

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

+ RFA 188/2007

KHEM CHAND Appellant
Through: Mr. C.B.Singh, Advocate

versus

HARI KUMAR SHARMA @ PAPPU Respondent
Through: Mr. J.K.Jain, Advocate

DATE OF DECISION

% 12.09.2008

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.(Oral)

1. Though Trial Court Record has not been summoned but since the relevant pleadings of the parties have been annexed along with the appeal and learned counsel for the parties have, during course of hearing, led us through the evidence of the witnesses of the parties, as

agreed by learned counsel for the parties the appeal has been heard for final disposal.

2. Admitted case of the parties is that Goverdhan had 2 sons namely Prehlad and Khem Chand. Prehlad has died. The respondent, Hari Kumar Sharma, is his son. It is also the further admitted case of the parties that on his death properties of Goverdhan devolved upon his two sons, Khem Chand and Prehlad. It is also the common case of the parties that on 21.10.1984 a partition deed Ex.DW-1/2, was executed partitioning the estate of Goverdhan.

3. The disputed position between the parties is the claim of the appellant Khem Chand who sued as a plaintiff by asserting that the agreement Ex.DW-1/2 was not implemented during the life time of Prehlad and being not given effect to, on 5.1.1995, vide Ex.PW-1/1, another family settlement was executed to partition the estate of Late Goverdhan. Claim was made in the suit under Ex.PW-1/1.

4. Thus, on the dispute between the parties, the obvious issue which arose for consideration was, whether Ex.DW-1/2 was implemented during the life time of the executants i.e. Prehlad and Khem Chand and if not, whether the deed of partition Ex.PW-1/1, was executed.

5. The learned Trial Judge has held in favour of Hari Kumar Sharma, the defendant.

6. The reasoning of the learned Trial Judge is as under:-

A. Ex.PW-1/1, the disputed partition deed dated 5.1.1995 does not contain any recital therein that the earlier family settlement dated 21.10.1984, Ex.DW-1/2, was not implemented. In fact, there is no mention of Ex.DW-1/2 in Ex.PW-1/1. The conclusion drawn from the aforesaid feature of Ex.PW-1/1 is that the document is a created document.

B. Vijay Pathak (examined as DW-1) (We note that two witnesses have been examined as DW-1, the other is the defendant himself) a common acquaintance of both the parties and a schoolmate of the son of Khem Chand gave deposition in support of the defendant to the effect that the parties were in respective possession of the properties which were assigned to Prehlad and Khem Chand under Ex.DW-1/2 i.e. the partition deed dated 21.10.1984. The conclusion drawn by the learned Trial Judge is that the respective possession of the parties evidences the implementation of the partition effected under Ex.DW-1/2.

C. The third reasoning of the learned Trial Judge is

that the signatures of the PW-2 on Ex.PW-1/1 as a witness are not his. The said finding has been returned on a visual comparison of the signatures of PW-2 on his testimony after his testimony was recorded viz-a-viz his signatures on Ex.PW-1/1.

7. At the hearing today, learned counsel for the appellant has urged two points. The first point urged is that as recorded in the order dated 27.7.2005 the parties had agreed to a re-partition with each taking 50% share therein. Contention urged is that said order concluded the dispute between the parties on the issue of partition.

8. The second contention urged is that the learned Trial Judge has returned findings which are nothing but conjectures and surmises.

9. Pertaining to the first plea, suffice would it be to state that the order dated 27.7.2005 records a submission made by learned counsel for the plaintiff that the parties have compromised and have agreed to take 50% share each in the properties and an architect be appointed. We note that the said order notes the presence of the respondent in person. It does not record the respondent's consent thereto.

10. It is obvious that the learned Trial Judge has

merely recorded a stand of the appellant/plaintiff and no more.

11. The first contention urged is thus held to be without any substance.

12. On the second plea, suffice would it be to state that the findings returned by the learned Trial Judge are neither surmises nor conjectures. Indeed, if Ex.DW-1/2, the partition dated 21.10.1984, was not implemented, reference of said fact would have found a mention in Ex.PW-1/1. Non mention of said fact gives rise to an inference that the document in question is not a genuine document.

13. The second line of reasoning adopted by the learned Trial Judge is equally correct. The case of the plaintiff was that the need to execute Ex.PW-1/1 arose because Ex.DW-1/2 was not implemented. The evidence on record established that Ex.DW-1/2 was implemented and parties went into respective possession.

14. In our opinion these two reasons are enough to sustain the finding recorded by the learned Trial Judge and we need not go into the issue whether the signatures of PW-2 on Ex.PW-1/1 were his or not.

15. We find no merits in the appeal.

16. Noting that the parties come from a rural background, expressing displeasure at the conduct of the appellant who is unnecessarily troubling his nephew we refrain from imposing any cost.

PRADEEP NANDRAJOG, J.

J.R.MIDHA, J.

SEPTEMBER 12, 2008
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