

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

+ RFA 592/2005 & CM Nos. 11521, 11522, 11523/05, 1516/07,
1517/07

Date of Decision: 19th February, 2008

PARDEEP KUMAR Appellant
Through Mr. Pawan Bahl, Advocate.

versus

RAM KANWAR GUPTA Respondent
Through Mr. R.K. Saini, Advocate.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE S.L.BHAYANA

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

JUDGMENT

19.02.2008

MUKUL MUDGAL, J. (ORAL)

The application being CM No.11522/2005 for condonation of delay of 883 days is filed on 18th July 2005 on behalf of the appellant stating therein

that there is sufficient cause for the delay in filing of the appeal. However, in our view, no sufficient cause arises for the condonation of delay as the appellant has not provided any documentary evidence to show that his father was unwell and suffering from Cancer. Further reasons given for the delay, such as the counsel met with an accident and he was busy in his treatment, do not fall under the clause 'sufficient cause' required for granting condonation of delay in terms of Section 5 of the Limitation Act.

2. Though the appeal is liable to be dismissed for the delay, nevertheless we have also considered the case on merits. With the consent of the learned counsel for the parties the appeal is taken up for hearing.

3. The brief facts as per the appellant sans unnecessary details leading to the culmination of this appeal are as follows:

a) The property bearing No.1859, Kucha Khayali Ram, Mohalla Imli, Kucha Pati Ram, Bazar Sita Ram, Delhi – 110 006 (hereinafter referred to as the “suit property”), earlier numbered as 1168 was previously owned by

Lala Harnath.

b) Lala Harnath died at Delhi in the year 1945. Lala Harnath was only having one female child named Tara Devi and the father of the appellant named Shri Ram Kishore was the only son of Tara Devi who died on 3rd March 1969. During his life time Lala Harnath executed a Will dated 3rd April 1944 which was duly registered on 11th April 1944 bequeathing the share of his properties to the present appellant as well as the respondent.

c) At the time of execution of the Will by Lala Harnath, the appellant was not born. The appellant, however, after birth and as per the contents of the Will became the owner of the various properties including property bearing House No.1859, (old number – 1168).

d) In terms of the aforesaid Will, the appellant was since entitled for the partition of the suit property. The appellant requested the respondents several times to get the suit property partitioned.

e) Having left with no alternative the appellant filed a suit for partition

of the suit property as well as separate possession and mense profit which was initially pending before this Court.

f) The matter was subsequently transferred to the District Court due to enhancement of the pecuniary jurisdiction of the District Court.

g) During the pendency of the aforesaid suit, Ram Kumar Gupta, (also referred as Ram Kanwar Gupta) nephew of Lala Harnath, died and after his death his legal heirs namely Shri Hari Kumar Gupta, Shri Narender Kumar Gupta, Shri Krishan Kumar Gupta and Shri Rajan Kumar Gupta were brought on record in place of deceased Ram Kumar Gupta.

h) The learned Additional Sessions Judge heard the arguments of the parties and delivered the judgment on 9th October 2002 thereby the suit of the plaintiff / appellant was dismissed and accordingly, decree sheet was drawn.

4. The appellant has contended that the suit property was previously owned by Lala Harnath, the maternal father of his father, who executed a

Will dated 3rd April, 1944 bequeathing his properties in favour of the present appellant as well as the respondent.

5. At the time of execution of the Will the appellant was not born, however the appellant contended that as per the contents of the Will the appellant was the owner of the suit property and as per the effect of the Will of Lala Harnath the appellant was entitled to claim partition of the suit property. Therefore, the appellant has requested the respondent on several occasions to partition the suit property, however, the respondent failed to partition the suit property. Thereafter the appellant filed a suit for partition of the suit property.

6. The grievance of the appellant is non-grant of the partition of the property bearing No. 1168 (old) and 1859(new), Kucha Khayali Ram, Mohalla Imli, Kucha Pati Ram, Bazar Sita Ram, Delhi 110 006, to the appellant. The finding of the trial court is, that based on the Will, the predecessor in title of the appellant only had a life time interest in the

property and the title so derived by the appellant, being at best a life time interest therefore does not entitle him to claim partition of the said property.

7. The appellant was directed to file in Court the Will made in favour of the Bhagirti, his predecessor in title. The relevant portion of the Will reads as follows:-

“(i) The entire property, moveable and immovable including cash, house hold goods of every sort shall owned by my wife Smt. Bhagirti in all the rights that I have now in it, for her life. She shall realise the rent of the houses. She shall have the unrestricted right to have the joint property partitioned. Since Smt. Bhagirti can adequately maintain herself from the rental income she shall maintain herself from cash, ornaments, and rental income. She can spend it as she likes in going to pilgrimage and giving donation. But she shall not have the power to alienate in any manner the immoveable property. After the death of my wife Smt. Bhagirti, House Nos. 1145 and 1147, situated in Chowk Shah Mubarak shall be owned and possessed by my daughter's son Ram Kishore. Further in House No. 1168, Ram Kishore my daughter's son and his off spring shall have the right of residence. But Ram Kishore

aforesaid shall have no right to alienate houses Nos. 1145 and 1147 mentioned above. He shall have only the right to realise the rent and use it. After the death of Ram Kishore my daughter's son, his male offspring whether adopted or natural born, shall be the owner of the property Nos. 1145 and 1147 like myself and they shall have full rights to alienate the property in any way like myself.

But in House No. 1168 they shall have only the right of residence. The remaining half share in House No. 1148 and the entire Houses Nos. 1052, 1053, after the death of Smt. Bhagirti shall be owned and possessed by Ram Kumar my nephew. But he shall have no right to alienate the property. He shall have only the right to realise rent and use it. After the death of Ram Kumar his male issue shall own and possess the half share in House No. 1148 and House No. 1052 and 1053 just like myself and they will have all the full rights to alienate the same in any way they like just like the rights I have.

Further, if no offspring of Ram Kishore my daughter's son occupy half house No. 1168 owned by me, it would revert to my nephew Ram Kumar. But Ram Kumar my nephew shall have only the right to realise rent. He shall have no right to sell, gift, mortgage etc. the property. After his death his male offspring shall own it in the

same capacity as I now own it. No relation of mine near or distant shall have any right to interfere with the Will.”

(Emphasis supplied)

8. Only a limited right having been received by the appellant through Bhagirti in property No.1859 (old number – 1168), who herself only had a right of residence, only a lifetime interest had been granted to him. Having perused the above contents of the Will, the finding of the trial court based upon the Will declining the grant of partition sought by the appellant cannot be faulted. Furthermore, we can not help noticing that the appellant who claims his descent and rights through Ram Kishore, who had already secured his rights in property No.1145 and 1147 and in addition is trying to have his limited right enforced to the detriment of the respondent Ram Kumar Gupta who had half right in the property No.1859 (old number 1168) and further right to the extent that if no offspring of Ram Kishore the appellant's father occupies half house No.1168, the said property would revert back to the respondent. Thus, even the interest of justice also do not

warrant interference with the impugned judgment. Accordingly, we find no merit in the appeal which is dismissed as such.

9. The appeal and all pending applications are dismissed and stand disposed of accordingly.

MUKUL MUDGAL, J

S.L. BHAYANA, J

February 19, 2008

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