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

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Date of Judgment: 07.12.2010

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RSA No.197/2007

RAJ SINGH Appellant
Through: Mr.Dushyant Sisodia, Advocate.

Versus

DHARAM PAL & ANR. Respondents
Through: Mr.Ashwani Tyagi, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 12.5.2007 which had endorsed the finding of the trial judge dated 10.5.2005 whereby the suit of the plaintiff/appellant had been dismissed.
2. This was a suit for partition. Plaintiff Raj Singh had filed suit for partition against his brother Dharam Pal. He had another third brother namely Prem Singh. They were the sons of Ram Swarup.
3. The contention of the defendant was that the suit property i.e. the house bearing Municipal No.192, Village Azadpur, Delhi had already been orally partitioned in the year 1975.
4. On the pleadings of the parties, the following issues were framed:

“1.Whether the suit is not maintainable in view of the oral partition of the property in the year 1975? OPD

2.Whether the plaintiff is entitled to the relief claimed ?OPP

3.Relief.”

5. On the basis of the oral and documentary evidence which included four witnesses examined on behalf of the plaintiff and two witnesses examined on behalf of the defendant, the Court had drawn a conclusion that the property stood partitioned orally in the year 1975. Thereafter, disputes had arisen between the plaintiff and defendant no.1 pursuant where to Pachayati Faisla Ex.PW-1/1 had been recorded in the year 1990. The family partition having been effected in the year 1975 the present suit was held not maintainable; suit of the plaintiff was accordingly dismissed.

6. Findings of the trial judge were endorsed in the impugned judgment on 12.5.2007. The impugned judgment had re-appreciated the oral as also the documentary evidence and endorsed the finding of the trial judge. The relevant extract of the said finding is as follows:

“Firstly, the findings on fact has been given by the Ld. Trial Court that the partition was effected by the father of the plaintiffs and defendant no.1 in the year 1975 by which the property was divided. The partition was effected by the father of the parties due to the fact that there was friction between the parties and during his lifetime the father of the parties wanted to settle everything. I have gone through the pleadings and feel that the Ld. Trial Court has correctly arrived at the findings of the fact that there was a partition between the parties by the father in the year 1975.

Secondly, Exh.PW1/1 is an admitted document which is admitted to be prepared in the handwriting of plaintiff himself.

Thirdly, even after the partition there was dispute between the parties and accordingly the dispute was referred to the Panchayat. The Panchayat vide Exh.PW1/7 has clarified the portions and legal possession of plaintiff no.1 and defendant no.1. Once the person agrees to the resolution of dispute through

Panchayat and then accepts its decision cannot later on challenge the compromise except where some fraud or misrepresentation has been alleged. Merely because the plaintiff does not accept the compromise at Panchayat dt.22.06.1990 is not sufficient.

Fourthly, the Ld. Trial court has returned the findings that no portion was given to plaintiff no.2 as he was given sufficient provision by the father of the plaintiffs and defendant no.1. It is a fact written by the Ld. Trial Court that the property was partitioned by the father of the parties in the year 1975 and till now there is no case or suit against that partition. Plaintiff no.2 knew the Panchayati Faisla dt. 22.06.1990 still has not taken any grievance against that Panchayati Compromise. A dispute has to be ended at somewhere. The dispute cannot be kept for many years.”

7. This is a second appeal. It is not a third fact finding Court. The two Courts below which were the fact finding courts had held against the plaintiff; suit was not maintainable as oral partition had been effected in the year 1975. There is no perversity in the said finding.

8. The questions of law had been formulated on page 10 A in the body of the appeal; they read as follows:

“(A) Whether occupying property as a matter of convenience can take away the right of one of joint owner to demand partition.

(B) Whether alleged oral partition can deny the right of co-owner to demand partition by metes and bounds.

(C) Whether a sharing of premises which is neither rational nor practical nor enforceable and in volumes sharing of common toilet and stair case to give rise to day to day conflict can bar a unit the partition by metes and bounds relief.”

9. They are all fact based. No question of law much less any substantial question of law has arisen. Appeal is dismissed in limine.

INDERMEET KAUR, J.

DECEMBER 07, 2010

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