

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 3rd November, 2011
Judgment Pronounced On: 18th November, 2011

+ RFA(OS) 122/2010

MOHAN LAL BHATNAGAR ...Appellant
Through: Mr.L.B.Rai, Advocate and
Mr.R.K.Rai, Advocate.

versus

KAMLESH KUMARI BHATNAGAR & ORS. ...Respondents
Through: Mr.S.K.Sharma, Advocate and
Mr.Aashish Gumber, Advocate for
respondents No.1,2 & 4.
None for respondent No.3

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

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

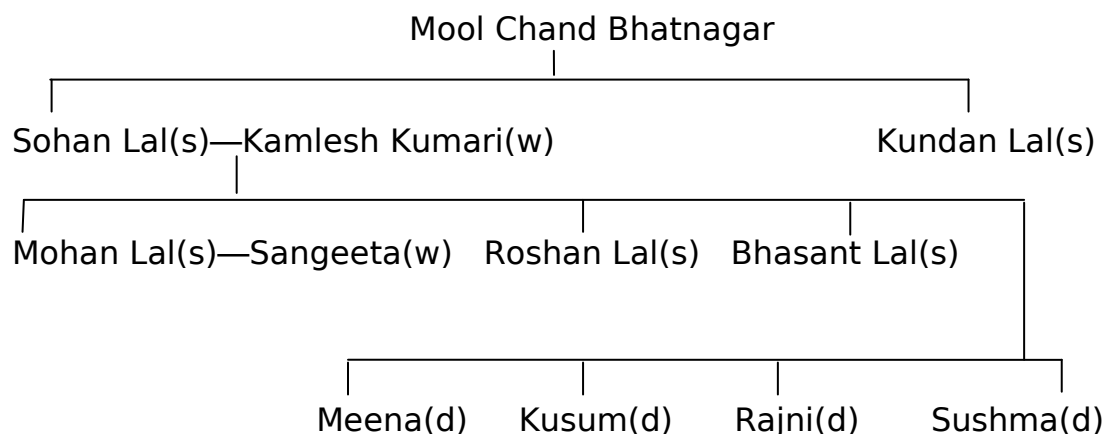
PRADEEP NANDRAJOG, J.

1. We shall be referring to the parties as per their original nomenclature i.e. plaintiff and defendants.
2. Plaintiff filed a suit seeking partition of a residential house bearing No.83 UB, Jawahar Nagar Delhi, on the plea that the recorded owner thereof, Late Sh.Mool Chand Bhatnagar

had acquired ownership thereof utilizing compensation received by him for ancestral properties left behind in Pakistan at the time of partition. Since Late Sh.Mool Chand Bhatnagar, during his lifetime had executed a gift deed dated 3.7.1953 gifting the property to his daughter-in-law Kamlesh Kumari (defendant No.1) who is the wife of Late Sh.Sohan Lal, i.e. the mother and the father respectively of the plaintiff, it was prayed that the said gift deed be declared null and void and further since Kamlesh Kumari had sold, vide sale deed dated 29.7.2002, the said property to her daughter-in-law Sangeeta Bhatnagar, the wife of her son Basant Lal Bhatnagar; impleading the said two persons as defendant No.2 and defendant No.4 respectively, it was prayed that the sale deed be declared null and void. Possession of a room on the ground floor adjacent to the courtyard has been sought.

3. The suit has been dismissed vide impugned judgment and decree dated 14.9.2010.

4. The pedigree table of the family of Late Sh.Mool Chand Bhatnagar needs to be noted for a clear understanding of the dispute. It is as under:-



5. Highlighting that neither Kundan Lal nor his successors-in-interest or the four daughters of Late Sh.Sohan Lal and Sh.Kamlesh Kumari were impleaded as defendants, suit was filed, praying as noted hereinabove in para 1. It appears that the branch of Kundan Lal, the second son of Late Sh.Mool Chand was not impleaded as a party for the reason it was stated in the plaint that during his lifetime, Late Sh.Mool Chand had gifted property No.13-F Kamla Nagar, to Smt.Rukmani Bhatnagar his second daughter-in-law i.e. the wife of Sh.Kundan Lal. It is apparent that the plaintiff proceeded to open the battle front by filing the plaint on the clear understanding that each branch of the family of Late Sh.Mool Chand had got its due share and hence he should be fighting for a share within the share which came to the branch of his father's family.

6. It was pleaded in the suit that since property No.83 UB, Jawahar Nagar, Delhi was acquired by Late Sh.Mool Chand Bhatnagar from out of ancestral funds generated from the compensation received for ancestral properties left behind by him in Pakistan, he could not gift the same and being ancestral property it was liable to be partitioned with one share each to the three sons and the wife of Late Sh.Sohan Lal. Thus, it was pleaded that no title could be transferred to Kamlesh Kumari under the gift deed dated 3.7.1953 and she in turn could not transfer any title to her daughter-in-law under the sale deed dated 29.7.2002. It was further pleaded that the sale deed dated 29.7.2002 was invalid for the further reason that as per the gift deed dated 3.7.1953, a condition was put that Kamlesh

Kumari could not sell the property gifted to her without the consent of her husband and that on 29.7.2002 Kamlesh Kumari's husband was not in a sound mind. It was additionally pleaded that consideration as recorded in the sale deed was not paid. It was further pleaded that on 13.11.1997 the three sons of Sohan Lal and their mother had entered into a written family settlement as per which 1/4th share in the property was assigned to the plaintiff who took possession of his 1/4th share. The description of the said 1/4th share in the built up property was stated to be a room near the courtyard. Alleging that he was illegally dispossessed from the room in question in his absence it was pleaded that the room was thereafter illegally amalgamated with an adjoining room to create a large hall. Thus, restoration of possession was sought for.

7. Defendant No.3 Sh.Roshan Lal Bhatnagar, filed an affidavit in the suit expressing his intention not to have any share in the suit property. Thus, it is apparent that the battle was fought between the two sons of Late Sh.Sohan Lal Bhatnagar i.e. the plaintiff and defendant No.4 who supported the title of his wife and through her, in their daughter-in-law.

8. In the written statement filed by said three defendants i.e. defendant No.1, 2 and 4, it was pleaded that Late Sh.Mool Chand Bhatnagar had purchased the subject property out of his own personal funds vide sale deed dated 26.1.1945 and the question therefore of the same being purchased out of funds received by Late Sh.Mool Chand Bhatnagar after the partition took place on 15th August 1947 in respect of ancestral properties left behind in Pakistan did not

arise. Admitting that Late Sh.Mool Chand had gifted property No.13-F Kamla Nagar, to his second daughter-in-law, it was pleaded in the written statement that the gift deed dated 3.7.1953 was immune from any challenge since limitation prescribed under Article 58 of the Schedule to the Limitation Act 1963 was 3 years when the right to sue first accrues. Not disputing having signed a writing dated 13.11.1997, it was pleaded that it was drawn up as a will of Smt.Kamlesh Kumari and it was highlighted that the writing was captioned 'Vaseeyat'. It was pleaded that since the plaintiff had the original document with him he interpolated the words 'Parivarik Sampati Samjhota' in the caption after the word 'Vaseeyat' interspacing the same i.e. to make the caption read: 'Vaseeyat/Parivarik Sampati Samjhota'. It was pleaded that a perusal of the writing would show that it records a partition in presenti and not a memorandum of a partition in the past and not being a registered document, admissibility thereof in evidence was questioned.

9. Following issues were settled on the pleadings of the parties:-

“(i) Whether the property in dispute is an ancestral property. If so, its effect? OPP

(ii) Whether suit of the Plaintiff is not maintainable and is liable to be rejected under O 6 Rule 14A CPC as the Plaintiff has not given the correct address? OPD

(iii) Whether the Plaintiff is entitled to decree of partition of the suit property? OPP

(iv) Whether the Plaintiff is entitled to declaration in respect to Gift Deed dated 17.8.1953 as well as deed dated 29.7.2002 and mutation deed dated 29.7.2002? OPP

(v) Whether the Plaintiff is entitled to decree of injunction as prayed? OPP

(vi) Whether plaint is liable to be rejected under O 7 Rule 11 CPC? OPD

(vii) Whether the property in dispute was a self acquired property of Mool Chand Bhatnagar, If so, its effect? OPD

(viii) Whether the suit is bad for misjoinder of Defendant No.1 and 4, if so its effect? OPD

(ix) Whether the Plaintiff has no locus standi to file the present suit? OPD

(x) Whether relief of declaration in respect of Gift Deed dated 17.8.1953 executed by Mool Chand Bhatnagar in favour of Defendant No.1 is barred by time? OPD

(xi) Whether the purported Will dated 13.11.1997 is legal and is not binding upon the parties, if so, its effect? OPD

(xii) Whether the alleged settlement dated 13.11.1997 is barred by time? OPD

(xiii) Whether the Plaintiff is entitled to any relief as claimed by him? OPP”

10. At the trial 11 witnesses were examined by the plaintiff and 4 by the defendants who proved several documents.

11. Summarizing the evidence brought on record through the testimony of the 4 witnesses of the plaintiff which alone is relevant to be noted, documents Ex.PW-1/I to Ex.PW-1/XVI would evidence that Late Sh.Mool Chand made a claim to be compensated ₹2,50,000/-, ₹10,000/- and ₹4,000/- for properties statedly left behind by him in Pakistan and valuations accepting the claim to be correct were made. The various orders accepting the claim have been passed in the year 1951. It be highlighted that with respect to the claim for compensation in sum of ₹2,50,000/- qua property left behind on Multan Road Lahore, Late Sh.Mool Chand had stated of having received the same at a family partition between him and his brother.

12. The plaintiff appearing as PW-1 stated that the family settlement Ex.PW-1/3 dated 13.11.1997 was voluntarily made and he was put in possession of a room near the courtyard with respect to his share in the suit property and whenever he visited India he resided in the room.

13. Admitting that for the last many years i.e. since 1993 he was working in Abu Dhabi, PW-1 denied knowledge that his and his wife's names were entered in the electoral rolls at serial No.635 and 636 showing their residence at B-22, Manas Vihar, ownership whereof he denied. He admitted that his daughters were studying in a school in Manas Vihar. He admitted that his elder daughter was married from B-22, Manas Vihar in the year 2002. He stated that he learnt about the gift deed dated 17.8.1953 only in the month of July 2003 and that he learnt of the room allotted to him under the family

settlement on 13.11.1997 being amalgamated with an adjoining room when he came for the annual barsi of his father in June, 2003.

14. Asha Ram Kaushik PW-2, the scribe of the writing dated 13.11.1997, Ex.PW1/3, stated that the settlement recorded in the document Ex.PW1/3 was entered into in his presence and he scribed the same and immediately thereafter the plaintiff was put in possession of a room near the courtyard as per his share under the settlement. He stated that the words 'Parivarik Sampati Samjauta' were written by him but admitted that the ink used to write the said words as also the pen were different. Sushma PW-3, sister of the plaintiff as also of defendant No.4, supported the family settlement dated 13.11.1997 and the fact that the plaintiff was put in possession of a room near the courtyard pursuant to the settlement. Suresh Chand, PW-4, the brother-in-law of the plaintiff and the defendant also supported the family settlement.

15. Testimony of the remaining witnesses examined by the plaintiff is irrelevant and hence is not being noted.

16. The defendants, through the 4 defence witnesses, proved purchase of the suit property vide sale deed dated 26.1.1945, Ex.DW-1/A, in the name of late Shri Mool Chand Bhatnagar and the gift deed dated 3.7.1953 Ex.DW-1/B and the mutation letter dated 13.2.1958, Ex.DW-1/C mutating property in the name of defendant No.1 for purposes of house tax record. The consent letter dated 29.7.2002 Ex.DW-1/D executed by Sohan Lal permitting defendant No.1 to sell the

house was proved as also the sale deed dated 29.7.2002 Ex.DW-1/E. The witnesses of the defendants deposed that the executants to the alleged settlement dated 13.11.1997 were forced to do so as the plaintiff was creating nuisance. They denied plaintiff being put in possession of any portion of the suit property. Voters' List Ex.DW-2/1 for the year 1993 was proved as per which at Sl.No.635 and 636 name of plaintiff and his wife were recorded as voters residing in Manas Vihar at house No.B-22.

17. In view of the evidence led and the fact that vide sale deed dated 26.1.1945, Ex.DW-1/A, the suit property was purchased by late Shri Mool Chand Bhatnagar, the learned Single Judge has held, and rightly so, that the evidence led by the plaintiff pertaining to the compensation claimed by late Shri Mool Chand Bhatnagar for properties left behind in Pakistan and compensation assessed payable to him was irrelevant as it related to the period 1951. It is apparent that the consideration paid under the sale deed when the subject property was purchased by Mool Chand could not be from out of the compensation received in respect of properties left behind in Pakistan. Holding that Mool Chand Bhatnagar would be competent to execute the gift deed Ex.DW-1/B the learned Single Judge has held that evidence revealed that if not earlier, at least in the year 1997 when the stated family settlement took place, the plaintiff had knowledge of the existence of the gift deed and challenge thereto had to be within 3 years as prescribed vide Article 58 of the Schedule to the Limitation Act. Holding that the defendant No.1 acquired valid title to the

suit property under the gift deed dated 3.7.1953 it has been held that defendant No.1 was empowered to sell the same and thus the sale deed dated 29.7.2002 has been upheld. Qua the family settlement dated 13.11.1997 it has been held that since the document seeks to partition immovable property and is not a memorandum of an oral family partition or of the oral partition being acted upon, the document was inadmissible in evidence and could not be looked into as the foundation of any right. The learned Single Judge has further held that there is no evidence that the plaintiff came into possession of any portion of the suit property on or after 13.11.1997.

18. A word of clarification needs to be spoken here, lest there be any confusion. The learned Single Judge has referred to the date of the sale deed as 17.8.1953 and the exhibit number as Ex.DW-1/B. The exhibit number is correct, but the date is wrong, probably for the reason the document is scribed in Urdu and while translating the same in Hindi the date of execution has been written as 17.8.1953. The original bears the date 3.7.1953.

19. Confronted with the fact that the sale deed Ex.DW-1/A under which late Shri Mool Chand purchased the suit property is dated 26.1.1945, learned counsel for the appellant could advance no argument to demolish the reasoning of the learned Single Judge that the claim in the plaint and the relatable evidence led qua late Shri Mool Chand leaving behind certain self acquired and certain ancestral properties in Pakistan at the time of partition in the year 1947 and receiving compensation in or after the year 1951 cannot have a bearing

on the consideration paid when sale deed dated 26.1.1945 was executed i.e. the consideration paid cannot be from the funds which came into the hands of late Shri Mool Chand when he received the compensation claims. Thus, the inevitable conclusion has to be that the ancestral character of the property in the hands of late Shri Mool Chand having failed to be established, the presumption, that the recorded owner under a sale deed is the owner of the property, in favour of the defendants rests on its own strength. This inevitably leads to the next conclusion that Shri Mool Chand was fully competent to execute the gift deed Ex.DW-1/B.

20. It assumes importance to note that late Shri Mool Chand was blessed with two sons and had two daughter-in-laws and for good reasons which only he knows, he gifted one property each to his daughter-in-laws, which he could do, and we appreciate the gesture since in the Indian social environment the tendency is not to let immovable property pass into the hands of female members of the family. It appears that late Shri Mool Chand was a man of far sight and was a pragmatic man.

21. The fact that the plaintiff could create nuisance and get executed the settlement dated 13.11.1997 Ex.PW-1/3 is proof of his knowledge of the existence of the gift deed. There is a reference to the same in the document. We note its contents. It reads as under:-

“Wasiyat/Pariwarik Sampatti Samjhauta

Aaj Dinank 13/11/97 November maas san 1997 ko nimanlikhit batein nishchit hui.

Pariwar ke sadasye Shri Sohan Lal Bhatnagar ji ke teeno putron dwara 83 UB Jawahar Nagar Delhi 7, jo ki dadaji Shri Mool Chand Ji wasiyat dwara Mataji Smt.Kamlesh Kumari ke naam kar di thi. Ab pariwar ke batwarein ke liye nimanlikhit baton par adharit hain.

No.1 = 83 UB Jawahar Nagar ke char barabar bhago me baanta jayega.

Pehla Bhag – 83 UB Jawahar Nagar Delhi ka Shri Sohan Lal Bhatnagar aur Smt.Kamlesh Kumari ka hai. Jo ki 25% (1/4) bhag mana jayega. Upar likhit hissa pura jisko chahe de sakte hain. Kewal 25% (1/4) bhag ka hi hoga.

Dusra Bhag – Shri Roshan Lal Bhatnagar, Shrimati Manju Manorama Bhatnagar ji ke pariwar ka hai. Jo ki (1/4) 25% bhag hoga. Shri Roshan Lal ji, Smt.Kamlesh Kumari ke bade putra hain.

Tisra Bhag – Shri Mohan Lal Bhatnagar ji avam Shrimati Anita Bhatnagar ji ke pariwar ka hai. 1/4 bhag (25%) hoga. Shri Mohan Lal Bhatnagar ji, Smt.Kamlesh Bhatnagar ke dusre putra hain.

Chautha bhag – Shri Basant Lal Bhatnagar avam Smt.Sangita Bhatnagar ke pariwar ka hai. Iska 1/4 bhage (25%) hissa hoga.

Shri Basant Bhatnagar Smt.Kamlesh Bhatnagar ji ke tisre putra hain.

83 UB, Jawahar Nagar Delhi 7 ka makan ki kimat ke anusar upar likhit batwara hoga.

83 UB Jawahar Nagar Delhi par upar likhit vyaktiyon mein kisi ka bhi kabza nahin mana jayega.

83 UB Jawahar Nagar sabhi upar likhit pariwar ke sadasyon ka nirnay anusar hissa mana jayega.

Makan ke batware ke samay 83 UB Jawahar Nagar khali mana jayega.

Upar likit baton ke adhar anusaar, Smt.Kamlesh Kumari purn roop se sehmat hain. Kyonki yeh makan dadaji ne Shri Mool Chand ji ne unkey naam uphar kiya hai. Upar likhit sabhi sadasyon ne apni sehmati anusar hastakshar kar diye hain.”

22. If not earlier, we have proof that the plaintiff had knowledge of the existence of the gift deed Ex.DW-1/B at least on 13.11.1997 and thus we agree with the learned Single Judge that challenge to the same had to be within 3 years thereof i.e. the period of limitation prescribed under Article 58 of the Schedule to the Limitation Act 1963. The suit challenging the same which was instituted in July 2003 was clearly barred by limitation. That apart, the challenge to the gift deed on the lack of the stated power in late Shri Mool Chand to gift the same has to fail, since we have upheld the view taken by the learned Single Judge that the property was self acquired; there is hardly any scope to question the power of late Shri Mool Chand to gift the self acquired property to his daughter-in-law.

23. As regards the admissibility of the family settlement dated 13.11.1997, contents whereof we have noted hereinabove, would establish a partition being effected in terms of the document and not a memorandum being recorded of an oral partition in the past which was given effect to.

24. In the decision reported as AIR 1976 SC 807 Kale & Ors. Vs. Deputy Director of Consolidation & Ors. the Supreme

Court held in no unequivocal words that only such memorandums which are reduced in writing, to record oral partitions in the past, would be admissible in evidence without such memorandums being registered, for the reason such a writing does not effect any partition i.e. does not create, extinguish or destroy rights in immovable property. But, where a family settlement partitions immovable property, extinguishing and/or creating rights in immovable property, such settlements reduced to writing, would be inadmissible in evidence if the writing was not registered.

25. Thus, the learned Single Judge has correctly opined that Ex.PW-1/3 was inadmissible in evidence as admittedly the same is not a registered document. Thus, no claim could be founded thereunder.

26. We also find no evidence of the plaintiff being put into possession of any part of the suit property, much less pursuant to a family partition as recorded in Ex.PW-1/3. He has committed perjury when on oath he denied residing in B-22, Manas Vihar, from where admitted the marriage of his elder daughter was solemnized. He admitted that his daughters were studying in a school in Manas Vihar. The records of the Election Commission would show that the plaintiff and his wife were registered as voters with reference to their residence being at B-22, Manas Vihar. The oral testimony of the plaintiff lacks credibility as he admits what is convenient to him and denies the inconvenient. Three of his witnesses who claim to be meeting him at the room in the suit premises have failed to disclose even the month, much less

the year when they met him there. That apart, there being irrefutable evidence of the fact that plaintiff was working for gain in Abu Dhabi and his wife and daughters were residing at B-22, Manas Vihar, it is apparent that whenever he would be visiting India, the plaintiff would be staying with his wife and daughter at B-22, Manas Vihar. There is just no documentary evidence to support the claim of the plaintiff that he was ever put in possession of any portion of the property. What is most telling is the fact that the plaintiff never obtained a separate electricity connection or paid house tax for the portion of the house which allegedly fell to his share; acts which he should have performed as a normal prudent person would do, if pursuant to a family partition a share is assigned to a family member.

27. It is no doubt true that in the gift deed Ex.DW-1/B there is a condition that the defendant No.1 could not sell the same without the consent of her husband, but we have proof through Ex.DW-1/D that husband of defendant No.1 gave the necessary consent and qua the challenge to his mental condition to do so, except for making self-serving statements, the plaintiff and his witnesses could take the case no further. Be that as it may, assuming the sale deed, which we note has been executed by defendant No.1 in favour of her daughter-in-law, failing due to any reason, it would be of no benefit to the plaintiff because in said circumstance the gift deed would stand. That apart, if the gift deed would stand, the plaintiff would have no locus standi to challenge the sale deed.

28. Looked at from any angle, we concur with the view taken by the learned Single Judge.

29. The appeal is dismissed with costs in favour of the contesting respondents and against the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(S.P. GARG)
JUDGE

November 18, 2011
mm