

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

+ **RFA No.365 /2008**

% **10th February, 2012**

SHRI VIJAY KUMAR Appellant

Through: Appellant in person.

VERSUS

M/S PRAHLAD SWAROOP ANIL KUMAR & ORS. Respondents

Through: Respondent No.4 in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. In spite of third call, the counsel for the appellant is not present.
2. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 7.1.2008 dismissing the suit for partition filed by the appellant/plaintiff.
3. With respect to the claim for partition of two properties being two shops, the trial Court has observed that the appellant/plaintiff had filed earlier

suits for both these shops. One suit was dismissed on merits with respect to one shop bearing No.374, Old Post Office Street, Sadar Bazar, Delhi and therefore qua that shop the suit was held to be barred under Order 2 Rule 2 CPC. The present suit was held to be barred under Section 34 of Specific Relief Act, 1963 inasmuch as the appellant/plaintiff was not in possession of the shop but a third party who had purchased the shop i.e. respondent No.4, is in possession. So far as another shop bearing no.2111-2112, Basti Peepal Wali, Sadar Bazar, Delhi is concerned, the trial Court notes that the present suit cannot be filed when the earlier suit is pending and which is therefore barred under Order 2 Rule 2 CPC. With respect to the second shop bearing No.2111-2112, Basti Peepal Wali, Sadar Bazar, Delhi, the appellant/plaintiff was not in possession and therefore the suit was also held to be not maintainable under Section 34 of the Specific Relief Act, 1963. Except with respect to aforesaid two shops, decree for partition was passed in favour of the appellant/plaintiff giving the appellant/plaintiff 1/6th share in the third property bearing No.2112, Basti Peepal Wali, Sadar Bazar shown red in site plan.

4. The trial Court has also recorded that the appellant/plaintiff is abusing the process of law as various other legal proceedings were filed but were not pursued such as a petition under Section 14(1)(a) of the Delhi Rent

Control Act, 1958 for realising of rent and also proceedings under Section 19 of Slum Areas (Clearance & Improvement) Act, 1956. The trial Court has noted certain pertinent admissions made by the appellant/plaintiff in his cross-examination in para 7 and 8 of the impugned judgment which read as under:-

“7. Sh. Vijay Kumar Aggarwal the plaintiff appeared as his own witness and tendered his evidence by way of affidavit defendant 4.8.2005 wherein, he reiterated the facts stated in his plaint. He also stated that the sale deed executed by defendants no.1 to 7 in favour of Sh. Anil Kumar Gupta and Sh. Gurdeep Singh are illegal as they have been executed without his knowledge and consent. He admitted having filed two separate civil suits for challenging the validity of the sale deed dt.27.11.95 and 29.11.91. He also deposed having demanded his 1/6th share from the defendants in respect of suit property on 9.4.2004 and 10.4.2004 on account of one of the legal heirs of Sh. Dauji Ram having 1/6th share therein. He has proved site plan Ex.PW1/1 and Ex.PW1/2 besides his identity papers and certified copies of the sale deed executed in favour of defendant no.9 and defendant no.8 as mark A & B respectively. He tendered his affidavit in evidence and appeared as PW1 on 30.9.2005. Before I refer to some portion of his cross-examination I may take note of the averments made by the plaintiff in paragraphs 4 and 5 of his plaint which is reproduced for the sake of reference:-

“that one shop at Ground Floor of Late Shri Dauji Ram, of said property no.2111-2112, more particularly shown in green colours in site plan attached was sold by defendant no.1,2,3,4 & 6 to defendants no.9 through its Partners Shri Anil Kumar Gupta, illegally on 27.12.1995 vide registered sale deed without my knowledge and consent. It is pertinent to mention herein that defendant no.9 i.e. M/s Prahlad Swaroop Anil Kumar was already a tenant in the said shop under me and defendant no.1 to 7. M/s Prahlad

Swaroop, Anil Kumar was having 2 partners i.e. Shri Anil Kumar Gupta and Shri Prahlad Swaroop. Shri Prahlad Swaroop died on 12.8.2003 leaving behind LRs i.e. Anil Kumar Gupta his son, his another son i.e. defendant no.10 one daughter i.e. defendant no.11. That, it is further pertinent to mention herein that defendant nos.1,2,3,4,6 and 7 sold out another property of late Shri Dauji Ram i.e. shop no.374, Old Post Street, Sadar Bazar, Delhi, on 29.11.1991, vide registered sale deed to defendant no.8 i.e. Shri Gurdip Singh who was already a tenant in the said shop under me and defendant no.1 to 7 illegally and without my knowledge and consent. Both, the registered sale deeds dated 27.12.1995 and dated 29.11.1991 have already been challenged by me by filing civil suits for cancellation of above said 2 registered sale deeds, out of which are pending in the Id. Court of Civil Judge, Delhi.”

8. Now I would refer to some of his cross-examination

“It is correct that prior to the present suit I had filed a suit for cancellation of sale deed Mark B. It is correct that the said suit was dismissed. The copy of the judgment is Ex.PW/D8A. It is correct that the shop which is the subject matter of the suit bearing No.374 Old Post Office street Sadar Bazar Delhi is not in my possession. It is correct that the present suit has been filed after the previous suit No.47/03 which was decided by the court of Ms. Varinda Kumari Ld. Civil Judge, Delhi. It is also correct that no appeal has been filed after the dismissal of the aforesaid suit No.47/03. It is correct that I have never received rent from defendant No.8. Vol there is no question of receiving any rent. The case with respect to cancellation of sale deed Mark B has finally disposal off by the Court of Ms. Virnda Kumari, Ld. Civil Judge, Delhi.

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It is correct that plaint filed by me in the court of Ms. Virnda Kumari is Ex.PW1/D8-B. It is wrong to say that my prayer of partition made in the present suit was not made in the earlier suit filed before Ld. Civil Judge, as afore mentioned.

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It is correct that I had filed an application under Slum Area Improvement & Clearance Act before Ms. Shail Jain Competent Authority Slum. I do not know the fate of that application. It is wrong to say that the permission was not granted. It is correct that I had filed another suit in the court of Ms. Sukhvinder Kaur Ld. Civil Judge, Delhi. I do not know the fate of that case also. I do not know whether the petition Under Section 14(1) (a) filed by me in the court of Ms. Deepa Sharma has not been withdrawn by me. The same had not been withdrawn by me. I am not aware whether my attorney had withdrawn the suits pending in the court of Ms. Deepa Sharma and Shri Pardeep Chada the then Ld. /addl. Rent Controller, Delhi. I did not apprise my Advocate about the fate of the previous cases at the time of drafting of the present plaint. It is wrong to say that I have intentionally filed the present case only with a view to harass the defendant no.8. It is wrong to say that I have no right title or interest in shop No.374, Old Post Office Street, Sadar Bazar, Delhi.”

(underlining added)

5. It may also be noted that two shops which the appellant/plaintiff states were wrongly sold by means of title deeds, which are of the year 1991 and 1995 i.e. on 29.11.1991 and 27.11.1995, and therefore, the present suit which was filed on 5.5.2004 for challenging these sale deeds will be in fact barred under Article 59 of the Limitation Act, 1963, having not been filed within three years, inasmuch as the appellant/plaintiff had knowledge of these

sale deeds right from the beginning. This knowledge of the sale deeds since beginning has been proved of the appellant/plaintiff in the earlier suit which was filed with respect to shop No. 374, Old Post Office Street, Sadar Bazar, Delhi.

6. In view of the above, the present appeal is an abuse of process of law. The appellant is present in person, however, as already noted above in spite of repeated pass overs, the appeal is not being argued. The appellant/plaintiff not being in possession the suit for partition was clearly barred under Section 34 Specific Relief Act. Also the suit was barred as an earlier suit for one shop was already dismissed and for the second shop a suit was pending. The appellant/plaintiff has been found to be unnecessarily indulging in litigation. The suit is also held barred under Article 59 of the Limitation Act as in 2004, as the sale deeds of 1991/1995 cannot be challenged.

7. In view of the aforesaid, there is no merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

FEBRUARY 10, 2012

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