

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

% *Judgment Reserved on: 06.01.2011*
Judgment Delivered on: 10.01.2011

+ **RSA No.214/2003**

SHRI PAL SINGH Appellant
Through: Mr.Gurinder Pal Singh and Mr.Nitin
Mangla, Advocates

Versus

SHRI DHARSHAN SINGH Respondent
Through: Mr.Y.P. Bhasin, Advocates

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.

1. This appeal has directed against the judgment and decree dated 29.8.2003 which had endorsed the finding of the trial judge whereby the suit of the plaintiff Darshan Singh seeking declaration qua his share in the suit property measuring 21 bighas 11 biswas in Bagh Wala Rakba was decreed in his favour.

2. The plaintiff Darshan Singh and Jagdish Singh were cousins; they had jointly applied for allotment of evacuee land in Delhi in lieu of the land which had been held by them in West Pakistan. After the death of Jagdish Singh the defendant was substituted in his place. On their joint application two lots of land were jointly allotted to the parties i.e. 49 bighas 13 biswas falling in village Haibatpur and 21 bighas 11 biswas in Bagh Wala Rakba. Parties entered into a mutual agreement dated 14.4.1970; in terms of this agreement the land comprised in village Haibatpur i.e. 49 bighas 13 biswas came to the exclusive possession of the defendant and the land measuring 21 bighas 11 biswas in Bagh Wala Rakba fell to the share of the plaintiff. This mode of partition was forwarded to the Managing Officer of the Revenue Department. This request was declined. Defendant thereafter sold his 49 Bighas 13 biswas of land and received the entire sale consideration. Plaintiff requested the defendant for execution of necessary documents in order that the 21 bighas 11 biswas land falling to his share be mutated in his name but the defendant declined his request.

3. The defendant in his written statement admitted the agreement but his submission was that this agreement was never acted upon. Contention was that the parties were dealing with the land jointly and the sale proceeded of 49 bighas 13 biswas of

land which had been sold was divided equally by both the plaintiff and the defendant. It was contended that the parties continued to own the land jointly. Suit was liable to be dismissed.

4. On the pleadings of the parties, the following issues were framed; they read as follows:

- “1. Whether the agreement dated 14.4.70 was not acted upon?
2. Whether the whole of the sale consideration regarding land measuring 49 bighas 13 biswas was received by Deft., only? if so, its effect?
3. Whether the defendant is the exclusive owner of the land measuring 21 bighas 11 biswas?
4. Whether the plaintiff is in possession of the property in suit? If not whether the suit is not maintainable?
5. Whether suit is barred by estoppel? OPD (Onus object to)
6. Whether the suit is properly valued for the purposes of court fees and jurisdiction?
7. Relief.”

5. Issue no.1 had been framed pursuant to an application filed under Section 14 Rule 5 of the Code of Civil Procedure (hereinafter referred to as ‘the Code’). The parties led their respective evidence. The trial court on the basis of the oral and documentary evidence led by the parties held that the parties had in fact acted upon this agreement dated 14.4.1970. The land measuring 49 bighas 13 biswas had been sold and the entire sale consideration had been received by the defendant evidencing the fact that this agreement dated 14.4.1970 had been acted upon.

6. The finding of the trial judge was endorsed in appeal vide the impugned judgment dated 29.8.2003. It was held that the decree of declaration passed in favour of the plaintiff called for no interference.

7. This is a second appeal. After its admission, the following substantial questions of law had been formulated; they inter alia read as follows:

“1.Whether unregistered document i.e. Agreement dated 14.04.1970 can be read in evidence?

2.Whether the courts below have decided the case in accordance with law?”

8. On behalf of the appellant, it has been urged that the agreement dated 14.4.1970 was a partition deed and this has been the submission of the plaintiff right from its inception; this also finds mention in his pleadings. The document dated 14.4.1970 (Ex.PW-1/8) also makes reference it as a partition deed. Such a document requires a compulsory registration under Section 17 and 49 of the Indian Registration Act, 1908; in the absence of which this document cannot be lead in evidence. On this ground alone the impugned judgment is liable to be set aside. On a query by the Court to the preliminary objection about the maintainability of such a plea that the document dated 14.4.1970 requires compulsory registration which plea admittedly had not been taken

up before the Courts below, learned counsel for the appellant has submitted that this submission goes to the root of the controversy between the parties and it is a question of law which can be raised and adjudicated upon in a second appeal. Learned counsel for the appellant has placed reliance upon a judgment of the Apex court reported in AIR 2004 SC 1591 Achintya Kumar Saha Vs. Nanee Printers and Ors. as also in judgment of the Supreme Court reported in 2010 (2) ALLMR(SC) 490 Mohd. Laiquiddin and Anr. Vs. Kamala Devi Misra (Dead) by L.Rs. and Ors. to support his submission. In the first case, the question was whether the agreement was a licence or a tenancy; this being the core issue and not having been adjudicated upon by the first appellate Court it was held to raise a substantial question of law permitting the second Appellate Court to go into the said issue. In the second judgment, the plea raised was that the assets of the partnership firm should have been dealt with under Section 48 of the Indian Partnership Act, 1932 and the proceeds be disbursed to the partners in accordance with their respective shares. This plea had been dismissed by the High Court. The Apex Court held that when a question of law is raised on the basis of the pleadings and the evidence on record which could not be raised before the

law cannot be permitted for the first time before the High Court. In the instant case the plea of the appellant/defendant before the courts below was that the partition deed was never acted upon; specific issue to this effect had also been framed. His argument before this Court is that this agreement could not have been read in evidence in the absence of registration. It is submitted that this plea now set up is a legal extension of the argument which had admittedly been raised in the Courts below. The legal submission being that the provisions of Section 17 and 49 of the Registration Act would bar the reading in evidence of such a document in the absence of registration.

9. There is no opposition to this preliminary submission. Learned counsel for the respondent has however countered the argument of the appellant on merits by submitting that the agreement dated 14.4.1970 was always acted upon and as such did not require any registration.

10. The preliminary submission made by the learned counsel for the appellant carries substantial force and the admissibility of the document dated 14.4.1970 (Ex.PW-1/8) and its true construction can be gone into. If the Court is of the view that this document dated 14.4.1970 was a partition deed and not acted upon, it would become a pure question of law that in the

RSA No.214/2003

absence of registration of such a document whether it could be read in evidence in view of the provisions of Section 17 of the Registration Act. This is also the first substantial question of law formulated by this Court.

11. Record has been perused. Written statement has not disputed the document dated 14.4.1970. Para 6 clearly states that the parties had entered into this agreement but the agreement was never acted upon. In fact issue no.1 has also been struck on the presumption that there was such an agreement dated 14.4.1970 entered into between the parties. Question for adjudication even before the trial court was as to whether this agreement was acted upon or not.

12. This document is dated 14.4.1970 and the nomenclature describes it as a 'Deed of Agreement. Admittedly, the parties had made a joint application for allotment of joint land in lieu of land left by them in West Pakistan. Party no.1 has described in this agreement is the plaintiff Darshan Singh and party no.2 is the defendant Pal Singh. The defendant in terms of this agreement had applied for Sanad/transfer that 49 bighas 13 bighas land would fall in the name of Pal Singh and 21 bighas and 11 biwas would go to the share of Darshan Singh. Para 6 of this agreement

gave the reasoning; it was that Darshan Singh had utilized the
RSA No.214/2003

claim compensation for adjustment towards his property and due to this both the parties had mutually agreed to have a transfer deed/Sanad in the aforestated ratios. Pursuant to this agreement dated 14.4.1970, it is admitted that the parties had moved an application before the Managing Officer to record the Sanad/transfer in the aforenoted ratios. This request was dismissed by the Managing Officer vide his letter dated 20.6.1970 and 27.6.1970. Against this order an appeal had been filed by Pal Singh. This appeal before the Settlement Officer was dismissed on 27.20.1970. This order categorically records that the parties had mutually submitted a partition scheme dated 14.4.1970 which had been rejected by the Settlement Officer; since the Revenue Authority had been enabled to carry out the mutation the appeal was dismissed.

13. These proceedings clearly show that the parties had in fact acted upon this settlement dated 14.4.1970; they had treated this agreement as the basis and foundation of their intention to claim Sanad/transfer of the property in the aforenoted ratios before the Managing Officer and thereafter in appeal before the Settlement Officer. Their plea in these proceedings was that their land stood mutually divided in terms of the agreement dated 14.4.1970 and this should accordingly be recorded in the Sanad/transfer deed of

RSA No.214/2003

the revenue records. Not only was the intention of the parties to act upon this agreement clear and unequivocal, it is also evident and apparent that they had, in fact, acted upon this agreement.

14. The argument urged before the Court is that this agreement dated 14.4.1970 is a partition deed and not a family settlement. The nomenclature has described it as a 'Deed of Agreement'. Parties are admittedly cousins; parties had entered into this memorandum of settlement; pursuant thereto they had entered into the proceedings aforementioned to record their land in the aforementioned ratios. It does not now lie in the mouth of the defendant/appellant to state that this agreement was not acted upon. The judgments relied upon by learned counsel for the appellant reported in 1988 RLR (SC) 239 Roshan Singh etc Vs. Zile Singh etc. , AIR 1992 All 235 Bankey Bihar Vs. Surya Narain alis Munnoo are on the ratio that an unregistered partition deed cannot be read in evidence under Sections 17(1) and 49 of the Registration Act. However, if a family settlement/partition deed has been acted upon as is so in the instant case, there is no bar of Section 17 which stands excluded. This has been held by this court in 119 (2005) DLT 295 Amarjeet Lal Suri Vs. Moti Sagar Suri & Ors. In this case the doctrine of estoppel was applied and

relying upon the judgment of the Apex Court reported in AIR 1976
RSA No.214/2003

SC 207 Kale & Ors Vs. Deputy Director of Consolidation & Ors. it was held that even if a document i.e. partition deed requires compulsory registration yet if one such party to the settlement had altered his/her share position by acting upon that compromise and under that compromise obtained a substantial benefit, he/she is bound by it and cannot ask the other to undo it. In 105(2003) DLT 987 Madan Lal Kapur Vs. Subhash Lal Kapur & Ors. the term "family" was expanded to be understood in the wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spec succession is so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The rule of estoppel had been adverted to set aside the plea of the person who sought to unsettle a settled dispute under which he had himself enjoyed a material benefit. In Roshan Singh (supra) the Supreme Court had held that a document containing a recital of past events and prior arrangement cannot be called a deed creating or extinguishing any right. The test for determining whether a document is an instrument of partition or

RSA No.214/2003 Page 10 of 12

otherwise had in fact been laid down. In the instant case, it is evident from the testimony of PW-6 and PW-7 the defendant Pal Singh had sold 49 bighas and 13 biswas of his share of the land and the entire proceeds of this sale consideration had been received by him. PW-6 and PW-7 were in fact the purchasers of this land and had on oath stated that the entire consideration had been given to Pal Singh and no money had been paid to the plaintiff Darshan Singh; PW-6, further stated that he had been directed to make the payment to Pal Singh only. No cross-examination of these witnesses had been effected. PW-2, PW-3, PW-4 and PW-5 were also witnesses to the effect that this agreement had in fact been acted upon.

15. The first appellate Court had re-appreciated this controversy and endorsed the finding of the trial judge. The second appellate Court is not a third fact finding court. It cannot interfere into findings of fact unless they are perverse. There is no perversity in these findings. Both the Courts below had returned a clear and categorical finding that the deed of agreement dated 14.4.1970 had, in fact, been acted upon. In these circumstances, the bar of Section 17(1)(b) is not attracted. Doctrine of estoppel comes into play. The defendant Pal Singh already having benefited himself

and on the basis of this agreement dated 14.4.1970 having sold

his share of 49 bighas 13 biswas of land and having received the entire sale consideration of the sale proceeds himself cannot now revert back and set up a case that this agreement was not acted upon and was not binding. He is estopped from doing so.

16. There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

JANUARY 10, 2011
nandan