

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

+ **RFA No.48/2011**

% **18th March, 2011**

SMT. PHOOL WATI & ORS. Appellants
Through: Mr.Alok Sharma, Advocate

VERSUS

SMT. TEEJA DEVI & ORS. Respondents
Through: Mr. Basant Kumar Gupta, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 25.11.2010 whereby the suit of the respondents/plaintiffs for partition was decreed with respect to the property E-16/1662, Bapa Nagar, Arya Samaj Road, Karol Bagh, New Delhi. The Trial Court held that the subject property was the property of the father of the parties, namely the plaintiffs who are the daughters and the late defendant no.1, Nanak Chand who was the adopted son. The Trial court therefore held that on the death of

Ghasi Ram the father, the property devolved in equal shares on all his daughters and son namely the plaintiffs and now deceased defendant no. 1 respectively.

2. The relevant issue as dealt with by the Trial Court was issue no. 1 and it is necessary to reproduce the same, and which reads as under:-

“Issue No.1

“Whether the property is owned by Late Sh. Ghasi Ram as alleged by the plaintiff? (OPP)

Onus to prove this issue was upon the plaintiff. In para 2 of Ex.PW. 1A it is stated by PW1 that Late Sh. Ghasi Ram had acquired the suit property during his life time in which the parties to suit had grown up and were married. Similar statement has been stated in para 2 by PW2 in Ex.PW.2/A, by PW3 in Ex.PW.3/A and by PW4 in Ex.PW.4A. During cross examination PW1 has stated that the deceased defendant came to Delhi in the year 1942-1943. She has further stated that house in question belongs to her father and the land in the village also belongs to her father. She has further stated that her father became owner by possession and it was not purchased by any one. She further states that she is told by her father that land was occupied by him. PW2, a UDC from MCD office, Delhi brought assessment order dated 22.12.2003 as Ex.PW2/2 in the name of Late Sh.Ghasi Ram. PW3 also tendered her evidence similar to the affidavit filed by PW1. She has also stated that her father shifted Delhi and thereafter her brother i.e. defendant shifted to Delhi. She further states that property in dispute is in owner ship of her father. She has also stated in her cross examination that her father raised construction over the suit property. She has also stated that her father shifted to Delhi prior to her birth. PW4 has also deposed on the similar lines. DW1 stated in par 4 of Ex.D1 that deceased defendant migrated from village Luniyavas to Delhi in the year 1942-43 and thereafter occupied the suit property and raised construction thereon out of his own funds. During cross examination he tendered in evidence House Tax receipt Ex.DW1/X1 and DW1/X2

which are of the year 2005-2006. During cross examination he further admits that property in question is about 60 years old. He further states that he did not have knowledge whether the suit property was earlier stands in the name of Sh.Ghasi Ram. He further admits that till date no house tax bill has been received in the name of his father i.e. deceased defendant. Thus, it is case of DW1 that property in question is about 60 years old and no house tax bill was received in the name of deceased defendant. Moreover, to ascertain the truth, during the course of arguments, this court asked from the counsel for the defendant about the age of the deceased defendant, he could not tell to the court or whether in the year 1942-43, defendant was born or not. It was submitted by the plaintiff that defendant was three to five years elder by her. Thus, it was observed after estimation by the court on the same date that if it is assumed that defendant was 10 years aged child in the year 1942-43 then the defendant could not occupy suit property in the year 1942-43. Moreover, the House tax receipts are in the name of Late Sh. Ghasi Ram, father of the parties. It is the case of PW1 that lat Sh. Ghasi Ram, father of the parties. It is the case of PW1 that lat Sh. Ghasi Ram occupied the suit property by possession. Thus, this issue is decided in favour of plaintiff and against the defendant with the observations that late Sh. Ghasi Ram was in possession of the property and also a claimant of ownership by way of possession.”(underlining added)

3. I agree with the findings and conclusions of the Trial Court because in the facts of the present case it is not as if that the subject property was purchased by means of a title document. The property was in fact occupied and thereafter constructed upon. The Trial Court held that by reference to Ex.PW2/2, which is the assessment order from the Local Municipal Authority that it was Ghasi Ram who was the owner of the property. The Trial Court has also referred to the fact that there was no question of late Nanak Chand/erstwhile defendant no. 1 to have occupied the property in 1942-43 and raise construction thereon thereafter, inasmuch as,

in 1942-43 Nanak Chand would have been barely of 10 years of age. In my opinion, the fact that the assessment order was of the year 2003 shows that the property was in the name of father Ghasi Ram, is a clear-cut indication of Ghasi Ram being the owner of the property. The assessment order, Ex.PW2/2 of 2003 is in fact an assessment order for revising the rateable value of the property which was already in the name of Ghasi Ram. The onus to prove that the property in any earlier year or period, in the property tax record, was in the name of late Nanak Chand/defendant no. 1 was on the appellants, but, the appellants failed to prove that the property stood in the name of Nanak Chand prior to 2003. Obviously, the appellants failed to prove this aspect because right till 2003 that is during entire lifetime of late Ghasi Ram and even after his death in the year 1975 and right till 2003, the property in the house tax record showed Ghasi Ram as the owner.

4. Learned counsel for the appellants argued that merely because there is an entry in the house tax record, would not mean that the same can confer title. There can be no quarrel to this proposition of law, however, this proposition that an entry in the property tax record would not confer title is applicable to those cases where otherwise ownership of the property is proved by means of other documents, including title deeds, so that the property in the house tax record, is not considered a basis evidencing title. In the facts of the present case, however, where admittedly the property was not purchased by means of a title documents and only occupied and

constructed upon thereafter, the house tax record is the best proof of ownership of the property and which record shows that during the lifetime of Ghasi Ram and thereafter for 27 years, the property was shown in the ownership of Ghasi Ram. The reliance placed by counsel for the appellants on the house tax receipts, Ex.DW1/X1 and DW1/X2 cannot help the appellants inasmuch as these are of the years 2005-06, i.e after the assessment order of the year 2003, Ex.PW2/2. How the appellants unilaterally got the property mutated in the name of Nanak Chand is not clear. Obviously, the mutation after 2003, that is in 2005-06 would have been done without any notice to the respondents/plaintiffs and therefore the same cannot bind the respondents/plaintiffs, and which is also so argued on behalf of the respondents/plaintiffs in this Court.

5. In my opinion, it was also required that the defendant no. 1/Nanak Chand, and thereafter the appellants who are legal heirs of Sh.Nanak Chand, to have proved the incurring of alleged costs by Nanak Chand for constructing the property. Admittedly, there is not a single piece of documentary evidence on record of financial capacity of Nanak Chand or the fact that Nanak Chand spent monies for construction of the property. This in fact could not be so inasmuch as the Trial Court has clearly recorded that Nanak Chand would be barely about 10 years in 1942-43 when the property was allegedly occupied by him.

6. Learned counsel for the appellants sought to argue that the Trial Court has wrongly relied upon the statement of the counsel for the plaintiffs/respondents that Nanak Chand was only about three to five years or so elder to the respondents/plaintiffs. I am of the opinion, that this argument is of desperation inasmuch as the statement on behalf of the respondents/plaintiffs was relied upon after giving an opportunity to give the age of Nanak Chand, but, the appellants failed to give the age of Nanak Chand, and which must have been done because the appellants knew that if they answered the Court question as to the age of the deceased defendant no.1/Nanak Chand, then the same would have gone against them.

7. This Court is entitled to interfere with the findings and conclusions of the Trial Court only if the findings and conclusions are illegal or perverse or cause grave prejudice or injustice. I do not find that any of such ingredients exist so as to enable this Court to interfere with the impugned judgment. Merely because two views are possible, this Court will not interfere with one possible and plausible view as taken by the Trial Court. In view of the above, the appeal being devoid of merits is dismissed leaving the parties to bear their own costs. The Trial Court record be sent back.