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

+ **RFA No.598/2007**

Date of decision: 02nd December, 2008

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SATPAL SINGH & ORS. Appellants

Through : Mr. A.C. Bhasin and
Mr. Amit Bhasin, Advs.

versus

DIDAR SINGH & ANR. Respondents

Through : Mr. Rajkumar Sherawat, Adv.
for R-1&2.

CORAM :-

THE HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

THE 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 the judgment should be reported in the Digest?

Pradeep Nandrajog, J. (Oral)

1. Heard learned counsel for the parties.
2. A frivolous appeal has been filed which merits dismissal with exemplary costs.
3. Litigation between the parties commenced way back in the year 1981 when Sardar Didar Singh filed a suit for declaration and perpetual injunction. Subject matter of the dispute was property bearing No.F-18 A & B, Moti Nagar, New Delhi.
4. Case pleaded by Sardar Didar Singh that the father of

the parties, Sardar Sant Singh was a displaced person from Pakistan and at the time of partition of this country in the 1947 had reached India as a refugee leaving behind immovable property in West Pakistan. It was alleged that Sardar Sant Singh was assessed to a compensation claim for properties left behind in Pakistan. It was averred that Sardar Sant Singh transferred his compensation claim to his son Sardar Darshan Singh, impleaded as defendant No.1, in the said suit. It was pleaded that the Ministry of Rehabilitation proceeded to convey perpetual leasehold rights in the name of Sardar Darshan Singh recording him to be the perpetual lessee of the property in question for which, consideration of premium towards the compensation assessed in the name of Sardar Sant Singh was adjusted. Asserting in the plaint that during his lifetime Sardar Sant Singh got effected a partition of the property by mutual consent of his three sons i.e. Sardar Didar Singh, Sardar Darshan Singh and Sardar Surinder Singh and that since said date the respective sons of Sardar Sant Singh went into exclusive possession of the respective portion assigned to them at the partition, evidenced by the fact that each son started paying house tax separately for his portion assigned to him at the time of partition and that the maintenance of the respective portion was by the concerned owner thereof, decree of declaration that it be declared that a partition had taken place resulting in the three sons of Sardar

Sant Singh being owners of the respective portion assigned to him.

5. The defence taken by Sardar Darshan Singh, who alone disputed the claim was that being the recorded perpetual lessee of the property he was the owner thereof. He denied that the property was ever partitioned.

6. On the pleadings of the parties 8 issues were settled in the said suit. Same are as under:-

- “1) Whether the savings and earnings of the plaintiff and defendants 1 to 4 were also invested in respect of the purchase of the property in suit? OPP.
- 2) Whether there was any family partition between the parties as alleged in paras 9 and 10 of the plaint? If so to what effect? OPP.
- 3) Whether the plaintiff is entitled to the relief claimed? OPP. Note: This issue is amended vide order dated 30.09.1983.
- 4) Whether the suit is bad by Sec.80(2) CPC? OPD.
- 5) Whether the suit has not been valued for the purposes of court fee and jurisdiction? OPD.
- 6) Whether this court has no jurisdiction to try the suit? OPD
- 7) Whether the defendant No.1 is the sole owner of the property in suit? OPD.
- 8) Relief.

7. Extensive evidence was led by the parties. Briefly noted, PW-2, Shri S.K. Burman, officer from the Land and Development Office deposed that on 17.02.1956, Ex.PW2/1, a letter was received from Sardar Sant Singh requesting the department that compensation claim assessed in his favour in the sum of Rs.4,855/- be adjusted while conveying the

perpetual leasehold rights in the property in question in favour of his son and that an asserted claim of one Shri Chandan Lal in sum of Rs.1064.80, be also adjusted towards consideration payable. Rs.660/- being the balance consideration payable for acquisition of the perpetual leasehold rights was paid in cash. The witness deposed that acting under the said authorization, the compensation claim as also cash payment was adjusted towards consideration for grant of the perpetual leasehold rights in the property and as per the desire of Sardar Sant Singh, Darshan Singh was recorded as the perpetual lessee.

8. The father of the parties, Sardar Sant Singh who was alive when the earlier litigation was fought, appear as PW-5 and supported the claim of his son that at an oral family settlement the property was partitioned. He stated that it was with his consent that his eldest son Sardar Darshan Singh was treated as the perpetual lessee of the property. PW-6, Amar Singh an Inspector from the House Tax Department proved Ex.PW6/A to Ex.PW6/E being certified copies of the extract of demand and collection register which showed that for purposes of house tax collection the house was sub-divided into three different portions and assessed in the name of Sardar Darshan Singh, Sardar Didar Singh and Sardar Surinder Singh sons of Sardar Sant Singh as the persons primarily liable to pay property tax for the respective portions. The witness

also proved a letter Ex.PW6/F and another letter PW-6/A which established that the three sons of Sardar Sant Singh had addressed communications to the MCD referring to a family partition in which the subject property was partitioned and three different portions were assigned exclusively to the three sons of Sardar Sant Singh.

9. Sardar Darshan Singh who appeared as his own witness admitted that the house was separately assessed in the name of the three brothers but stated that he had no knowledge as to how this was done. He admitted not having paid property tax for the entire property and that for two portions his brothers were paying the property tax.

10. Commenting upon the said admissions of Sardar Darshan Singh, in para 53 of the judgment dated 31.07.2001 passed by the learned Civil Judge disposing of the suit which was filed in the year 1981, learned Trial Judge has held that it is unnatural conduct for an owner of a property to have knowledge that somebody else is paying property tax for two portions of his property and yet the person keeps quiet about the same.

11. A Special Power of Attorney, Ex.PW1/9, also became the subject matter of consideration by the learned Trial Judge in the said suit.

12. The said Power of Attorney was in favour of Sardar Didar Singh and was ostensibly signed by Sardar Darshan Singh.

Since Sardar Darshan Singh had denied his signatures on the Power of Attorney which we note was used by the father to interact with the Municipal Authorities when request for separate assessment of three different portions of the property was made to the Municipal Corporation of Delhi. The learned Trial Judge returned a finding in para 54 as under:-

“54. Defendant no.1 has denied that he had written to MCD that he had given a power of attorney in favour of S. Didar Singh on the basis of which he wrongly got the property mutated in his name. When he was shown the said letter dated 29.02.1980 he gave evasive answer. In his testimony he said that he did not give any special power of attorney Ex.PW1/9 to the plaintiff so the question of getting the same cancelled does not arise. Documents on record belie the testimony of DW1 as on record there is registered special power of attorney in favour of S. Didar Singh Ex.PW1/9 and cancellation of special power of attorney by S. Darshan Singh of the year 1979 which is also a registered document. According to defendant No.1, he came to know about the mutation in 1980 so why the necessity arose for getting the special power of attorney cancelled in 1979. No satisfactory reply came from the mouth of defendant No.1 in this regard. From the evidence and the documents, it is inferred that defendant No.1 was well aware that the property was mutated in the records of MCD since 1962-63 and plaintiff and defendant No.3 have been paying the house tax. The documents Ex.PW6/A to E also support the case of the plaintiff which are the extract of demands and collection register of the year 1972-73, 1976-77, 1980-81, the extract of inspection register 1965-66 and 30.9.1970 showing the house tax being charged from the plaintiff, defendants no.1 and 3.”

13. While considering further documentary evidence, learned Trial Judge proceeded to consider Ex.DW1/X3 and DW1/X4, being letters under the signatures of Sardar Darshan

Singh addressed to the Municipal Corporation of Delhi. Noting that Sardar Darshan Singh denied his signatures on the said letters, with reference to his conduct and in particular payment of property taxes of two portions of the two properties by his two brothers, learned Trial Judge opined, in para 62 as under:-

“62. PW1 in his testimony stated that after the partition he raised some construction on the portion of the suit property from his own funds. The defendant no.1 did not cross-examine on this point. Even DW1 in his testimony sometimes stated that plaintiff raised some construction and sometimes he denied that plaintiff had raised the construction. During arguments plea was taken by the defendant that construction, if any, does not confer the plaintiff the right of ownership. Further the defendant no.1 did not dispute the site plan Ex.PW1/1, extent of construction at present, the construction at the time of allotment of the suit property. Considering these facts, it is inferred that plaintiff had raised construction over the suit property after getting portion of it. The question arises when the defendant No.1 laid his exclusive right/title in the suit property why he not intervened and not stopped the plaintiff from raising the construction. There is nothing of this sort in this regard. Further PW6 has stated that the suit property is in the name of plaintiff and defendants since 1965-66 till 1980-81. He also referred a statement i.e. demand notice sent to defendant no.1 dated 5.3.1976. The records show that the defendant no.1 did not raise any objection regarding mutation in favour of the plaintiff till 1980. In this case the defendant denied his signatures on the documents Ex.DW1/X3 and DW1/X4, the letter corresponded by defendant no.1 with MCD which are of the year 1982 i.e. after filing of the present suit. I fail to understand why the plaintiff will forge the signature of defendant no.1 after filing of present suit after the dispute.”

14. Noting that mutation in the municipal records is not a proof of a partition itself, view taken by the learned Trial Judge was that it is a good evidence of conduct wherefrom an inference of how the family settled its affairs can be drawn. The conclusion arrived at by the learned Trial Judge is that an oral family partition stood established and thus the suit filed seeking a declaration that there was a family settlement under which the property was partitioned was decreed. Injunction prayed for was granted.

15. The said judgment and decree dated 31.07.2001 was challenged by way of a first appeal being RCA No.12/2001. The said appeal was dismissed vide judgment and decree dated 24.12.2002.

16. Second appeal filed before this court being RSA No.11/2003 was dismissed vide order dated.24.12.2002.

17. Petition for Special Leave to Appeal No.5625/2006 filed before the Hon'ble Supreme Court challenging the decision dismissing the Regular Second Appeal was turned down vide order dated 07.04.2006.

18. Sardar Darshan Singh having died in the meanwhile, his heirs, the appellants, commenced a second round of litigation when they filed a suit registered as Suit No.170/2007 seeking a declaration that the decree passed in the earlier suit which was affirmed right throughout was a nullity. The claim for decree to be declared a nullity was founded on Sections 22,

24 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It was also alleged that the decree was obtained by playing fraud and concealment of material facts.

19. The second suit suffered a summary rejection in as much as the application filed under Order 7 Rule 11 by the defendants succeeded vide impugned order dated 23rd October, 2007.

20. The principal reason which can be culled from the impugned order is that the parties litigated on the issue of partition and finding returned that the property was partitioned way back in the year 1963 and the three sons of Late Sardar Sant Singh went into exclusive possession of their respective shares assigned at the partition having attained finality, the issue could not be re-agitated.

21. Though not stated in the impugned order, we note that there are no allegations as to what fraud was committed and what was the concealment of fact made when claim was predicated in the earlier suit.

22. At the hearing today, the sole contention urged by learned counsel for the appellants is that in view of Section 22, 24 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the jurisdiction of the Civil Court was barred and hence the decree passed by the Civil Court is a nullity because it is settled law that where a court lacks

jurisdiction over the subject matter of the dispute the decree is a nullity.

23. We are afraid, the contention urged by learned counsel for the appellants is totally misplaced and cannot be accepted. The reason is obvious. The suit filed in the year 1981 by Sardar Didar Singh did not challenge any order passed by any authority under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The foundation of the suit, as noted above was that Sardar Darshan Singh was a mere benamidar and that was evidenced by the manner in which the compensation claims were adjusted as consideration for grant of the perpetual leasehold rights. The real owner of the property was Late Sardar Sant Singh, who during his lifetime got effected a partition of the property with the consent of his three sons i.e. Sardar Didar Singh, Sardar Darshan Singh and Sardar Surinder Singh. The battle was fought on the issue of partition being effected or not. Evidence was led and decision went in favour of Sardar Didar Singh.

24. Neither a dispute was raised and none was settled pertaining to legality or otherwise of the orders passed by the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The suit sought a declaration based on a family settlement partitioning the house. The subject matters was clearly within the jurisdiction of the Civil Court.

Thus the instant shit is clearly an abuse of the process of law and is no maintainable.

25. The appeal is dismissed with exemplary costs. We impose cost of Rs.50,000/- on the appellants. Rs.25,000/- shall be paid to the respondents for harassment and Rs.25,000/- would be deposited with the Delhi High Court Legal Services Authority as recompense to the state for waste of valuable judicial time.

PRADEEP NANDRAJOG, J

J.R. MIDHA, J

DECEMBER 02, 2008

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