

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

+ **RFA No. 172/2004**

% **7th May, 2012**

SHRI SATYA PAL AGGARWAL Appellant
Through: Mr. M.N. Dutt, Advocate.

versus

SHRI RAJINDER KUMAR AND ORS. Respondents
Through: Ms. Vidhi Gupta, Advocate for Mr.
Mohit Gupta, 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 filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 29.1.2004. By the impugned judgment the suit of the appellant/plaintiff seeking partition was dismissed taking note of the facts which emerge on record showing that the appellant/plaintiff himself was signatory to two documents, Ex.DW1/1 (dated 14.1.1987) and Ex.DW1/2 (dated 17.2.1985) which showed that the

division of the properties had already taken place between the family members of late Sh. Rama Nand Aggarwal.

2. The facts of the case are that the appellant/plaintiff filed the suit for partition of the properties which fell to the share of his father-Sh. Rama Nand Aggarwal. Appellant/plaintiff and defendant Nos.10 and 11 were children of Sh. Rama Nand Aggarwal through the first wife Smt. Manbo Devi. Sh. Rama Nand Aggarwal was the son of Sh. Ram Parshad. Sh. Ram Parshad had another son, Sh. Jagan Nath. It was pleaded that to the share of the branch of Sh. Rama Nand Aggarwal, certain portions of the property Nos. 230 and 233, Nawada Bazar, Najafgarh, New Delhi fell, and it was pleaded that such properties be partitioned inasmuch as the appellant/plaintiff did not get any share in the said properties.

3. The main defence of defendant Nos.1 to 7 who are the second wife i.e. Smt. Sarla Devi (defendant No.7) of Sh. Rama Nand Aggarwal and the children (defendant Nos.1 to 6) through the second wife was that properties were already partitioned and the partition was evidenced by means of the documents, Ex.DW1/1 and Ex.DW1/2, as stated above.

4. The trial Court has dealt with this aspect while dealing with issue No.1 in the following paragraphs:-

“ISSUE NO.1

11. The learned counsel for the defendants have vehemently contended that the plaintiff has not come to the court with clean hands as the suit properties have already been partitioned by metes and bounds between the parties on 24.1.1987 and as such the plaintiff is not at all entitled to the relief as claimed by him in the suit. The learned counsel for the defendants has also drawn my attention to documents Ex.DW1/1 and Ex.DW1/2 and has contended that by virtue of these two documents the properties have already been partitioned and thus the plaintiff is now stopped from raising the plea of partition. The counsel for the defendants has finally contended that since the properties have already been partitioned between the parties by virtue of family partition, the plaintiff is now not entitled to seek the relief of partition.

12. The Hon'ble Supreme Court in case **S. Shamugan Pillal Vs. K.S. Shamugan, AIR1972 SC 2069** has held that if in the interest of the family properties or family itself, the close relations had settled their dispute amicably this court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements. Further in case reported in Kale and others vs. Dy. Director of and others, AIR 1976 SC 807 the Hon'ble Supreme Court after analyzing number of other judgments observed that validity of the family settlement should be always tried to be upheld. The central idea in the approach taken by the Hon'ble Supreme Court is that if by the consent of the parties the matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous grounds. Therefore, even if there is an oral family settlement between the parties and the defendant, then also the same should be accepted provided,

1. it is with the consent of the parties and,
2. the family settlement must be bonafide and
3. the family settlement is fair and equitable division of allotment between the various members of the family and
4. family settlement must be voluntary and should not be induced by fraud, coercion or undue influence.

13. Applying the principles as laid down by the Hon'ble

Supreme Court in the authorities mentioned above, let us see whether the properties have already been partitioned as alleged by the defendants or whether the plaintiff is entitled to partition of the properties as alleged by him or not.

14. The plaintiff while appearing as PW-1 has deposed that he is the son of Rama Nand and his father had two marriages. From the first wife he and two sisters were born and from the second wife, six sons and two daughters were born. He has further deposed that he got married at the age of 19 years and thereafter he started working with his father. He has further deposed that after the business flourished, he was turned out from the shop at the instance of his step mother and he came to the house no.230 in 1986 which belonged to Jagan Nath and started living there. He has also deposed that his father had not partitioned the property. He has further deposed that the defendants told him that as he/plaintiff was in occupation of the house belong to Jagan Nath and should take the same.

15. On the other hand, Sarla Devi DW-1 has deposed that the partition of the property had taken place after the death of her husband and the partition was got done by the plaintiff himself and documents of partition were prepared which is Ex.DW1/1. She has specifically deposed that the document that the document is in the hand of the plaintiff and bears signatures. At the first instance, she could not identify the signature of the plaintiff but she again deposed that signature of plaintiff appear at point B. She has deposed that front portion of house no. 230 fell in the share of the plaintiff and apart from the plaintiff never asked for repartition before filing the suit nor any notice was sent. In her cross examination, she has deposed that the front portion of house no. 230 which is in possession of plaintiff was in possession of Jagan nath and Jagannath was not having any share in house no. 230 and that the plaintiff is having examination, she has specifically deposed that the shops which the plaintiff sold and received consideration were not in his share. It shall not be out of place to mention here that the plaintiff in the open court had admitted that these documents i.e.Ex. DW1/1

and Ex.DW1/2 are in his handwriting DW-2 Narender Kumar has deposed that documents Ex.DW1/1 and Ex.DW1/2 bear the signatures of the plaintiff and the plaintiff got half of the property no. 230 front portion. He has specifically deposed that the plaintiff has no further right to partition and his suit is false. He has denied the suggestion that no partition has taken place in respect of house no. 233.

16. A perusal of Ex.DW1/2 reveals that it has been executed by Ramanand Aggarwal and Sarla Devi. This is dated 17.2.1985. It is also witnessed by Satpal the plaintiff in this case, Mahinder Kumar, Rajinder Kumar and Surinder Kumar Ex.DW1/1 has been executed by Sarla Devi and has been witnessed by Satpal, Mahinder, Surinder, Narinder, Bansidhar and Om Parkash. It shall be pertinent to mention here that during the course of cross-examination of DW-1 the plaintiff has admitted in the open court that these documents are in his handwriting then by no stretch of imagination, it can be said that these documents were not in the knowledge of the plaintiff and the plea of the plaintiff that the property has not been partitioned by metes and bound on 24.1.87 falls to the ground. Furthermore, it has been specifically stated in Ex.DW1/1 that Satpal Aggarwal, son of late Ramanand Aggarwal who was in possession of half front portion and was having full roof and which belonged to Jagan Nath will now be that of Satya Pal. Thus once the portion as mentioned in Ex.DW1/1 has been given to the plaintiff and which also bears the signature of the plaintiff, it now does not lie in the mouth of the plaintiff to say that he was not given any share in the property. As such in the face of documentary evidence proved by the defendants on record and which have been admitted by the plaintiff, the oral evidence led by the plaintiff cannot be considered. Thus I have no hesitation in holding that documents Ex. DW1/1 and Ex. DW1/2 have been executed with the consent of the parties and it was bonafide fair and equitable division and was voluntary and was not induced by fraud, coercion or undue influence Ex.DW1/2 and Ex.DW1/1 are dated 17.2.1989 till he filed the present suit on 26.11.94. Thus I have come to the conclusion that by virtue of Ex.DW1/1 and Ex.Dw1/2 the properties have already been

partitioned.” (underlining added)

5. It is trite that Courts make maximum endeavours to uphold family settlements inasmuch as they bring about valuable peace in the family. Unless and until completely prohibited by law, Courts uphold the family settlements in the interest of peace in the family and the society in general. The aforesaid findings of the trial Court show the admitted position that the appellant/plaintiff was a witness to both Ex.DW1/1 and Ex.DW1/2. Vide the document Ex.DW1/2 dated 17.2.1985, and which was a document executed between the father-Sh. Rama Nand Aggarwal and the second wife-Smt. Sarla Devi, the property No.233 being a shop fell to the share of their youngest sons, Sh. Banshi Dhar and Sh. Om Parkash i.e. defendant Nos.4 and 6 as per the amended memo of parties. So far as the document Ex.DW1/1 dated 14.1.1987 is concerned, the same is a comprehensive document recording the settlement between all the family members and the division of the properties and as per which the appellant/plaintiff got a share of property No.230. It is not in dispute that the appellant/plaintiff has signed Ex.DW1/1 and as per para 5 of which he received a portion of the property No.230.

6. In my opinion, therefore, the settlement in the family, as evidenced by Ex.DW1/1 and Ex.DW1/2, needs to be affirmed. The

appellant/plaintiff deliberately concealed in the plaint the factum of his being a signatory to Ex.DW1/1 and Ex.DW1/2 and which showed the division of the family properties.

7. Learned counsel for the appellant very vehemently sought to urge that the documents, Ex.DW1/1 and Ex.DW1/2 are partition deeds and therefore unless the same are registered, the same cannot be looked into. Of course, if the documents are partition deeds they would require registration, however, language of both Ex.DW1/1 and Ex.DW1/2 shows that they are in fact family settlements to show an existing arrangement between the parties which has been put on record. In fact, the languages such as the one contained in the present documents have been held not as partition deeds but as family settlement, in a judgment of the Supreme Court reported as ***Roshan Singh and Ors. Vs. Zile Singh and Ors. AIR 1988 SC 881.***

8. An appellate Court is entitled to interfere with the findings and conclusions of the trial Court only if the findings and conclusions are illegal or perverse. In view of the fact that appellant/plaintiff was himself a signatory to Ex.DW1/1 and Ex.DW1/2, I do not find any illegality and perversity in the impugned judgment of the trial Court dismissing the suit for partition.

9. In view of the above, the appeal is dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MAY 07, 2012

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