

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

Date of decision: 16th February, 2012

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LPA 466/2006

% **GURBACHAN SINGH THAPAR** Appellant

Through: Dr. Sarbjit Sharma with Mr. Sumit
Sharma, Advs.

Versus

UOI AND ORS

..... Respondents

Through: Ms. Gayatri Verma & Mr. Kapil
Wadhwa, Adv. for Mr. Sachin Datta,
CGSC for R-1 to 6.
Mr. Manu Nayyar, Mr. Mohd.
Niyazuddin & Mr. Amit Kumar,
Advs. for R-7,8&9.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court Appeal impugns the judgment dated 28th November, 2005 of a Single Judge of this Court allowing W.P.(C) No. 16/1983 preferred by the respondent no.7 Shri Preetinder Singh Thapar, respondent

no.8 Shri Hardeep Singh Thapar and respondent no.9 Smt. Narinder Kaur. The said respondents no.7,8&9 herein are hereafter referred to as the contesting respondents. The writ petition aforesaid was filed by the contesting respondents impugning the order dated 10th November, 1982 of the Dy. Secretary to the Government of India, Department of Rehabilitation with the delegated powers of the Central Government and the order dated 30th August, 1982 of the Dy. Chief Settlement Commissioner and for declaration that, in terms of the lease deed and conveyance deed executed by the President of India in their favour on 25th May, 1971, the contesting respondents were the owners/lessees to the extent of 3/4th share of property bearing No.A-78, Malviya Nagar, New Delhi. The appellant herein was impleaded as respondent no.11 in the said writ petition.

2. It is deemed expedient to set out the history with respect to the aforesaid property. The said property was in the year 1950 allotted to one Capt. Kirpal Singh Thapar, a displaced person. The said Capt. Kirpal Singh Thapar was a non-claimant and had during his lifetime paid substantial part of the cost of the said property. However, before any documents of title with

respect to the said property could be executed in favour of Capt. Kirpal Singh Thapar, he died intestate on 9th September, 1962 leaving behind a widow and 15 children i.e. 9 sons and 6 daughters. The appellant is one of the sons of Capt. Kirpal Singh Thapar. Similarly the respondents no.7&8 are also sons of Capt. Kirpal Singh Thapar. The respondent no.9 is one of the daughters of Capt. Kirpal Singh Thapar. Though as per the law of intestate succession applicable to Shri Capt. Kirpal Singh Thapar, his rights in the aforesaid property devolved on his widow and children in the share of 1/16th each but the widow and all the children of Capt. Kirpal Singh Thapar applied to the governmental authorities for execution of the documents of title pertaining to the said property in the name only of Sh. Onkar Singh Thapar being the eldest son of Capt. Kirpal Singh Thapar.

3. The governmental authorities however upon finding the contesting respondents no.7,8&9 to be minors, refused to so execute documents of title with respect to the property in favour only of Sh. Onkar Singh Thapar and on 20th August, 1963 ordered execution of such documents in favour of said Shri Onkar Singh Thapar and the contesting respondents.

4. After the contesting respondents attained majority, a lease deed of the land underneath the property and conveyance deed of the structure existing on the property were executed in favour of Shri Onkar Singh Thapar and the contesting respondents. However at the time of the registration of the said documents, only the contesting respondents appeared before the Sub Registrar and thus the lease deed and the conveyance deed though in the name of the contesting respondents and Shri Onkar Singh Thapar, was in or about the year 1971 registered in favour of the contesting respondents only.

5. The contesting respondent no.8 Shri Hardeep Singh Thapar in the year 1972 filed a suit for partition of the aforesaid property claiming the shares of the contesting respondents and Shri Onkar Singh Thapar therein to be $\frac{1}{4}^{\text{th}}$ each. Shri Onkar Singh Thapar contested the said suit claiming, that on the demise of Capt. Kirpal Singh Thapar the property had been inherited by his widow and 15 children in the shares of $\frac{1}{16}^{\text{th}}$ each; that one of the sons of Capt. Kirpal Singh Thapar had since died a bachelor and thus the widow and the remaining children of Capt. Kirpal Singh Thapar had $\frac{1}{15}^{\text{th}}$ share each in

the said property. The said suit was however dismissed in default.

6. In the year 1973 another two sons of Capt. Kirpal Singh Thapar namely Shri Inder Singh Thapar and Shri Jagmohan Singh Thapar who are respondents no.14&15 respectively in this appeal, filed another suit for partition of the said property; they claimed $1/9^{\text{th}}$ share each in the said property pleading that their 6 sisters together had $2/9^{\text{th}}$ share in the property. The said suit though pending at the time of filing of the writ petition from which this appeal arises, was also dismissed in default.

7. On 3rd October, 1981 Shri Onkar Singh Thapar moved an application before the Settlement Officer stating that, since the widow and other children of Capt. Kirpal Singh Thapar had disclaimed their interest in the said property in his favour only, he was entitled to $13/16^{\text{th}}$ share in the property and the three contesting respondents had $1/16^{\text{th}}$ share each in the property; since the lease deed and the conveyance deed executed in the year 1971 did not specify the shares of Shri Onkar Singh Thapar and the contesting respondents, Shri Onkar Singh Thapar sought execution of a supplementary deed so specifying their shares.

8. The aforesaid application was rejected by the Managing Officer on 12th November, 1981. Aggrieved therefrom Shri Onkar Singh Thapar filed appeal before the Settlement Commissioner. The same was also dismissed on 17th February, 1982. Shri Onkar Singh Thapar thereafter filed a revision petition under Section 24 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 before the Chief Settlement Commissioner. The said revision petition was allowed vide order dated 30th August, 1982 (supra) of Dy. Chief Settlement Commissioner and it was held that in view of the widow and other children of Capt. Kirpal Singh Thapar disclaiming rights in the property in favour of Shri Onkar Singh Thapar alone, his share in the property was 13/16th and the share of each of the three contesting respondents was 1/16th. The contesting respondents applied to the Central Government under Section 33 of the Displaced Persons Act. The said petition was however dismissed vide order dated 10th November, 1982 (supra).

9. The writ petition from which the present appeal arises was filed by the contesting respondents impugning the said orders dated 30th August, 1982 & 10th November, 1982.

10. The Learned Single Judge has in the impugned judgment allowing the writ petition held that only Shri Onkar Singh Thapar contested the writ petition. The Learned Single Judge has observed/held:-

- A. that though the property aforesaid stood allotted to Capt. Kirpal Singh Thapar but no documents with respect thereto were executed in his favour till his demise;
- B. that on execution of the lease deed and the conveyance deed in the year 1971 in favour of the three contesting respondents and Shri Onkar Singh Thapar without specifying the shares of each of them, they had equal i.e. 1/4th share in the property;
- C. that after the execution of the lease deed and the conveyance deed in favour of the contesting respondents and Shri Onkar Singh Thapar, the Chief Settlement Commissioner and other persons under the Displaced Persons Act became *functus officio* and could not reopen the lease deed or the conveyance deed or determine the *inter se* shares of the transferees i.e. the contesting

respondents and Shri Onkar Singh Thapar. The remedy if any in this regard was in the Civil Courts and not before the said authorities. Reliance in this regard was placed on ***Smt. Balwant Kaur v. Chief Settlement Commissioner*** AIR 1964 Punjab 33 (FB). Reliance was also placed ***Karan Chand Thakar Das v. Union of India*** AIR 1967 Punjab 85 (DB) in support of the proposition that on execution of deeds under the Displaced Persons Act, the title of the transferee became absolute and could not remain inchoate indefinitely;

- D. though Shri Onkar Singh Thapar had not joined in the registration of the lease deed and the conveyance deed in the year 1971 but he also did not take any steps challenging the execution thereof and which in the absence of shares of each of them being specified, reflected each of them to be having equal i.e. 1/4th share;
- E. that Shri Onkar Singh Thapar in the suits for partition aforesaid also had not claimed himself to be having 13/16th share in the property but had claimed only 1/16th or 1/15th share in the property.
- F. that the contesting respondents after the execution of the lease deed and the conveyance deed had out of their own funds

converted the two room tenement earlier existing on the property into a 2 ½ storeyed building;

- G. that none of the other heirs of Capt. Kirpal Singh Thapar had joined the battle;
- H. that the disputes ought to have been settled in civil litigation and not by approaching the authorities who had executed the lease deed and the conveyance deed.

Accordingly the orders dated 30th August, 1982 and 10th November, 1982 specifying the share of Shri Onkar Singh Thapar in the property as 13/16th and that of the contesting respondents (who were the writ petitioners) as 1/16th each were set aside.

11. Shri Onkar Singh Thapar has not challenged the order of the Learned Single Judge. Though a respondent in this appeal, he has chosen not to appear even. The appellant being another son of Capt. Kirpal Singh Thapar has filed this appeal contending:-

- a. that the Learned Single Judge has erroneously recorded that the writ petition aforesaid filed by the contesting respondents had

been contested by Shri Onkar Singh Thapar only when in fact it was contested by the appellant alone;

- b. that the order dated 10th November, 1982 (supra) was legal and the Learned Single Judge has drastically slashed the share of Shri Onkar Singh Thapar from 13/16th to 1/4th;
- c. that the appellant was a co-sharer and in possession and occupation of the property in his own rights;
- d. that the filing of the affidavit of no objection/relinquishment in favour of Shri Onkar Singh Thapar was based on the understanding that Shri Onkar Singh Thapar would give to the appellant the appellant's due share in the property;
- e. that there was no presumption (in the absence of the shares being specified in the lease deed and the conveyance deed) of the shares of Shri Onkar Singh Thapar and the three contesting respondents being equal;
- f. that all the owners had spent monies on renovation of the property.

12. Notice of this appeal was issued; the appeal was admitted for hearing on 29th September, 2008 but the application for interim relief dismissed. We

have heard the counsels for the appellant and the counsel for the contesting respondents.

13. We find that the writ petition, from the order wherein this appeal has been filed, arose out of a dispute between the contesting respondents (who had filed the writ petition) on the one hand and Shri Onkar Singh Thapar on the other. The appellant herein had no role therein. In the said dispute, Shri Onkar Singh Thapar was seeking execution of a supplementary deed specifying his share in the property as $13/16^{\text{th}}$ and the share of the three contesting respondents as $1/16^{\text{th}}$ each; on the contrary the contesting respondents were claiming the shares of Shri Onkar Singh Thapar and each of them as $1/4^{\text{th}}$ each. In fact, neither the appellant nor any of the other heirs of Capt. Kirpal Singh Thapar (except the contesting respondents) were parties even to the proceedings culminating in the orders impugned in the writ petition. The said orders also, did not recognize any share of appellant in the property. The writ petition was filed impugning the orders aforesaid in favour of Shri Onkar Singh Thapar i.e. declaring his share in the property as $13/16^{\text{th}}$. There was no need even for the appellant to be impleaded as a party

to the writ petition since the challenge in the writ petition was to the orders holding Shri Onkar Singh Thapar to be having 13/16th share in the property and further since the appellant was not even party to proceedings, orders wherein were challenged in the writ petition. However the contesting respondents nevertheless impleaded the appellant, perhaps as a 'proper party'. Though the appellant filed a counter affidavit to the writ petition, but again supporting the orders impugned in the writ petition and which orders, if had been upheld (the writ petition had been dismissed) would again have given Shri Onkar Singh Thapar a 13/16th share in the property and do not give appellant any share in the property.

14. We have as such enquired from the counsel for the appellant as to what is the locus of the appellant to prefer this appeal. No answer has been forthcoming.

15. Shri Onkar Singh Thapar as aforesaid has not challenged the order of the Learned Single Judge allowing the writ petition filed by the contesting respondents. Since the judgment of the Learned Single Judge affects Shri Onkar Singh Thapar only, the right to appeal could have been of Shri Onkar

Singh Thapar only and not of the appellant. Even if the judgment of the Learned Single Judge were to be found to be erroneous, the effect thereof would be restoring the orders dated 30th August, 1982 and 10th November, 1982 holding Shri Onkar Singh Thapar to be having 13/16th share in the property. The appellant under the said orders also does not get any share in the property.

16. The counsel for the appellant has urged before us that the appellant, on demise of Capt. Kirpal Singh Thapar inherited 1/16th share in the property and the same could not have been transferred in favour of Shri Onkar Singh Thapar without a registered document and which has not been executed. However the said questions do not arise for adjudication in these proceedings. The writ petition was filed seeking judicial review of orders holding Shri Onkar Singh Thapar to be having 13/16th share as claimed by him and not 1/4th share, as contended by contesting respondents. The question, whether the appellant had/has any share was alien to and did not arise in the said proceedings. As aforesaid, the appellant at no point of time, before the authorities whose orders were impugned in the writ petition,

claimed any share. The appellant could not have used the said writ petition for asserting his right if any.

17. We are thus of the view that the present appeal is not maintainable. The appellant cannot fight a proxy battle for Shri Onkar Singh Thapar. If the appellant has any independent rights in the property as he claims, the same have to be agitated in a properly constituted proceeding asserting the said rights and not in these proceedings from the outcome whereof the appellant would remain unaffected.

18. The counsel for the contesting respondents has also contended that the remedy of the appellant is by way of a Civil Suit though he claims that the said remedy is also barred by limitation.

19. We reiterate that in these proceedings arising out of the orders dated 30th August, 1982 and 10th November, 1982 no relief can be granted to the appellant. Thus we dismiss this appeal on this ground alone leaving it open to the appellant to take appropriate remedies in accordance with law for

asserting his rights and which proceedings if filed, the contesting respondents shall be entitled to contest on all grounds available to them. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

FEBRUARY 16 , 2012
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