

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

Judgment Reserved on: October 19, 2012
% *Judgment Pronounced on: October 31, 2012*

+ **RFA (OS) No.41/2011**

KIRPAL KAUR Appellant
Represented by: Ms.Kamlesh Mahajan, Advocate

versus

RAM SINGH & ORS. Respondents
Represented by: Ms.Rakhi Ray, Mr.S.S.Ray and
Mr.Vaibhav Gulia, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

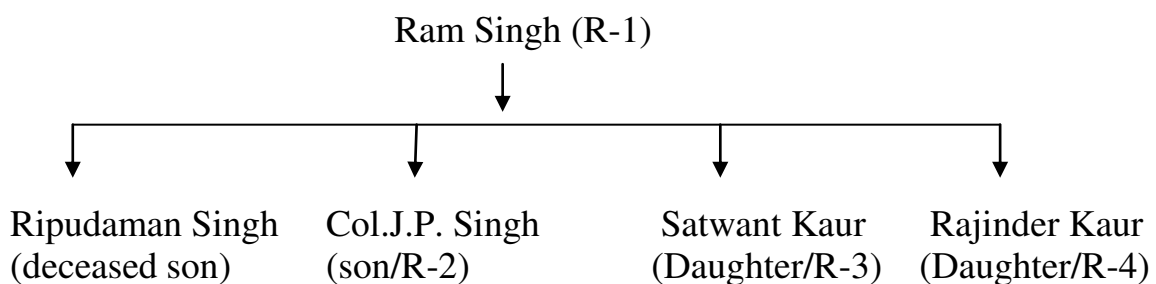
1. Appellant Mrs.Kirpal Kaur has filed the present Regular First Appeal under Section 96 of the Code of Civil Procedure read with Section 10 of Delhi High Court Act against the judgment and decree dated 21st January, 2011 passed by the learned Single Judge of this Court in CS(OS) No. 2172/2003. The appellant who was the plaintiff had filed a suit seeking a decree for declaration and partition of the following properties:-

- a) Agricultural land at Village Jahgirpur and at Village Patial.
- b) Property bearing No.45, Sant Nagar, East of Kailash, New Delhi.
- c) Property situated at Kothi No.56, Giani Zail Singh Nagar, Ropar.

2. She had also sought a share in the rent received from property No.45 Sant Nagar, East of Kailash, New Delhi and in the income generated from

the agricultural land at village Jahgirpur and village Patial.

3. The appellant is the daughter-in-law of respondent No.1 being the widow of his late son Ripudaman Singh. The respondent No.2 is other son of respondent No.1 and respondents No.3 and 4 are his daughters. The pedigree tree of the family is as under:



4. The case of the appellant was that the respondent No.1 had two brothers named Prem Singh and Dayal Singh and one sister named Smt.Har Kaur. On the death of Dayal Singh his share in the ancestral property i.e. the agricultural lands is being used by his legal heirs, whereas the sister Har Kaur had relinquished her share in favour of the legal heirs of Dayal Singh. The remaining agricultural land is alleged to be jointly owned by respondent No.1 Ram Singh and his brother Prem Singh. In the year 1954, respondent No.1, out of the funds received from the agricultural land, purchased the plot bearing No.45, Sant Nagar, East of Kailash, New Delhi, on which he constructed two rooms and kitchen, bathroom etc. in the year 1957-1958. In the years 1980-1982, second phase of the property was constructed using money sent by the husband of the appellant who was working in Kuwait since the year 1978-1979 used to send money regularly to his parents. The first floor of the property was occupied by respondents No.1 and 2, whereas second floor was occupied by the appellant and basement and the ground floor were let out to the tenants from whom the rent is being received by respondent No.1. Appellant pleaded that the respondent No.1 had purchased the plot of land in Saini Farms in the name of the husband of the appellant.

The plot was sold by the respondent No.1 who gave only ₹1,82,000/- to her husband while the balance amount was distributed amongst respondents No.1 to 4 and the wife of respondent No.2.

5. The case of the respondent No.1 was that the property at Sant Nagar was his self-acquired property and that husband of the appellant had separated from him. Admitting that respondent No.1 has purchased a plot at Saini Enclave in the name of the husband of the appellant, it was pleaded that husband of the appellant sold the plot and appropriated ₹6 lakhs.

6. It was pleaded by the respondent No.1 that plot bearing No.45, Sant Nagar, New Delhi, was purchased by him from out of his own funds in the year 1954 when the husband of the appellant was only seven years old. A building was constructed in two stages. During the first stage, the ground floor was constructed in the year 1957-1958 by the respondent No.1 using his own funds and the said fact was admitted by the appellant in the written statement filed by her in the suit instituted by respondent No.1 against her seeking possession of the second floor which he had permitted her to occupy. According to the respondent No.1, on his retirement from the Ministry of Defence in September 1980, he completed the construction of second phase on the said plot by using the retirement fund and the loans taken from relatives, friends and other financial institutions. Regarding the agricultural land in Ropar, it was pleaded that the said ancestral land was divided between him and his two brothers and one sister and during that division a piece of land measuring 8 kanals and 18 marlas situated in Village Patial District Ropar, came to the share of respondent No.1 in the year 1972. He denied owning any land in village Jahgirpur. As regards property No.56, Giani Zail Singh Nagar, Ropar, Haryana, the common stand taken by respondent No.1 and 2 was that the said property was a self-acquired

property of respondent No.2.

7. The following issues were settled on the pleadings of the parties:-

(i) Whether the suit is maintainable in its present form?

(ii) Whether the properties, as mentioned in paragraph 24 of the plaint other than the property situated at Kothi No.56, Giani Zail Singh Nagar, Ropar, Haryana are joint family properties?

(iii) Whether the Plaintiff is entitled to claim partition and 1/5th share in the properties mentioned in paragraph 24 of the plaint other than the property situated at Kothi No.56, Giani Zail Singh Nagar, Ropar, Haryana?

(iv) Whether the property bearing No.45, Sant Nagar, East of Kailash, new Delhi has been constructed out of joint family funds or out of funds received by Defendant No.1 from the late husband of the plaintiff, Shri R.D. Singh?

(v) Relief.

8. Issue No.1 was not pressed by the respondents before the learned Single Judge, hence it was decided against the respondents.

9. There being no evidence and as a matter of fact no denial in the replication to the stand taken in the written statement that there was no agricultural land in village Jahgirpur which was inherited by respondent No.1, no relief has been granted qua said land as prayed. And as regards property bearing No.56 Giani Zail Singh Nagar, Ropar, Haryana, in view of the registered sale deed dated January 03, 1996 evidencing respondent No.2 having purchased the land for a consideration of ₹80,000/- and the same being withdrawn from the DSOP account, facts not disputed by the appellant, no relief has been granted qua said property. On a concession made by respondent No.1 the appellant has been declared one-fifth owner of

the agricultural land in village Patial, District Ropar, Punjab.

10. With respect to issue No.(iv) which is also decided in favour of the respondent No.1 in respect of property No.45, Sant Nagar, East of Kailash, New Delhi, the learned Single Judge came to the conclusion that it was the self-acquired property of respondent No.1. The same was not purchased out of any joint family funds. The appellant had therefore no title or interest in any of the aforesaid properties. The appellant had failed to prove receipt of any agricultural income by the respondent No.1. No evidence has been produced to prove that brother of respondent No.1 used to make any payment to him in respect of the agricultural land or any agricultural produce obtained from the land in Vill. Patial used to be sold by respondent no.1 and assuming he was receiving some agricultural income and amount received from the husband of the appellant and had utilized that amount towards construction raised at Sant Nagar property that by itself would not confer ownership rights in the property on any family members. This issue was decided after considering the evidence of the parties.

11. Learned counsel for the appellant had restricted her arguments mainly on three points: firstly the learned Single Judge did not consider the statement (Ex.DW1/P1) made by respondent No.1 in the court of Mr.Pradeep Chaddha, Additional District Judge on 11th December, 2003 in the suit filed by respondent No.1 against the appellant whereby certain admissions were made by respondent No.1 with regard reconstruction of the property; secondly the learned Single Judge also did not consider the statement of respondent No.1 recorded on 28th February, 2008 in the suit filed by appellant in which the respondent No.1 had admitted his earlier statement made on 11th December, 2003 before the court of Mr.Pradeep Chaddha, Additonal District Judge; and thirdly while passing the impugned

judgment, the learned Single Judge has not considered para 3A of the amended written statement Ex.DW1/3 wherein it was specifically stated that even before partition, the respondent No.1 along with his brother had inherited ancestral agricultural land in District Ropar and the property at Sant Nagar which is in dispute had been purchased as well as constructed not only out of the funds received from late husband of the appellant but also from the agricultural income received by the respondent No.1.

12. Let us discuss the case of the appellant on the abovementioned three points raised by the learned counsel for the appellant in support of her submissions.

13. With regard to points No.1 & 2, it is not in dispute that respondent No.1 as PW-1 in the suit filed by him seeking possession of the second floor from the appellant had tendered in evidence his affidavit Ex.PW-1/2. The statement of respondent No.1 in the court of Mr.Pradeep Chaddha, Additional District Judge, Delhi, in the suit filed by him against appellant on 11th December, 2003 which is exhibited Ex.DW-1/P-1 in the suit filed by the appellant for partition reads as under:-

“I have 4 children, eldest 18 Ripu Daman who is also known as R.D. Singh. Next is Col. J.P. Singh, next is Satwant Kaur and last one is Rajinder Kuar. Defendant is wife of my eldest son Sh. R.D. Singh. They were married in 1972. Since her marriage defendant is staying in the same house alongwith her husband at Sant Nagar except for a period of very brief at Sant Nagar. I had purchased H. No.45, Sant Nagar. I was working at ACSO, Defence Head Quarters. I retired on 30/9/1980. I used to get around Rs.2,500/- p.m. The house was built from my retirement benefits and I had also taken loan from my friend. I had received around Rs.1 lac on basing the structures. Finishing was done later on. R.D. Singh had gone to Quwait on 15/10/1978. It is correct that he used to send money to me from Quwait. He had

sent to me Rs.82,000/- in all in shape of Bank Draft and Cash. It is incorrect to suggest that he has sent to me Rs.six and a half lacs. It is incorrect to suggest that he used to send money to me of and on through his friends visiting India. It is incorrect that I had utilized the money sent by him in raising the building. It is correct that I am having agricultural land at Ropar. The same is ancestral property. I received small amounts from the land periodically. The same is inherited property and same was there before partition. It is correct that I had spent the receipts from the agricultural land on construction of the house again said I spent the same on my illness. I was admitted in the hospital. I can not tell the date, month or year of admitting in the hospital. I was admitted two-three times. On occasion I was admitted for one.....months. I am receiving the receives from the agricultural land after death of my father in 1972. It is incorrect to suggest that R.D. Singh had gone to Quwait at my instance to earn and remit money for construction of the house as my own income of Rs.2,500/- was meager for the purpose. R.D. Singh died on 6/1/2000. I have not served any legal notice on R.D. Singh during his life time. I am not aware whether defendant is working or not. It is incorrect to suggest that upon death of R.D. Singh my relatives told me to pay maintenance of Rs.5,000/- 6,000/- to her as she has no source of income. It is further incorrect to suggest that I had filed the present suit to avoid the said amount. It is correct that house at Sant Nagar has been occupied by the tenant in the basement and ground. It is incorrect to suggest that I am having rental income of Rs.25,000/- p.m. I get Rs.3,300/- from basement and Rs.3,800/- from ground. I retain the rent. It is wrong to suggest that I find the present suit to harass the defendant. It is wrong to suggest that I am deposing falsely.”

14. It is also an undisputed fact that the said statement was confirmed by him in the statement made on 28th February, 2008 as DW-1 in the suit for partition filed by the appellant (being CS(OS) No. 2172/2003) by admitting

that he had stated on 11th December, 2003 before the court of Mr.Pradeep Chaddha, learned Additional District Judge, that he received ₹82,000/- in the shape of bank draft and cash from the husband of the appellant and his entire statement Ex.DW-1/P-1 is correct.

15. The argument by the counsel for the appellant that the learned Single Judge has not discussed aforesaid admissions is incorrect for the reason the same have been discussed by the learned Single Judge in paras 16 to 19 of the impugned judgment. The same are reproduced herein below:-

“16. As regards the construction raised after the retirement of defendant No.1, it has come in the deposition of defendant No.1 that on his retirement he had received Rs.1 lakh towards his retirement benefits. The total amount spent on construction at Sant Nagar house was Rs.1,42,000/- as stated by defendant No.1 and there is no evidence to controvert this part of his deposition. It has come in the deposition of defendant No.1 that he had taken a sum of Rs.30,000/- from M/s Sahara Deposits and Investments (India) Ltd. Exhibits DW-1/5 to DW-1/18 are the receipts whereby loan taken by the defendant No.1 from M/s Sahara Deposits and Investments (India) Ltd. was paid by him in instalments. Considering the amount of about Rs.1 lakh received by defendant No.1 as his retirement benefits and amount of Rs.30,000/- taken by him as loan from M/s Sahara Deposits and Investments (India) Ltd., it is highly unlikely that any substantial amount out of the money received by him from the husband of the plaintiff was utilized for construction of House No.45, Sant Nagar, New Delhi between October, 1980 and December, 1981. Though there is evidence of defendant No.1 having received money sent by the husband of plaintiff to him from Kuwait, there is no evidence to prove that the money sent by him was utilized for raising construction that was raised between October, 1980 and December, 1981. The plaintiff has admitted that at the time her husband was working in Kuwait, she and her children were being looked after by defendant No.1. The money, which the husband of the plaintiff sent to defendant No.1 from Kuwait, could well have been utilized towards meeting their expenses.

17. Defendant No.1 received Rs.10,000/- vide Exhibit P-1, Rs.3000/- vide Exhibit P-2, Rs.3500/- vide Exhibit P-3, Rs.7000/- vide Exhibit P-4 from the husband of the plaintiff. A perusal of Exhibit P-5, which is a document filed by the plaintiff herself, show that out of total sum of Rs.1 lakh received by defendant No.1 from the husband of the plaintiff, a sum of Rs.82,650/- was left with defendant No.1. Receipt of this amount was admitted by defendant No.1 in the previous suit between the parties.

18. As regards receipt of Rs.7000/-, it has been claimed by defendant No.2 that he had booked a scooter for the husband of the plaintiff and this amount was received towards that purpose. As far as PW-2 is concerned, though according to him about Rs.5,00,000-Rs.5,50,000/- was sent by the husband of the plaintiff to defendant No.1 from Kuwait, he does not claim to have personally delivered that much amount in cash or by draft etc. to defendant No.1. Thus, though the plaintiff has failed to prove that her husband had sent more than Rs. 6,00,000/- to defendant No.1, as claimed by her, the fact remains that some amount was definitely received by defendant No.1 from the husband of the plaintiff and going by Exhibit P-5, which is a document in the hand of defendant No.1 and has been filed by the plaintiff herself, this amount appears to be Rs.1,00,000/- out of which Rs.17350/- were given to the plaintiff leaving a sum of Rs.82650/- with defendant No.1. As noted earlier, there is no evidence to prove that this amount was utilized by defendant No.1 for raising construction of House No.45, Sant Nagar, New Delhi between October, 1980 and December, 1981.

19. Even if it is assumed that the amount of Rs.82650/- received by defendant No.1 from the husband of the plaintiff was utilized by him for carrying out construction at property No.45, Sant Nagar, New Delhi between October, 1980 and December, 1981 that by itself did not entitle the husband of the plaintiff to a share in the property No.45, Sant Nagar, New Delhi. Since the plot on which this house has been constructed was purchased by defendant No.1 from his own funds, use of the funds provided by the husband of the plaintiff towards construction raised on that plot would be regarded either as a

gift or a loan of that amount by the husband of the plaintiff to defendant No.1. If the plot of land on which the construction is raised is purchased by a person solely from his own funds, mere use of the funds provided by another person, without anything more does not make the person, whose funds are used for raising construction, a co-owner of the building which is constructed using his funds.

Immovable property worth more than Rs.100/- can be transferred wholly or partly, only by executing a registered document such as Sale Deed, Transfer Deed, Exchange Deed, Gift Deed and Relinquishment Deed. The ownership of such an immovable property cannot be transferred from one person to another person either under an agreement between them or by use of funds of another person by the owner of the land underneath the building, for the purpose of raising construction thereof. If a person wants to transfer his ownership in a building to another person, either wholly or partly, he must necessarily execute a Sale Deed, Transfer Deed, Exchange Deed, Gift Deed, Relinquishment Deed or another document evidencing transfer of ownership from him to the other person and such document needs to be compulsorily registered.”

16. The reasoning of the learned Single Judge is sound and logical. It may be true that respondent No.1 had received ₹82,000/- from his son i.e. the husband of the appellant and assuming that he spent the entire amount in the second stage construction would not mean that he has blended his personal property with an ancestral or joint character. On the subject of blending, the law declared by the Supreme Court in the decision reported as 1997 (9) SCC 692 *Parshotam Singh (dead) thru' LRs vs. Harbans Kaur & Anr.* guides us that for a self-acquired property to be blended with ancestral property there has to be positive evidence of blending, and this ratio of law would also hold good if as a consequence of blending the pleading is that the property became joint.

17. It is true that the learned Single Judge has not considered the amended written statement filed by the appellant in the suit filed by respondent No.1

against her seeking possession of the second floor, but that would hardly make any difference for the reason in the suit filed by the respondent No.1 against the appellant, in the written statement filed by the appellant, the appellant admitted that the plot was acquired by the appellant from his own funds but claimed a share through her husband on the strength of the plea that her husband had contributed towards the construction. It is the admitted position between the parties that the property at 45, Sant Nagar, New Delhi, was purchased by the respondent No.1 in the year 1954 vide sale deed dated 22nd March, 1954 for a sum of ₹400/-. He was working as UDC w.e.f. 13th January, 1945. In 1954, he was getting salary of ₹201/- per month i.e. ₹120/- + (9 increments x 9 = 81). He was the only earning member. At that time, admittedly the husband of the appellant was only seven years old. The first phase of the construction of the ground floor on the plot of land was raised in the year 1957 when the husband of the appellant was ten years old. The second phase construction was done between October, 1980 and December, 1981. The case of the respondent No.1 before the court below was that on his retirement in September, 1980, he reconstructed the aforesaid property using his retirement benefits, gratuity and loan taken from the various resources and from friends and relatives and using old building material. He also proved receipts Ex.DW1/5 to DW1/18 whereby the payment was made to M/s.Sahara Deposits and Investments (India) Ltd. It was specifically mentioned by the respondent No.1 that the husband of the appellant did not contribute any amount either towards purchase or construction of property No.45, Sant Nagar, East of Kailash, and at the time when the construction was on progress between October 1980 and December, 1981, the husband of the appellant was in process of setting himself in Kuwait and did not have sufficient funds. The period of

construction was 3rd October, 1980 to 31st December, 1982. Total amount was spent ₹1,42,451.60/-. In his testimony, he has given the details of funds which includes retirement benefits, Ex.DW-1/5 to 18 and the same are proved in this regard. Nothing contrary was brought on record by the appellant. The respondent No.2, Jatinder Pal Singh, appeared as DW-2 and supported the case set up by the respondent No.1 with regard to property at 45, Sant Nagar. He stated that it is exclusively owned by his father and is his self-acquired property. It was also stated that the sale proceeds of Plot No.178, Saini Enclave, which respondent No.1 had purchased in the name of husband of the appellant, were retained by the husband of the appellant and the cash received by them was kept in bank locker No.606 in the joint name of the appellant and her husband with Punjab National Bank, Nehru Place, New Delhi, and in order to sort out the issues in the family, a meeting was arranged between the parties on 29th September, 1986 wherein it was decided that the appellant and her husband would keep the sale proceeds of Saini Enclave plot but would not be entitled to any share in the agricultural land in village Patial and other properties of respondent No.1.

18. We do not agree with the argument of the learned counsel for the appellant on the statement made by the appellant No.3A of the preliminary submission that the learned Single Judge has considered the defence taken in the said para and the finding arrived at merely on the basis of un-amended written statement as it is the admitted position that the said agricultural land initially stood in the name of the father of respondent No.1 i.e. Sh.Prabhu Dayal, who had expired in the year 1971 and as such the ancestral agricultural land could not have devolved upon the respondent No.1. None of the documents filed by the appellant supports her case. The statement made in para 3A of the preliminary objections of the amended

written statement which is allegedly not considered by the learned Single Judge in his judgment is also without any substance as the learned Single Judge in various paras of his judgment has discussed the said aspect after considering the evidence of the parties. In para 15 of the judgment, it is specifically mentioned that as regard construction on the aforesaid plot, it is not in dispute that initial construction on the plot was raised in the year 1957-1958. There was no evidence to prove that the respondent No.1 was receiving any agricultural income at that time. His father was alive and the agricultural land stood in his name. The appellant could not have personal knowledge in this regard as at the time of construction, she was not married to the son of respondent No.1. She failed to prove that the respondent No.1 was getting any agricultural income or any part of income was utilized for raising construction. With regard to second phase of construction raised by the respondent No.1 after his retirement, it is deposed by him that on his retirement he had received ₹1 lac towards retirement benefit. The total amount spent on construction was ₹1,42,000/-. There was no evidence to controvert this part of the deposition. The respondent No.1 produced the documentary evidence with regard to loan taken from M/s. Sahara Deposits and Investments (India) Ltd. i.e. receipts Ex.DW1/5 to Ex.DW1/18 whereby loan taken by the respondent No.1 was paid by him in installments.

19. It was also recorded in para 17 of the judgment that the respondent No.1 might have received certain amount from the husband of the appellant which appears from Ex.P1 to Ex.P5. A perusal of Ex.P5 shows that out of total sum of ₹1 lac received by the respondent No.1 from the husband of the appellant. A sum of ₹82,650/- was left with the respondent No.1. Receipt of the said amount was admitted by respondent No.1 in the previous suit between the parties in the statement Ex.DW1/P1. With regard to receipt of

₹7000/- Ex.P4 it has been stated by the respondent No.2 that he had booked a scooter for the husband of the appellant and the said amount was received for that purpose.

20. With regard to statement of PW-2 who deposed that about ₹5 lac to ₹5,50,000/- was sent by the husband of the appellant to the respondent No.1 from the Kuwait, the appellant has failed to prove that her husband had sent the said amount to the respondent No.1. However, it was stated by her that some amount was definitely received by respondent No.1 from her husband and in case Ex.P5 is examined which is a document in the hands of respondent No.1 which was filed by the appellant, the amount mentioned in the said documents is ₹1 lac out of which ₹17350/- were given to the appellant and ₹82,650/- were left with the respondent No.1. No evidence was produced by the appellant that the said amount was utilized by the respondent No.1 for raising construction of the house. In case the statement of the appellant is believed that ₹82,650/- received by respondent No.1 from the husband of the appellant was utilized by him for carrying out the second phase of construction of property No.45, Sant Nagar, between the period October 1980 to December 1981. However, the same itself does not entitle the husband of the appellant to a share in the property as the plot in question was purchased in the year 1954 when the husband of the appellant was seven years old and first phase of the construction was done in the year 1957 he was ten years old. The sale deed was admittedly in the name of respondent No.1 who purchased the same for ₹400/- from his own funds.

21. There is no title document either in favour of the husband of appellant or in her name by the respondent No.1 and in case a person solely from his own fund purchased the land in his name, a mere use of funds provided by his family member for the purpose of raising the construction, he cannot

become co-owner of the property. We agree with the findings of the learned Single Judge that at the best, he would be entitled for refund of the said amount with interest or compensation.

22. Under these circumstances, for the reasons mentioned above, we feel that all the three points have been dealt by the learned Single Judge if the entire judgment is read in a meaningful manner. We are not inclined to interfere with the judgment and decree dated 21st January, 2011 passed by the learned Single Judge. There is no merit in the appeal.

23. Before concluding we must put on record that to bring the curtains down and obviate any further litigation i.e. the appellant challenging the decision in the appeal before the Supreme Court, respondent No.2 had made an offer to pay ₹15 lakhs to the appellant provided she undertook not to litigate any further and hand over vacant possession of the second floor of property No.45, Sant Nagar to respondent No.1 or his nominee, an offer which was rejected by the appellant who was not only counseled by us in Court to accept the offer since the weight of the evidence led at the trial was fairly against the appellant. Even learned counsel for the appellant tried her level best to convince the appellant to accept the offer, but she refused.

24. We dismiss the appeal but without any order as to costs.

(MANMOHAN SINGH)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 31, 2012/jk