

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 11.01.2011
Judgment Pronounced on: 17.01.2011

+ **CS(OS) No. 347/2006**

BALRAJ TANEJA

.....Plaintiff

- versus -

RAJINDER LAL TANEJA & ORS.

.....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. Varun Bhandari and Mr. Abhishek Rai

For the Defendant: Mr. Raman Kapur and Mr. Dhiraj

Sachdeva for D-1.

Mr. Harpreet Singh and Mr. Rajesh Gupta
for D-2 to 5.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J

1. This is a suit for partition of property No. 9-B, Mathura Road, Jangpura, New Delhi as also for injunction. Defendants No.1 and 2 are the brothers of the plaintiff, defendant No.3 is his sister-in-law being the widow of his brother late Sh. Ashwani Kumar Taneja whereas defendants

No.4 and 5 are children of late Sh. Ashwani Kumar Taneja. It is an admitted case that late Sh. Raghu Nath Rai was the owner of property No. 9-B, Mathura Road, Jangpura, New Delhi. Though it was alleged in para 2 of the plaint that the suit property is in effect a joint family property and has been referred to and registered as HUF property, it was expressly stated by the plaintiff's vide their statement dated January 11, 2011 that this was the self acquired property of late Sh. Raghu Nath Rai and no other person or entity had any right, title and interest therein.

2. It is further alleged in the plaint that a settlement was reached in the lifetime of late Sh. Raghu Nath Rai, whereby various portions of the suit property were allocated to him and his sons. The case of the plaintiff is that the family settlement, which was reduced into writing vide Memorandum of Understanding (MOU) dated 26th June 1996 with a site plan attached to it, can at best be regarded as a living arrangement, not bestowing any ownership rights on anyone. Under the MOU, it was agreed that none of the parties shall sell, transfer or otherwise alienate any part or whole of the portion in his occupation to any outsider or create any third part right into it. It is also stated that the

plaintiff and defendants No. 1 and 2 are in actual physical possession of the suit property as per the portions earmarked for them in the MOU dated 26th June 1996 and the site plan attached thereto. Regarding Garage Block of the property, it is claimed that the same having been given independently to the son and wife of the plaintiff, does not form a part of the joint family property. It is further alleged that defendant No.2 has authorized defendant No.1 to sell the portion occupied by him and defendant No.1 has accepted an advance of Rs.50Lacs for the sale of his portion of the property to a third party. The plaintiff has accordingly sought a decree for partition of property No. 9-B, Mathura Road, Jangpura, New Delhi and has also sought injunction, restraining the defendants from selling, transferring, alienating or parting with possession of any of the portion of the property.

IA No. 2208/2006 has been filed by the plaintiff along with the suit, seeking interim injunction restraining the defendants from selling, transferring, alienating or parting with possession of the suit property or any part thereof during pendency of the suit.

3. The suit has been contested by the defendants. In

their written statement, defendants No.1 and 2 have claimed that property No.9-B, Mathura Road, Jangpura, New Delhi was owned solely and exclusively by late Sh. Raghu Nath Rai, he having purchased and built it with his self acquired funds. It is further alleged that vide Will dated 21st May 1996 late Sh. Raghu Nath Rai had bequeathed the suit property in terms of the settlement effected in his lifetime. The Memorandum of Understanding dated 26th June 1996 has been admitted by them and they have claimed that the property was partitioned by metes and bounds vide settlement recorded in this document. Referring to minutes of meeting held on 21st December 2001, it has been alleged that each party to the suit has a right to sell his share and to deal with it in any manner he likes. It is also claimed that the plaintiff has advertized in newspaper for sale of not only his portion but also of the portion of the defendants. It has, however, not been denied that defendant No.1 has accepted an advance of Rs.50Lacs from the third party for sale of his portion.

4. Defendants No. 3 to 5, in their written statement, have supported the plea taken by defendants No.1 and 2 as regards ownership of the suit property. They also have

claimed that vide Will dated 21st May 1996, late Sh. Raghu Nath Rai had bequeathed the suit property in accordance with the settlement effected during his lifetime and that the property was divided by metes and bounds vide settlement recorded in the MOU dated 26th June 1996. IA 13956/2006 has been filed by the defendants for vacating the interim order dated 24th February 2006 whereby the parties were directed not to create any third party interest with respect to title and possession of the suit property.

5. In their statement recorded on January 11, 2011, the plaintiffs, after seeing the Will dated 21st May 1996, which the defendants have filed in this case, admitted its genuineness as well as validity and stated that they were not disputing the same. Since the plaintiffs have also admitted that property No.9-B, Mathura Road, New Delhi was the self acquired property of late Sh. Raghu Nath Rai and no other person or entity had any right, title and interest in it, the property, on the death of late Sh. Raghu Nath Rai, devolved in terms of the bequest made by the deceased. In fact there is no difference in the arrangement incorporated in the MOU dated 26th June 1996 and disposition of the property under the Will dated 21st May

1996 except to the extent that the Will contains no restriction on the right of the legatees to deal with their respective portions, in the manner they desire.

6. In terms of the Will, the Garage Block of the property was bequeathed to Sachin and Madhu and son and wife of the plaintiff, as separate from the rest of the house and is to be held by them independently and in addition to their rights in the rest of the portion on the eastern side of the house in the flat which was stated to be in possession of the plaintiff, Madhu, Sachin and Tanuj (second son of the plaintiff). The ground floor portion built on the eastern side was bequeathed to the plaintiff, his wife Madhu, his son Sachin and Tanuj, who is the second son of the plaintiff. They were to hold this portion in equal shares with the condition that Madhu has only life interest in it. The first floor flat on the eastern side was in occupation of defendant No.1 Rajender Lal and his family. Barsati floor was stated to be in possession of the testator, who had reserved for his son Ashwani. After death of the testator, this flat was to belong to Rajender, his wife Shalini and their two sons Varun and Rajat jointly and independently of any of his other sons and their children.

The first floor flat on the western side and above the flat on the ground floor, which was in possession of Prem Pal and his wife Manjula and their son was to belong to Prem Pal, Manjula and their children and no other child of the testator or his successor was to have right in this portion. The ground floor flat on the western side where the testator and his wife were at that time living was to belong to Ashwani, his wife Krishna and their two children after the death of testator and his wife. After the death of testator and his wife, the Barsati floor was to belong to Rajender and his family and they were given full rights in the flat, Barsati and terrace independently of any other heirs.

The grassy plot on the ground floor, which was in occupation of the testator and was stated to be of the size 88ft x 15ft was not to form part of the flat, which the testator bequeathed to his son Ashwani and was to belong jointly and equally to all the six boys, which were grandsons and they were to be joint owners of this independently of their rights in any other portion of this house with their parents. The passage and pucca paths were not to form part of this item. The entrance to the grassy plot was to be from road on both sides where there was a wall.

7. It is thus evident that late Sh. Raghu Nath Rai bequeathed separate portions of the suit property to his sons and their family members, which were duly identified not only in the Will but also in the MOU dated 26th June 1996 and the site plan which formed part of the MOU. During the course of arguments, the learned counsel for the plaintiff could not point out any portion of the suit property which was not subject matter of the bequest made by late Sh. Raghu Nath Rai. Therefore, this is not a case where the property was jointly bequeathed to more than one person without identifying their respective portions. Here, not only specific portions were bequeathed, they were also identified in the lifetime of the deceased. As regards the lawn/grassy plot also a specific bequest was made. Pathways, staircase, etc. of course have to be jointly enjoined by all the beneficiaries under the Will. Since the testator himself divided the suit property while executing the Will dated 21st May 1996, it cannot be said that the suit property needs to be partitioned through intervention of the Court. The beneficiaries under the Will have become owners of the portions bequeathed to them and can use their respective portions without any hindrance from the other co-owners of

the building. The lease hold rights in the land underneath the building have to remain joint property of all the legatees and even otherwise are capable of partition. Even the individual share of the various legatees in leasehold rights in the land cannot be determined, considering the bequest made by the testator. Therefore, the plaint does not disclose any cause of action for filing the suit for partition of property No.9-B, Mathura Road, New Delhi.

8. Coming to the injunction claimed by the plaintiff, his case is that since the family settlement contained in the MOU dated 26th June 1996, to which all the parties are signatories, stipulated that none of the parties shall sell, transfer or otherwise alienate part or whole of the portion in their occupation to any outsider or create any third party rights into any of the portions of the house, defendant No.1 has no right to sell, transfer or assign his portion to any outsider. This is not the case of the plaintiff that the MOU dated 26th June 1996 is in the nature of a Will or codicil. The case is that there was a family arrangement reached in the lifetime of late Sh. Raghu Nath Rai which can at best be regarded as a living arrangement without bestowing any

ownership rights on anyone and that family settlement was by way of MOU dated 26th June 1996.

While executing the Will, the testator himself did not place embargo on the right of the legatee to sell, transfer or otherwise alienate or part of the portion bequeathed to them to any outsider, though even the testator could not have placed such an embargo, once he had absolutely bequeathed various portions of the suit property to the legatees. Section 138 of Indian Succession Act provides that where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction. This Section applies to a case, where, on a reading of the Will, the intention of the Testator is found to be to give whole of his estate absolutely to the legatee, but, he has imposed restrictions on the right of the legatee to use and enjoy that property as its absolute owner. In such a case, though the bequest will stand, the subsequent clause in the Will placing restriction on the right of the legatee would be treated as void. In other words,

this Section applies to a case where the Testator has devised an absolute estate to the legatee, but, has specifically added a clause, which has the effect of reducing his power to deal with that property as an absolute estate. In such a case, the restriction placed on the right of the legatee needs to be rejected on account of its being repugnant to the absolute bequest of that property to the legatee. Another noteworthy circumstance in this regard is that at the time MOU was executed on 26th June 1996, late Sh. Raghu Nath Rai was alive and, therefore, none of the beneficiaries under the Will had any right, title or interest in the suit property at that time.

9. Assuming that the Clause 7 of the MOU prohibiting the parties from selling, transferring or alienating any part or whole of their respective partition to any outsider, is binding on the parties to the document, this Clause in my view cannot be interpreted to mean that the parties to the settlement can never sell or transfer their respective shares to an outsider even in the event of the other parties to the settlement refusing to buy their share or insisting on buying at a price lower than the prevailing

market price. This Clause does not prohibit sale to outsiders for a definite period such as two or three years nor does it envisage purchase by other family members at a discount to the prevailing market price. Such a Clause in my view can at best mean that if the party to the settlement want to sell or transfer his portion or any part of it, he has to first give an offer to the other parties to the settlement to purchase it at the prevailing market price and in the event of the other parties refusing to purchase his share or offering less than the prevailing market price, he is entitled to sell his share to any outsider. If this Clause is interpreted to mean that a person party to the settlement can in no event and at no point of time sell his share in the building to an outsider, it would very much be possible for one or more parties to the settlement to defeat his right which he enjoys being the absolute owner of his portion of the building, to deal with his property in any manner he wants simply by refusing to buy his share or by offering a price which is substantially less than the prevailing market price. Moreover, a blanket prohibition against sale to any person other than those who are parties to the family settlement, may also offend the Rule against perpetuity,

since it would amount to giving unlimited and unrestricted right of pre-emption to the other parties to the settlement, forever, without any backing of law. This, in my view, could not have been the intention of the parties to the document. To my mind, when the co-owners of an immovable property agree to a Clause of this nature which neither restricts the right of the other co-owners to purchase the property to a particular time period, nor does provide for purchase by them at a specified discount to the prevailing market rate, their intention is that if one of the co-owners wants to sell his share in the property, the other co-owners should have a preferential right to buy that share at the market price prevailing at the time of the intended sale.

10. During the course of arguments, it was contended by the learned counsel for the plaintiff that defendant No.1 did not offer to sell his portion to the other parties to the settlement before entering into an agreement to sell made to an outsider and, therefore, the plaintiff is entitled to an injunction against sale of the portion of defendant No.1 to an outsider. The learned counsel for defendant No.1 on the other hand maintained that defendant No.1, before entering

into a deal with the outsider had offered his portion to the other parties to the settlement, but none of them was willing to buy his share. In support of his contention, he has referred to the minutes of the meetings held on 21st December 2005 and 26th December 2005, which are admitted documents. Clause 1 of the minutes show that defendant No.1 had given time to the family members till 31st December 2005 to come up with the plan for raising fund to buy his share of the property. This clearly indicates that the other family members were given an offer to buy his portion. The minutes show that, when this offer was given, the plaintiff suggested a rental proposal. A perusal of the minutes of the meeting held on 26th December 2005 would show that Varun stated that he was interested in total sale of plot/property and Prem Pal had declined to participate in any manner. It further shows that BT (Balraj Taneja) ST and KT sought similar letters to sell out the shares as were provided to defendant No.1. This part of the minutes indicates that the plaintiff Balraj Taneja also wanted to sell his share and that is why he desired a letter similar to the letter issued by defendant No.2 to defendant No.1. I, however, need not go into the question as to whether

defendant No.1 had before entering into a transaction with the outsider, offered to sell his share to other parties to the settlement or not, for the simple reasons that the suit is not based on the averment that before entering into transaction with the outsider, defendant No. 1 had not offered to sell his share to other parties to the settlement. The case, as set out in the plaint, is that defendant No.1 has no right at all to sell his portion to an outsider. This plea in my view is not available to the plaintiff in law. Other parties to the settlement can at best seek preferential rights to purchase the share of defendant No.1, but, they cannot refuse to buy his share or offer him less than the prevailing market price of his portion and at the same time block his right to dispose of the portion owned by him in the manner he deems best in his interest.

11. Since there are no pleadings as regards the question as to whether defendant No.1 had, before entering into a transaction with the outsider, offered his portion to other parties to the settlement, it will not be open to the Court to permit the parties to lead evidence on this issue. It would be pertinent to note here that the plaintiff has not

sought to amend the plaint so as to plead that defendant No.1, before entering into transaction with the outsider, had failed to offer his portion to the other parties to the settlement, for purchase by them

In these circumstances the relief of permanent injunction sought by the plaintiff also cannot be granted to him on the basis of averments made in the plaint.

12. For the reasons given in the preceding paragraphs, the suit is hereby dismissed without any order as to cost. However, the plaintiffs will be at liberty to institute a fresh suit for injunction after making necessary averments with regard to alleged failure of defendant No.1 to offer his portion to the other parties to the settlement, for purchase by them, before selling the same to an outsider.

(V.K. JAIN)
JUDGE

JANUARY 17, 2011

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