRADEEP NANDRAJOG, J.

1. Late Shri Govardhan Dass Gupta was blessed with three sons, Madan Lal Gupta, Hari Ram Gupta and Rameshwar Dass Gupta. He was blessed with a daughter Ms.Bishni Devi. He was a prosperous man. He died on 22.11.1971. His children and his wife Kesar Devi were the heirs.

2. Various properties standing in his name became the subject matter of litigation in the family. Respondent No.1,

Madan Lal Gupta, unfortunately, appears to have fallen foul with his brothers, his sister and his mother. He sued for partition and rendition of accounts.

3. The suit filed by Madan Lal Gupta has resulted in the impugned judgment and decree dated 21.4.2007 declaring that he has 1/3rd share in property bearing Municipal No.91/9, Block-C, Wazirpur Industrial Area, New Delhi and that his two brothers Hari Ram Gupta and Rameshwar Dass Gupta have 1/3rd share each in the said property. Similarly, in respect of property No.387, Block-D, Sabzi Mandi, Azadpur, finding returned is that each brother has 1/3rd share in the said property.

4. The suit for partition embraced other properties in the State of Haryana in respect whereof the share of each sibling i.e. the three brothers and the sister has been held to be 1/4th each.

5. Hari Ram Gupta and Rameshwar Dass Gupta have filed the instant appeal restricting challenge to the impugned judgment and decree dated 21.4.2007 insofar it has determined the share of Madan Lal Gupta as 1/3rd in the two properties noted hereinabove situated in Wazirpur Industrial Area and Sabzi Mandi, Azadpur. They alleged that share of Madan Lal Gupta in the said two properties is 1/5th and that their share in the two properties is 2/5th each. Thus we need not note the facts relating to the other properties.

6. To appreciate the contentions urged by the appellants it is necessary to note the reasons which have weighed with the learned Trial Judge to hold that the three brothers have $\frac{1}{3}^{\text{rd}}$ share each in the two properties in question.

7. The land comprising property No.91/9, Block-C, Wazirpur Industrial Area, New Delhi and Plot No.387, Block-D, Sabzi Mandi, Azadpur, was demised under a perpetual lease hold tenure by DDA in favour of Govardhan Dass Gupta. On the death of Govardhan Dass Gupta, in the records of DDA, the names of Madan Lal Gupta, Hari Ram Gupta and Rameshwar Dass Gupta stand mutated as the perpetual lessees. In this view of the matter, the finding returned by the learned Trial Judge is as under:-

"When the property was mutated in the name of the plaintiff and defendants No.1 & 2, the other defendants had full knowledge about the property being mutated in the name of plaintiff and defendants No.1 & 2, now except the person mentioned in the mutation no other person is entitled to any share in the property."

8. The case of the appellants was that their mother and their sister had executed a relinquishment deed dated 27.10.1972, Ex.DW-1/6, where under their mother and their sister had relinquished their $\frac{1}{5}^{\text{th}}$ share in the two properties in their favour and in this manner the two brothers became entitled to $\frac{2}{5}^{\text{th}}$ share each in the two properties.

9. Now, if the wife of the deceased and the daughter

of the deceased did not relinquish their share in the said two properties, the obvious conclusion has to be that on the death of Govardhan Dass Gupta, his three sons, his wife and his daughter each inherited 1/5th share in the said two properties.

10. The learned Trial Judge has discounted the evidentiary value of the relinquishment deed Ex.DW-1/6 by holding as under:

"I have seen the relinquishment deed dated 27.10.1972. This relinquishment deed is alleged to have been executed by defendants No.3 & 4 i.e. Smt. Kesar Devi and Smt. Bishni Devi. This relinquishment deed is not signed by Smt. Kesar Devi and Smt. Bishni Devi. Since the relinquishment deed is not signed accordingly, this relinquishment deed has no legal effect."

11. Unfortunately, the learned Trial Judge failed to appreciate that the original relinquishment deed was submitted to DDA when the three brothers sought mutation of the lease hold rights in their name upon the death of their father and Ex.DW-1/6 proved at the trial was the certified copy of the relinquishment deed obtained by the appellants from the office of the Sub-Registrar.

12. The relinquishment deed is dated 27.10.1972 and as explained by learned counsel for the appellants in said year the Sub-Registrar's office was not equipped with a photocopy machine. Whosoever applied for certified copies of the registered documents, the Sub-Registrar gave a true copy thereof to be prepared by use of a typewriter. The certified copy of the document was drawn on a non-judicial stamp

paper of Rs.2/-.

13. Indeed, Ex.DW-1/6 is the certified copy of the relinquishment deed executed by Smt. Kesar Devi and Smt. Bishni Devi. Obviously, at the place where the two ladies affixed their signatures as also the place where the witnesses affixed their signatures the Sub-Registrar could not copy the same. Thus, the place where Bishni Devi has signed has been marked with the notation:-

“Sd/-
Bishni Devi”

The place where Kesar Devi has affixed her thumb impression, the Sub-Registrar has recorded:-

“LTI
Kesar Devi”

14. Thus, ex-facie the learned Trial Judge has given factually incorrect reasons to hold that the relinquishment deed has no legal effect. The learned Trial Judge failed to appreciate that the relinquishment deed Ex.DW-1/6 was a certified copy obtained by the appellants from the office of the Sub-Registrar. The original was in the record of DDA. The same was submitted to DDA when mutation was got effected.

15. Ex.DW-1/6 clearly records that Kesar Devi and Bishni Devi have relinquished their 1/5th share each in the two properties in favour of the appellants.

16. In this connection it would be relevant to note that the appellants had examined as DW-3 Shri Girish Kumar, UDC

from the Land Sale Branch of DDA who deposed:

"I have seen the relinquishment deed dated 27.10.1972 which is in our file executed by Smt. Kesar Devi and Bishni Devi. The said relinquishment deed is already Ex.DW-1/6."

17. It would also not be out of place to record that Kesar Devi filed a written statement in which she supported the appellants by pleading in para 10 of the written statement that she and her daughter had executed a relinquishment deed in favour of the appellants.

18. Looked at from any angle, the learned Trial Judge has committed a serious procedural irregularity by treating as if Ex.DW-1/6 was the original relinquishment deed. The learned Trial Judge has ignored the testimony of DW-3 who stated that the original relinquishment deed was in the file of DDA and was executed by Kesar Devi and Bishni Devi and that Ex.DW-1/6 was a copy thereof.

19. As noted above the learned Trial Judge has given two reasons against the appellants. The first is that the relinquishment deed does not bear the signatures of the executants. The second is that the property stands mutated in the name of the three brothers.

20. We have given our reasons hereinabove to negate the first reasoning by the learned Trial Judge.

21. Pertaining to the second reasoning, suffice would it be to state that a mutation entry is never treated as proof of title. See Navalshanjari Ishwarlal Dave & Ors. vs. State of

Gujarat & Ors. AIR 1994 SC 1496, Sawarni vs. Inder Kaur & Ors. AIR 1996 SC 2823, Sankalchan Jaychandbhai Patel & Ors. vs. Vithalbhai Jaychandbhai Patel & Ors. (1996) 6 SCC 433 and Balwant Singh & Ors. vs. Daulat Singh AIR 1997 SC 2719.

22. What has happened in the instant case is that processing the case for mutation on death of Govardhan Dass Gupta and taking cognizance of the relinquishment deed executed by Kesar Devi and Bishni Devi, DDA has merely made an entry in its record that the three sons of Govardhan Dass Gupta have inherited the perpetual lease hold rights.

23. Obviously, DDA excluded Bishni Devi and Kesar Devi as the successor-in-interest of Govardhan Dass Gupta because of the relinquishment deed executed by them. The inevitable conclusion has to be that the benefit of the relief must enure to the beneficiary named in the relinquishment deed i.e. the appellants.

24. The appeal succeeds as prayed for.

25. Maintaining the impugned judgment and decree dated 21.4.2007 insofar it relates to the other properties, we modify the same pertaining to the property No.91/9, Block-C, Wazirpur Industrial Area, New Delhi and Plot No.387, Block-D, Sabzi Mandi, Azadpur by holding that the share of the appellants in the said two properties is $\frac{2}{5}^{\text{th}}$ each and that of respondent No.1 is $\frac{1}{5}^{\text{th}}$.

26. Since the impugned judgment and decree is a

preliminary decree declaring respective shares of the parties we direct the learned Trial Judge to proceed ahead for finalization of the claim for partition in light of the judgment and decree passed by us today.

27. No costs.

PRADEEP NANDRAJOG, J.

J.R.MIDHA, J.

NOVEMBER 14, 2008
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