

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

+ **RFA No.379 /2010**

% **30th January, 2012**

DR. GURCHARAN LAL BHATIA Appellant
Through: Mr. Parshant Verma, Advocate.

versus

MR. RAMESH CHAND BHATIA Respondent
Through: Mr. Rajeshwar 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 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 5.3.2010. The impugned judgment and decree is a final decree in a suit for partition. A preliminary decree was passed way back on 10.3.1997, and , which admittedly became final as the same was never challenged. By the preliminary decree, both the parties being the two brothers were declared as equal co-owners of the suit property being 7/30, Roop Nagar, Delhi, and proceedings were then to take place for partitioning of the suit property by metes and bounds or for

other steps required so as to pass a final decree.

2. The impugned judgment notes that there is a front portion of the property and a back portion of the property. Before I proceed ahead, I must note that when legally we talk of partition by metes and bounds it means division is equal in terms of value with respect to the shares to be allotted i.e. partition is not simply area-wise but there has to be equivalence in terms of value to be allotted. In this case, the property is 646 sq. yds. The appellant/defendant is occupying the front portion of the property and is obdurately refusing to give any front portion of the property to the other equal co-owner/brother/respondent/plaintiff. The trial Court has noted that the respondent/plaintiff is agreeable to take the back portion but the respondent/plaintiff must be compensated in terms of the value but this proposal was not acceptable to the appellant/defendant who is advantageously residing in the front portion of the property. The appellant/defendant has refused to give any compensation for taking front portion of the property if the back portion is allocated to the respondent/defendant in the final partition. Further, the trial Court has also noted in the impugned judgment that if the property is vertically partitioned, the respondent/plaintiff has agreed to bear the costs with respect to his own sewage line and other necessary requirements so as to

independently enjoy his portion of the property.

3. I do not find that there is any illegality or any inequity caused by the impugned judgment and decree which gives half of the front portion to the respondent/plaintiff and half of the front portion to the appellant/defendant. The same is the position so far as the back portion is concerned inasmuch as half of the back portion goes to the respondent/plaintiff and half of the back portion goes to the appellant/defendant by the impugned judgment.

4. Learned counsel for the appellant argues that the appellant was entitled to costs incurred by him towards getting the property vacated from different persons. In my opinion, this was an issue which had to be necessarily urged before the preliminary decree was passed. If this issue was raised, the preliminary decree would have directed any assumed compensation which the appellant/defendant was entitled allegedly on account of the appellant/defendant getting certain portions of the property vacated. However, the preliminary decree simply and only declared both the brothers/plaintiff and defendant to be equally co-owners of the property, and there is no direction therein of any payment to the appellant/defendant. This preliminary decree having not been appealed from, has become final and therefore the issues which have to be urged

before passing of the preliminary decree cannot be urged in the final decree proceedings.

5. It is obvious that the appellant/defendant is unnecessarily causing harassment to the respondent/plaintiff/other brother. The trial Court has discussed the reasonableness of the respondent/plaintiff and the unreasonableness of the appellant/defendant. Neither is the appellant/defendant ready to compensate the respondent/plaintiff for taking back portion of the property nor is agreeable to the vertical partition which will be a fair division for equal distribution of the value of the property. Further, in my opinion, the respondent/plaintiff was in fact entitled to be paid charges/amounts by the appellant/defendant because the appellant/defendant has benefit of entire sewage lines and other municipal amenities with respect to his portion of the property but the respondent/plaintiff has to incur costs for creating these amenities. Obviously, the appellant/defendant wants to continue his physical possession of the front portion of the property to the detriment of the respondent/plaintiff.

6. The Supreme Court recently in the case of *Ramrameshwari Devi and Others v. Nirmala Devi and Others*, (2011) 8 SCC 249 has held that it is high time that actual and realistic costs be imposed in order to pre-

empt and prevent dishonesty in litigation. The Supreme Court has also said that actual costs must be imposed keeping in view the facts of the case including the time spent in litigation. The Supreme Court has made the following pertinent observations in this regard:

“43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh v. State of Punjab* (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved

if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These

appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.”

(underlining added)

Earlier to the judgment of *Ramrameshwari Devi (supra)*, a Division Bench of three Judges of the Supreme Court in the case of *Salem Advocate Bar Association Vs. Union of India, (2005)6 SCC 344* in para 37 has also observed that it is high time that actual costs must be awarded. I am also empowered to impose actual costs by virtue of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*.

7. Accordingly, I dismiss the appeal with actual costs which I quantify to be ₹ 50,000/-. Costs shall be paid within a period of four weeks from today. Appeal is dismissed and disposed of accordingly. Trial Court record be sent back.

VALMIKI J. MEHTA, J

JANUARY 30, 2012
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