

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

+ **RFA No. 402/2004**

% **9th May, 2012**

TUSHAR & ANOTHER Appellants
Through: Ms. Manjusha Wadhwa, Advocate.

versus

SH. BALLU RAM & ORS. Respondents
Through: Ms. Usha Srivastava, Advocate for
respondent Nos.2, 3 and 5.

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 27.2.2004. By the impugned judgment, the trial Court has dismissed the suit for partition and injunction filed by the appellants/plaintiffs. The appellants/plaintiffs, in the suit were the minor children of Sh. Daya Chand, the deceased son of Sh. Ballu Ram/defendant No.1. Suit was filed through their mother-Smt. Sarita. The basic cause of action pleaded in the plaint was the entitlement to share in

RFA No.402/2004 ***Page 1 of 12***

the suit property admeasuring 25 sq. yds. bearing No.7/429, Trilok Puri, Delhi on the ground that the property was an ancestral property, however this plea of the appellants/plaintiffs has been disbelieved by the trial Court which also holds that the suit property stands validly transferred to a third party, namely, Sh. Ram Bharosay/defendant No.5/respondent No.5.

2. The facts of the case are that the appellants/plaintiffs filed the subject suit for partition and injunction pleading that the suit property was originally owned by one Smt. Sukhbiri Devi and the same was purchased by defendant No.1/Sh. Ballu Ram by the usual documents dated 12.2.1986 being the agreement to sell, general power of attorney, receipt, affidavit and the Will. The Will and receipt are registered documents. It was further pleaded in the plaint that though the suit property was in the name of defendant No.1, the same was an ancestral property and therefore the plaintiffs as the legal heirs of one son of Sh. Ballu Ram were entitled to 1/3rd share. It was additionally pleaded in the plaint that there was a partition deed dated 21.4.1998 whereby the suit property was divided into three equal shares. One share (ground floor) fell to Daya Chand, father of the plaintiffs, another share (first floor) fell to Sh. Jai Chand, defendant No.2 and the third share (second floor) fell to Sh. Kishan Chand, defendant No.4, all of whom were sons of Sh. Ballu Ram. Since the

defendants/respondents are stated to have refused to partition the suit property, the subject suit came to be filed.

3. The respondents/defendants contested the suit. Defendant Nos.1 to 4 filed one written statement and defendant No.5, the subsequent purchaser filed another written statement. Defendant No.1, Sh. Ballu Ram is the father of Sh. Daya Chand (father of the plaintiffs), Jai Chand-defendant No.2 and defendant No.4, Sh. Kishan Chand. Defendant No.3 was the wife of defendant No.2. In the written statements, plea of the defendants was that the property was not an ancestral property inasmuch as Sh. Ballu Ram had purchased the suit plot from his retirement funds and the same was constructed thereafter upon by the defendant No.2. It was pleaded that there was no partition deed as claimed by the appellants/plaintiffs and in fact if the same existed (inasmuch as the mother of the appellants had taken away a valuable box while leaving the matrimonial home) the same would be a forged and fabricated document. Partition deed was also pleaded to be void for lack of registration. It was pleaded that relationship between the mother of the appellants and their father were not on sound footing and the mother of the appellants, Smt. Sarita had left the company of her husband-Sh. Daya Chand i.e. father of the plaintiffs. It was pleaded that though initially Sh. Daya Chand had

gone away from the suit house alongwith his wife Smt. Sarita but thereafter he returned back and continued to stay in the suit property with the defendant Nos.1 to 4 till the time of his death. It was further pleaded that the original owner, Smt. Sukhbiri had subsequently executed documents being the agreement to sell, general power of attorney and receipt all dated 14.8.1986 transferring the suit property to defendant No.2, and which transfer was made with the consent of defendant No.1/father-Sh. Ballu Ram. The defendant No.2 has thereafter during the lifetime of Sh. Ballu Ram transferred rights in the suit property to the defendant No.3 i.e. the wife of defendant No.2 by means of the documentation dated 8.1.2003, and the defendant No.3 thereafter had transferred the suit property to defendant No.5 by means of the documentation dated 4.4.2003. The defendant No.5 claimed that he was a bonafide purchaser for value.

4. After completion of pleadings, the trial Court framed the following issues:-

- “1. Whether the present suit of plaintiffs is bad for non cause of action? OPD
2. Whether the suit property is ancestral property or not? OPD
3. Whether the present suit of the plaintiffs has not been property valued for the purpose of jurisdiction and court fee? OPD
4. Whether the suit property was earlier allotted to Smt. Sukhbiri by the DDA and she was owner thereof? OPD
5. Whether the defendant No.5 is now the sole and absolute

owner of the suit property? OPD

6. Whether the plaintiffs are entitled for partition of 1/3rd share in the suit property? OPP

7. Relief.”

5. The main issues dealt with by the trial Court are issue Nos.1,2 and 6 and while giving the findings with respect to the same, the trial Court has arrived at a finding of fact that the suit property is not an ancestral property inasmuch as Smt. Sarita appearing as PW-1 categorically admitted in her cross-examination that the suit property was purchased by Sh. Ballu Ram-defendant No.1 from his retirement funds. Such an admission was made not once but twice in the cross-examination. Accordingly, the trial Court has held that there does not arise any issue of the property being an ancestral property. Trial Court has further held that the partition deed which was filed and proved by the appellants/plaintiffs through PW-8 Sh. Anis Ahmed, Advocate exhibited as Ex.PW8/A could not be looked into as the same was an unregistered document inasmuch as registration of the partition deed was compulsory in view of Section 17(1)(b) of the Registration Act, 1908, and thus Section 49 of the Registration Act, 1908 bars any rights being claimed on the basis of such a document which is unregistered. No finding was given with respect to issue No.5 of the claim of declaration of ownership of defendant No.5 as the trial Court felt that there was no occasion to decide the title of defendant No.5 with respect to

the suit property.

6. Learned counsel for the appellants before this Court argued that the partition deed has been wrongly rejected by the Court. It is also argued that the signatures of Smt. Sukhbiri on the documents dated 14.8.1986 are forged and therefore the said documents cannot be looked into. It is also argued that the forgery is proved as the appellants/plaintiffs filed report of hand-writing expert who confirmed that the signatures on the General Power of Attorney dated 14.8.1986 are not of Smt. Sukhbiri.

7. I am afraid I am unable to agree with any of the arguments as urged on behalf of the appellants. Firstly, the trial Court has rightly held that the partition deed, Ex.PW8/A cannot be looked into because the same is an unregistered document. In view of the language/contents of the partition deed, as also its heading, there is no doubt that document exhibited as Ex.PW8/A was a partition deed and therefore the same required compulsory registration under Section 17(1)(b) of the Registration Act, 1908. In the absence of registration, the said documents cannot be looked into by virtue of Section 49 of the Registration Act, 1908. In fact there is another fundamental reason for rejecting the partition deed dated 21.4.1998, Ex.PW8/A. The reason is that the said document was to be executed by all the executants, namely, Sh. Daya Chand, Sh. Jai Chand, Sh.

Kishan Chand and Sh. Ballu Ram and whose names with places for signatures are found at page 4 of the document, however, the partition deed is not a completed transaction inasmuch as the said document only bears the signatures of the father of the plaintiffs, namely, Sh. Daya Chand and is blank where the signatures of the defendant Nos.2 and 4 had to appear. In fact, even the places of the signatures of the witnesses, Sh. Omi and Sh. Parkash, are found blank i.e. these witnesses have not signed on this document. Obviously, therefore this document assuming the same was prepared could not be completed as Sh. Jai Chand and Sh. Kishan Chand i.e. defendant Nos.2 and 4 refused to sign the same. Incomplete documents therefore cannot be used to urge any rights allegedly created by the same. A further reason to doubt that Sh. Ballu Ram had ever signed this partition deed dated 21.4.1998, Ex.PW8/A is that Sh. Ballu Ram had agreed that Smt. Sukhbiri executed the documents dated 14.8.1986 in favour of the defendant No.2 i.e. documents by which the defendant No.2 received rights in the suit/immovable property are prior in point of time than the partition deed of April, 1998, and therefore Sh. Ballu Ram would have no occasion to sign this later partition deed. Any doubt as to the fact that Sh. Ballu Ram has not signed this partition deed becomes clear from the fact that Sh. Ballu Ram appeared in the suit and admitted that the suit property stands

transferred in the name of defendant No.5 and that the transfer was made in the name of defendant No.5 by the defendant No.3, and in whose favour defendant No.2-Sh. Jai Chand had executed documents. Quite clearly, thus there are enough reasons to doubt execution of the partition deed, Ex.PW8/A by Sh. Ballu Ram, defendant No.1 and in any case even if executed either the same cannot be looked into being unregistered or because the same was an incomplete transaction or because there already existed documents dated 14.8.1986 in favour of the defendant No.2-Sh. Jai Chand by Smt. Sukhbiri.

I may at this stage state that the stand of defendant No.2 was that he spent moneys on the construction of the suit property completely out of his own pocket and therefore the father, Sh. Ballu Ram allowed a second set of documents to be executed by Smt. Sukhbiri in his/defendant No.2's favour. I may hold that Sh. Daya Chand in his lifetime never claimed any rights on the basis of this alleged partition deed, Ex.PW8/A and which is another reason to doubt the validity of the same. I therefore hold that there is no valid partition deed, Ex.PW8/A for the reasons stated above and therefore Sh. Daya Chand never came to own his share in the suit property. For the sake of completion of narration, I must also add that in this Court, the appellants/plaintiffs did not pursue the case of the suit

property being ancestral one in view of the categorical admissions made by Smt. Sarita-PW1 in her cross-examination.

8. Though the counsel for the appellants argued that the general power of attorney dated 14.8.1986,DW2/A cannot be said to bear the signatures of Smt. Sukhbiri, I find the argument without merit because appellants/plaintiffs have no locus standi to challenge the rights created in favour of Sh. Jai Chand/defendant No.2 by means of the documents inasmuch as it was only Sh. Ballu Ram in whose favour the prior set of documents dated 12.2.1986 by Smt. Sukhbiri were executed who only could put the challenge, and in fact, Sh. Ballu Ram appeared as defendant No.1 in the suit and supported the stand of the defendant Nos.2 to 5, filed a joint written statement with defendant Nos.2 to 4 and personally appeared in the Court and made a statement on 11.8.2003 that the suit property is no longer in his possession, and which statement was basically to support the factum of transfer of the suit property to the defendant No.5. In fact, this statement of Sh. Ballu Ram has been recorded simultaneously with the other statements of defendant Nos.2, 3 and 5 on 11.8.2003, and when all the statements are read together they show that indubitably all the defendants admitted that rights in the suit property were transferred to the defendant No.5. I, therefore, in view of the facts hold that

appellants/plaintiffs have no locus standi to challenge the document being general power of attorney dated 14.8.1986 marked as DW2/A in favour of defendant No.2.

9. The following conclusions therefore emerge:-

(i) The suit property was not an ancestral property but was the property of Sh. Ballu Ram as he has purchased the same from his retirement funds.

(ii) In favour of Sh. Ballu Ram, Smt. Sukhbiri had executed documentation dated 12.2.1986, however, subsequently Smt. Sukhbiri with the consent of Sh. Ballu Ram had executed documents for transferring rights in the suit property in the name of defendant No.2 on 14.8.1986. Defendant No.2 thereafter executed the necessary documentation dated 8.1.2003 in favour of defendant No.3 i.e. his wife and who thereafter transferred the rights in the suit property to defendant No.5/respondent No.5.

(iii) The partition deed is an inchoate instrument, and even if the same was a complete transaction, no rights can be created under the same on account of the same not being registered, partition deed being compulsorily registrable under Section 17(1)(b) of the Registration Act, 1908.

(iv) Sh. Ballu Ram supported the stand of the defendants i.e. of Smt. Sukhbiri having executed the documents in favour of defendant No.2 who had executed further documents in favour of defendant No.3 and who had thereafter executed documents in favour of defendant No.5 giving the defendant No.5 rights in the suit property.

(v) Even assuming no rights are created in favour of defendant Nos.2,3 and 5, however, no rights are equally created in favour of the plaintiffs in the suit property inasmuch as admittedly even as per the plaint, rights in the suit property were transferred by the original owner-Smt. Sukhbiri to the defendant No.1/Sh. Ballu Ram by means of the documentation dated 12.2.1986, and which original documents have been filed by the appellants themselves. Once it is admitted in the cross-examination that the suit property was not an ancestral property and was the property of Sh. Ballu Ram, the plaintiffs cannot have rights in the suit property because all the defendants took up the stand that rights in the suit property were transferred to defendant No.5.

10. An appellate Court would not interfere with the findings and conclusions of the trial Court unless the findings are illegal or perverse. I do not find any illegality or perversity in the impugned judgment which calls for interference by the Court in the appeal.

11. In view of the above, I do not find any merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MAY 09, 2012

Ne