

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

+ **RFA No. 209/2003**

% **2nd December, 2011**

SH. VIRENDER KUMAR & ORS. Appellants
Through Mr. A.K. Trivedi, Advocate.

versus

SH. ASHOK KUMAR Respondent
Through Mr. Jagdeep Anand, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 07.10.2002 which decreed the suit for partition filed by the respondent / plaintiff with respect to the suit property No.C-71, Vishnu Garden, Tilak Nagar, New Delhi.

2. The facts of the case are that the subject property was owned by the father of the parties late Sh. Gian Chand who died intestate on 13.3.1991. The mother of the parties also expired on 22.2.1992. It was pleaded in the

plaint that though the respondent / plaintiff was living separately from the family, however, he was taking care of his parents including their medical expenses. It was also pleaded that the respondent / plaintiff arranged the marriage of the defendant no.1/brother and spent money on the same. It was also pleaded that monies were spent by the respondent / plaintiff in the marriage of the defendant No.3/sister.

3. It was pleaded that since the subject property belonged to the father who died intestate, consequently the property has to be divided between all the legal heirs of the deceased father Sh. Gian Chand.

4. The appellant / defendant contested the suit and did not dispute that his father died intestate. It was, however, pleaded that the father during his lifetime had got a public notice published in the newspaper “Punjab Kesari” (Hindi Edition) dated 28.7.1988 debarring the respondent / plaintiff from inheriting any of his properties. It was pleaded that, therefore, the suit of the plaintiff was bound to be dismissed.

5. The only issue which has been argued on behalf of the appellants / defendants was that by virtue of the newspaper notice dated 28.7.1988, which was admitted to have been published, the respondent / plaintiff would not have any right in the suit property.

6. Learned counsel for the appellants / defendants relied upon Section 28

of the Hindu Succession Act, 1956.

7. In my opinion, the arguments as advanced on behalf of the appellants / defendants have no substance. Once a person dies intestate, the property has to naturally be divided among all the legal heirs as mentioned in the Schedule to the Hindu Succession Act, 1956. In this case, there are heirs falling in Class I of the Schedule i.e. the parties to the suit who are the children of late Sh. Gian Chand / father, therefore, the suit was rightly decreed by the Trial Court by giving the respondent / plaintiff his share in the suit property. I do not see how Section 28 of the Hindu Succession Act, 1956 relied upon by the counsel for the appellants / defendants in any manner applies because that Section provides that a person is not disqualified to succeed any property on any ground unless it is so provided in the Act. There is no provision in the Hindu Succession Act, 1956 whereby on account of issuing of a notice during the lifetime of the deceased, any person can be debarred from inheriting the property.

8. After dictation of the judgment, counsel for the appellants / defendants argued one other aspect in this Court that the respondent / plaintiff is not entitled to the suit property because the father during his lifetime had purchased a property for the respondent / plaintiff being house

No. RZ-148, Gali No.1, Uttam Vihar, Rajapuri, Delhi. This argument, in my
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opinion, is misconceived because the appellants / defendants led no evidence to show as to how the sale proceeds of a shop by the father were given to the respondent / plaintiff for purchase of the property at Uttam Vihar. Further, it has come on record that it is not known at what point of time a DDA shop was sold and when the property at Uttam Vihar was purchased. The stand of the respondent / plaintiff was that the shop was sold much later, and the property at Uttam Vihar, was in fact purchased earlier by the respondent / plaintiff from funds provided to him by his in-laws. The relevant paragraphs in this regard of the Trial Court giving the necessary arguments, findings and conclusions are paras 11 to 15 and which read as under:

“11. A perusal of the pleadings of the parties goes to show that it is undisputed case of the parties that late Sh. Gian Chand was the absolute owner of property No. C-71 Vishnu Garden, Tilak Nagar, New Delhi. There is also no serious dispute regarding the fact that the public notice dated 28.01.1988 was published in Punjab Kesri whereby plaintiff was debarred from inheriting property No. C-71 Vishnu Garden, New Delhi. It is also not disputed that the plaintiff is residing in property No. RZ-148, Uttam Vihar, Uttam Nagar, New Delhi. There is also no dispute that late Gian Chand owned the DDA shop in Vikas Puri which was sold by him. The basic question for consideration is whether the sale proceeds of the shop were given by late Gian Chand to the plaintiff from which he purchased a separate house bearing No. RC-148, Gali No. 1, Uttam Vihar, Raja Puri, Delhi and whether the public notice is sufficient to debar the plaintiff from inheriting the property belonging to his father.

12. Plaintiff has deposed that he got married in the year 1983. However, relations between his wife and parents were not very cordial therefore after about 4/5 years of the marriage he left the house alongwith his wife and started living in house No. RZ-148, Uttam Vihar, Uttam Nagar, Delhi. Accordingly to him this house was purchased by him with the help of his in laws. According to him despite living separately he continued visiting his parents his relations with his parents were cordial. When his brother Virender Kumar got married he rendered financial help. Before the death of his father he was admitted in RML hospital and at that time he took care of him and after his death last rites were performed by him and expenses on the same were incurred by him. Last rites of his mother were also performed by him. According to him ashes of his father and mother were taken by him to Hardwar and entry was made with the Punch in Haridwar. He proved the site plan of the property as Ext. PW1/1. According to him no money was paid by his father when the shop at Vikas Puri was sold by his father. Infact, according to him the house was purchased by him prior to the sale of shop at Vikas Puri by his father. He further went on stating that his father had disowned him under pressure of the defendants in order to maintain peace in the house but he also told him that he does not want to disowned him infact from the property. He claimed ½ share in the property by stating that one of the sister has already relinquished her rights and defendant no. 2 has also obtained share in the property of her in laws house. She is not entitled in any share in the property.

13. On the other hand defendant no. 1 has deposed that relations of plaintiff with his parents were strained. He never paid any respect to them as such his father separated him in the same house. Despite that dispute continued. After selling the DDA shop, the sale proceeds were given by his father to the plaintiff, out of that sale proceeds the plaintiff purchased property No. RZ-148,

Raja Pur, Delhi. His behaviour did not improve as such on 28.07.1998 his father served a notice through M.R. Sehgal Advocate whereby he disowned the plaintiff from his property. This notice was given in newspaper Punjab Kesri. All the expenses on the treatment and last rites of his parents were borne by him. He also examined DW-2 Rajesh Upadhaya Manager, Punjab Kesri who has deposed that public notice was got issued by M.R. Sehgal Adv. in the daily issue dated 28.07.1998 on behalf of Gian Chand and he proved the copy of the issue Ext. DW2/. DW-3 M.R. Sehgal has deposed that he got published notice Ext. DW2/1 issued on behalf of his client Gian Chand.

14. DW-4 Usha Rani filed her affidavit wherein she took almost the similar plea which were taken by defendant No.1.

15. At the outset it may be mentioned that it is not proved on record as to at what point of time DDA shop at Vikas Puri was sold by father of the parties. Therefore it is not proved whether it was sold prior/after to the purchase of the property No. RZ-148, Rajapuri, Delhi. Similar no cogent and convincing evidence has been led by the defendant to prove that the sale proceeds of this shop were given by father of the parties to the plaintiff or that out of the sale proceeds, the house at Raja Puri was purchased by the plaintiff.” (underlining added)

9. The Trial Court in my opinion, therefore, is clearly justified in holding that no monies of the deceased father were utilized in purchase of the house at Uttam Vihar. In any case, in my opinion this cannot make any difference because devolution of the property of the deceased who has died intestate

has to take place in accordance with Hindu Succession Act, 1956 and,

therefore, there is no change to devolution by succession merely because during the lifetime the deceased father, which we assume for the sake of arguments, had given funds to the respondent / plaintiff to purchase a property.

10. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

DECEMBER 2, 2011

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