

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

+ **RFA 126/2011**

% **15th December, 2011**

DHARAM PAL DIXIT & ORS Appellants
Through : Mr. Rishi Kumar Awasthi, Advocate.

versus

DAULAT RAM DIXIT & ORS Respondents
Through : None.

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 21.9.2010. By the impugned judgment, the trial Court decreed the suit of the respondent/plaintiff for partition by holding that plaintiff as well as seven defendants are entitled to 1/8th share each over the said suit property bearing no. I-77, Garwali Mohalla, Lalita Park, Laxmi Nagar, Delhi-110 092 which is a three storied structure built on a plot admeasuring 175 sq. yds.

2. The brief facts of the case are that the suit property admittedly belonged to the father of the parties Sh. Ratan Lal Dixit, who expired on

9.10.2002 leaving behind him the plaintiff and defendants as his Class-I legal heirs. The father was said to have died intestate. The suit was filed as it was stated that the defendant Nos. 1, 2 and 5 declined the request of the plaintiff to partition the suit property.

3. Before the trial Court, defendant Nos. 1, 2 and 5, who are the appellants herein, contested the suit by stating that the father of the parties had partitioned the property during his life time and that the suit property was given to defendant Nos. 1, 2 and 5 whereas the plaintiff was given property at their native place situated at village Haler, District Kangra, Himachal Pradesh.

4. There are only two issues which were framed by the trial Court, and the same read as under:-

- “1. Whether during the life time of Sh. Ratan Lal Dixit, plaintiff has been given his share and therefore, has no right in the suit property and nor any share therein? OPD 1, 2 and 3
2. Whether plaintiff is entitled to claim partition of the suit property? OPP
3. Relief.”

5. The trial Court had arrived at the necessary finding of the absence of any family settlement in para 13 of the impugned judgment and which reads as under:-

- “13. The factum regarding the ownership of the suit property by late Sh.Ratan Lal Dixit and his dying intestate

on 9.10.2002 leaving behind him the plaintiff and all the seven defendants as his Class I legal heirs is not found disputed by any of the parties. However, the stand of the plaintiff to the effect that as said Sh.Ratan Lal Dixit who was the father of the parties was the original owner of the suit property and have died intestate and had not partitioned the suit property during his life time, therefore, the plaintiff and all the defendants are entitled for 1/8th share each on the said suit property, is disputed by defendants no.1, 2 and 5 on the count that in the year 1990 said Sh.Ratan Lal Dixit during his life time had orally partitioned his property whereby giving the suit property to the defendants no.1,2 and 5 and the plaintiff was given his share on the property of native village Haler, District Kangra, Himachal Pradesh and therefore, the plaintiff or any other defendants are having no right over the suit property. Though said defendants no.1,2 and 5 have got examined defendant no.1 as DW1, Smt. Lalita Awasthi, cousin sister of the parties as DW2, Smt. Sushma Dixit who is wife of defendant no.5 as DW3 and Mohammad Yusuf who is neighbour/friend of the defendants as DW4 but none of them specifically deposed as regards the month and year as to when oral family settlement was conducted by said Sh.Ratan Lal Dixit nor could they state specifically as regards the particulars of the property which was given to the plaintiff in his share by the father of the parties. Furthermore, none of the said DWs could state about the age of the plaintiff at the time of said oral family settlement. Besides that from the perusal of the copy of the Ration Card as placed on record by the plaintiff which is Ex.PW1/2, it is clearly reflected that the plaintiff Sh.Daulat Ram Dixit was born in the year 1980 and therefore, he happens to be aged about 10 years in the year 1990 as to when the alleged family settlement is claimed to have taken place by the defendants no.1,2 and 5. In view of the same, I found force in the submission of Ld. Counsel for the plaintiff that the stand of said defendants no.1, 2 and 5 to the effect that in the family settlement which took place in the year 1990 the plaintiff was given his share in the property of native village by his father Sh.Ratan Lal Dixit is false and

fabricated, in view of the fact that the plaintiff was merely 10 years old by that time and there was no occasion for any such family partition and giving share of the property to the plaintiff by their father. Furthermore, there are several discrepancies found in the deposition of the DWs regarding various aspects as regards the said family settlement. Besides that though DW2 Smt. Lalita Awasthi and DW4 Mohammad Yusuf in their deposition are found to have claimed to be present at the time of oral family settlement by late Sh.Ratan Lal Dixit but DW1 Sh.Lekh Raj Dixit and DW3 Smt. Sushma Dixit have not deposed regarding the presence of said DW2 Smt. Lalita Awasthi and DW4 Mohammad Yusuf at the time of the alleged family settlement. Besides that though all the DWs have stated that the alleged family settlement has taken place in their presence and presence of the plaintiff and the defendants but the plaintiff as well as defendant no.3, 4 and 7 have clearly denied regarding any such family settlement by their father Sh.Ratan Lal Dixit during his life time in this respect. Defendants no.3, 4 and 7 have appeared in person before this court on the date of final argument i.e. 15.9.10 and submitted that they support the stand of the plaintiff and as no family settlement has taken place during life time of their father, they urged for partition of the suit property to the extent of 1/8th share each.”

(Underlining added)

6. A reading of the aforesaid para shows that the trial Court has correctly arrived at the finding that there is no oral family settlement which was proved by the appellants. One of the reasons for disbelieving the alleged oral family settlement was that the plaintiff was only ten years old in the year 1990 when the alleged family settlement was stated to have taken place. Obviously, valuable rights in properties cannot be lost by means of oral deposition of an oral family settlement, when such a family settlement has been denied by the

other party. The onus of proof in such a case, which was upon the appellants/defendant Nos. 1, 2 and 5, cannot be said to have been discharged because the stand of the appellants was denied on oath by the plaintiff/respondent No.1.

7. In view of the fact that the property belonged to the father who died intestate, and the parties to the suit were legal heirs falling in Class-I as per Hindu Succession Act, 1956, the trial Court has rightly decreed the suit giving each of the parties 1/8th share in the suit property.

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

VALMIKI J. MEHTA, J.

DECEMBER 15, 2011

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