

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

% *Date of Decision: March 07, 2012*

+ **RFA(OS) No.80/2007**

ASHOK KUMAR SHARMA & ORS. Appellants
Represented by : Appellant No.1 in person.

versus

RAM PARSHAD ROHTAGI & ORS. Respondents
Represented by : Ms.Amrit Kaur Oberoi,
Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. RFA(OS) No.80/2007 has been filed by the appellants Ashok Kumar Sharma and Anil Kumar Sharma, both sons of Late Sh.Nand Lal Sharma impleading Ram Parshad Rohatgi (plaintiff in CS(OS) No.2646/1998) as respondent No.1 and other legal heirs of Late Sh.Nand Lal Sharma as respondents No.2 to 6. Anil Kumar Sharma was a bachelor and died during pendency of the appeal. Since all the legal heirs of Late Sh.Nand Lal Sharma are already on record and infact in the appeal, the relief, if any, has been claimed only against respondent No.1 Ram Parshad Rohatgi (as CS(OS) No.2646/1998 filed by him was decreed), appeal was heard as no further substitution was required.

2. The appellant has placed on record written submissions.

3. Submission made by learned counsel for respondent No.1 is that the appeal is barred by limitation and there is no application seeking condonation of delay, hence on this score alone the appeal is liable to be dismissed.

4. The appellant Ashok Kumar Sharma is litigating in person. Efforts of the Court to provide him legal assistance proved futile. Proceedings reveal that on 04.12.2007 Sh.Rakesh Tikku, Advocate (now Senior Advocate) graciously offered to do this matter pro bono with a view to assist the appellant but could not succeed.

5. Another attempt was made by the Court on 03.10.2008 by requesting Mr.R.M.Sinha, Advocate to appear as an Amicus Curiae on behalf of the appellant to assist the Court. He also submitted before the Court on 14.07.2009 that he had faced considerable difficulty in obtaining instructions from the appellants who are present in person. The appellants Ashok Kumar Sharma and his brother Anil Kumar Sharma (now dead) submitted that they shall argue the appeal themselves, hence Mr.R.M.Sinha, Advocate was discharged.

6. A perusal of provision of order 41 Rule 3A CPC shows that when an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the

Court that he had sufficient cause for not preferring the appeal within such period.

7. Noting here that the appellant is not even clear in the appeal as to what he is impugning nor ready to understand the implication of non-filing of application under Section 5 of the Limitation Act requiring him to give reasons for condonation of delay, we are left to deal with a situation where the appellant is neither willing to avail legal assistance nor understand the meaning/effect of the various orders referred to by him in the written submissions. Mere claiming before the Court that he is a poor person but not even ready to avail any legal assistance at the expenses of High Court Delhi Legal Service Authority, has left us to find out for ourselves what the appellants intend to convey and deal with the contentions made in the written submissions ourselves on the basis of record. The prayer made in the appeal can give us some clue about the order impugned, hence the prayer made in this appeal is extracted as under:-

*'It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased **to see the circumstances and poor condition of the plaintiff pass the decree order in the favour of plaintiff and against the defendant No.1 (tenant) on the basis of the order dated 01.08.2003 by the Hon'ble Mr.Justice D.K.Jain and base the written argument dated 27.07.2005 or submission dated 15.12.2005. Please pass the appeal against the decree order dated 05.07.2006. Regular first appeal base of the last judgment dated 14.09.2007.***

This Hon'ble Court may be pleased such the further orders as may be complete justice on the facts and circumstances of the case.'

8. Since the contentions are in unsystematic and illogical manner, we are left with no option but to deal with the same

in the manner they have been raised. Which order is under challenge? It is not clear.

9. After going through the appeal file, we feel convinced that infact the appellant impugned the order dated 05.07.2006 in CS(OS) No.2646/1998 whereby the learned Single Judge held that plaintiff was the joint owner of the property in question having half share therein and that he was not a tenant in the property as alleged by the defendants. It was further held that since undisputedly the plaintiff (in CS(OS) No.2646/1998 i.e. Ram Parshad Rohatgi) and defendants were in possession in the respective portions which is virtually equal and that when both the parties were having equal share in the property and possession of the respective portion also comes to half, there was no necessity to first pass a provisional decree of partition and then get it partitioned by metes and bounds. The common portion consisting of courtyard, latrine and bathroom was held to be in their common share.

10. The appeal has been filed on 26.11.2007 i.e. almost after a delay of more than 1 year and 3 months. The issue of limitation was raised before the Court on 22.01.2009 and at that time, the appellants claimed that the appeal was within time as order dated 14.09.2007 was also being challenged. Here suffice it to say that the order dated 14.09.2007 is in I.A.No.10516/2007 in CS(OS) No.2646/1998 which was already decided on 05.07.2006. While disposing of I.A.No.10516/2007, the Court has observed that **from a reading of the application it is difficult to make out**

what the defendants seek to allege. Observing that the application seems to be an endeavour to re-agitate the same issue, which was not permissible, it was dismissed. Obviously appeal could not have been filed impugning the order dated 14.09.2007 and hence the appeal cannot be claimed to be within limitation on the strength of above noted order.

11. Taking the issue of limitation, on the face of it the appeal is barred by limitation. We are not even having an application under Section 5 of the Limitation Act before us to consider the grounds for condonation of delay. The appellant is not ready to move this application despite being explained by the Court time and again and best legal assistance being provided. The Court in the given circumstances could only make him aware the necessity to file an application seeking condonation of delay. The appellant wants the limitation to be computed w.e.f. 14.09.2007 i.e. from the date of passing or order in I.A.No.10516/2007 which is not legally permitted as the limitation has to be computed from the date of passing of impugned judgment and decree. On failure of the appellant to move the application under Section 5 of Limitation Act seeking condonation of delay, the appeal is liable to be dismissed on this score alone.

12. Since the appellant is arguing in person and filed written submissions, instead of dismissing the appeal on technical ground i.e. barred by limitation, we proceed to deal with the various contentions raised before us as per the written submissions.

13. In the written submissions, the appellant has contended that record of any history always comes from the past old days to the present but not that the new history found to be recorded in the old history. It has been contended that the last record shows that Ram Prashad Rohatgi (respondent No.1 in the appeal) was and is a tenant from the very beginning and nothing else as per order dated 01.08.2003 passed by Hon'ble Mr.Justice D.K.Jain.

14. Suffice it would be refer the order dated 01.08.2003 passed by Hon'ble Mr.Justice D.K.Jain on IA No.4883/2002 filed in CS(OS) No.2646/1998 by Ram Parshad Rohatgi seeking correction of typographical error in the statement of PW-5 (Ram Parshad Rohatgi) recorded on 09.01.2002 as in the suggestions given 'not' is missing. IA No.4883/2002 was dismissed observing as under :-

'It is evident from the relevant lines, wherein the word "not" is sought to be incorporated, that the answer by the witness, in the negative, was to a suggestion put by learned counsel for the defendant, whose case through has been that the plaintiff was a tenant in the subject property. Perhaps the applicant is reading these lines out of context. The application is misconceived and is accordingly dismissed with costs quantified at `1000/-'.

15. Another contention raised is that in CS(OS) No.2646/1998, on behalf of defendants, Sh.Surinder Kumar Sharma and Anil Kumar Sharma (defendants No.1 and 4 respectively in CS(OS) No.2646/1998) appeared as witnesses. After the death of Sh.Surinder Kumar Sharma – defendant No.1, Sh.Anil Kumar Sharma – defendant No.4 (also appellant No.2 in this appeal) has every legal right to ask for the decree in his favour and that none of the other

defendants in CS(OS) No.2646/1998 has any right to change the statement given by defendants No.1 to 6.

16. As can be gathered prima facie, if there is some inter se dispute between the legal heirs of Late Sh.Nand Lal Sharma in respect of their interest in property No.G-41, Radhey Puri, New Delhi owned by Late Sh.Nand Lal Sharma, that cannot be subject matter of this appeal.

17. Reference in the written submission has also been made to CS(OS No.1426/2007 contending that the decree in both the suits were passed on the basis of wrong statement given by the respondents and that the actual owner of the disputed property was Late Sh. Nand Lal Sharma – father of the appellants and respondents No.2 to 4. We are constrained to refer to the decree passed in CS(OS) No.1426/2007 just with a view to deal this aspect.

18. CS(OS) No.1426/2007 was filed by Smt.Beena Sharma, widow of Sh.Surinder Kumar Sharma and their son Pankaj Sharma seeking partition from other legal heirs of Late Sh.Nand Lal Sharma. Sh.Ram Parshad Rohatgi (plaintiff in suit No.2646/1998) was only a proper party in that case and no relief was claimed against him. The suit was decreed by learned Single Judge proceeding to pronounce the judgment under Order 15 Rule 1 CPC as the parties were not at issue. So the judgment rendered by learned Single Judge in CS(OS) No.1426/2007 on 04.08.2008 which is mainly for inter se partition among the legal heirs of Late Sh.Nand Lal Sharma, in respect of half portion of plot No.G-41, Radhey Puri, Delhi, has no bearing on disposal of this appeal.

19. Another submission made by appellant is that the possession over the entire property in dispute has taken and has got done with the help of the tenant Sh.Ram Parshad Rohatgi. The decrees dated 05.07.2006 and 04.08.2008 show that the history is made from the present to past. Respondent No.1 Sh.Ram Parshad Rohatgi has been done the owner of the entire property in dispute and the owners have been made as his servants. He want to grab the property after the death of Sh.Nand Lal Sharma in 1958 and that the decrees dated 05.07.2006 and 04.08.2008 and notice dated 06.01.2009 shows that respondent No.1 Ram Parshad Rohatgi may legally do to what extent and dispossess the actual owners of the property.

20. Perusal of the impugned order shows that Ram Parshad Rohatgi was declared owner in respect of 50% of property No.G-41, Radhey Puri, New Delhi in a suit for partition filed by him. The judgment in CS(OS) No.1426/2007 again makes it clear that remaining 50% portion of the property is with the legal heirs of Late Sh.Nand Lal Sharma. So where is the question of Ram Parshad Rohatgi taking possession of the entire property by dispossessing the legal heirs of Late Sh.Nand Lal Sharma.

21. Another contention raised is that the order dated 05.07.2006 passed by Hon'ble Mr.Justice A.K.Sikri in favour of, after the death of Sh.Surinder Kumar Sharma who was expired on 14.02.2006.

There is no force in the contention, as the judgment and decree dated 05.07.2006 has been passed on the

strength of documents produced and proved by the plaintiff some of which were even executed by Late Sh.Nand Lal Sharma admitting the joint ownership of Sh.Ram Parshad Rohatgi in property No.G-41, Radhey Puri, New Delhi.

22. Reference has also been made in the written submissions of the order passed by one of us (Pradeep Nandrajog, J.) on IA No.9182/2006 in CS(OS) No.2646/1998. The matter was ordered to be posted on 25.08.2006 before Hon'ble Mr. Justice A.K.Sikri by this order.

23. On 25.08.2006 IA No.9182/2006 was disposed of by Hon'ble Mr.Justice A.K.Sikri observing that by means of this application, the applicants have filed objections to the judgment and decree dated July 5, 2006 and that if the applicants have any grievance, the remedy available to them is to file appeal against the said judgment. The application was dismissed as not maintainable.

24. After referring to the various orders referred to in the written submissions and the effect thereto, now we proceed on the assumption that in RFA No.80/2007 the appellants have impugned the order dated 05.07.2006 passed by learned Single Judge in CS(OS) No.2646/2007. In order to appreciate the various contentions, it is necessary to refer the case of the plaintiff as presented by him before learned Single Judge and the documents proved in that suit on the basis of which a decree was passed in his favour.

25. The case of the plaintiff in CS(OS) No.2646/1998 was that property bearing No.G-41, Radhey Puri, New Delhi was purchased jointly by him and Late Sh.Nand Lal Sharma as

they were very close friends. Since they were living in rented accommodation, they decided to buy a plot bearing No.G-41,Radhey Puri, New Delhi from International Land and Financial Company Ltd., a colonizer. Initial payment was made by them jointly but due to inter se disputes in the colonizer company, transfer documents like sale deed could not be executed in their favour though they were put in possession. They jointly constructed ground floor and one room on the roof top. The site plan annexed with the plaint reflected green portion in possession of plaintiff, red in possession of legal representatives of Late Sh.Nand Lal Sharma and blue portion comprising of courtyard, latrine and bathroom in common possession. As there were no title deeds in favour of the plaintiff and Late Sh.Nand Lal Sharma executed by colonizer, to acknowledge joint ownership Sh.Nand Lal Sharma executed an agreement dated 06.01.1956 Ex.PW5/2 with the recital that the property was purchased by them jointly having 50% share each and construction has also been raised jointly on the said plot. During his life time, Sh.Nand Lal Sharma also executed a mortgage deed in respect of his half portion with Sh.Hari Ram to secure the loan taken from Sh.Hari Ram. After the death of Sh.Nand Lal Sharma in November, 1958, suit bearing No.304/1964 titled as Hari Ram Vs. Kamla Devi & Ors. for recovery of the loan taken by Sh.Nand Lal Sharma, secured by mortgaging his 50% share in property No.G-41, Radhey Puri, New Delhi, was filed by Hari Ram against the widow and other legal heirs of Late Sh.Nand Lal Sharma.

The suit was decreed on the basis of statement made by the widow on her behalf and on behalf of minor legal heirs as well as counsel for all the defendants.

26. There was another civil litigation between Lala Kishan Chand and the plaintiff Ram Parshad Rohatgi i.e. Suit No.122/1957 titled as Kishan Chand vs. Ram Parshad, for recovery of the price of timber supplied by the plaintiff to the defendants at the time of construction at Plot No.G-41, Radhey Puri, New Delhi. Sh. Nand Lal Sharma, predecessor in interest of the appellant, appeared as a witness for Sh.Ram Parshad Rohatgi admitting the correctness of the ledger book maintained for purpose of expenses incurred on construction of that plot and also stating that they had jointly purchased the timber for raising construction on the plot owned by them (Ram Parshad Rohatgi and Late Sh.Nand Lal Sharma) admitting not only the written agreement Ex.PW5/2 but also that cost of construction was shared by them equally.

27. In CS(OS) No.2646/1998 witness from Sub-Registrar Office was also summoned by the plaintiff Ram Parshad Rohatgi (respondent No.1 in this appeal) to bring the mortgage deed executed by Late Sh.Nand Lal Sharma in respect of his half share with Pw-4 Sh.Hari Ram.

28. In CS(OS) No.2646/1998 the plea taken by the appellants and other legal heirs of Late Sh.Nand Lal Sharma, who were defendants, was that Sh.Ram Parshad Rohatgi was a tenant and that Sh.Nand Lal Sharma owned the entire plot No.G-41, Radhey Puri, New Delhi. Learned Single Judge

considered the documents i.e. agreement dated 06.01.1956 Ex.PW5/2 between the plaintiff Ram Parshad Rohatgi and Sh.Nand Lal Sharma, mortgage deed dated 08.05.1957 Ex.PW2/1 executed by Sh.Nand Lal Sharma in favour of Sh.Hari Ram, statement of Sh.Nand Lal Sharma recorded as DW-1 in Suit No.122/57 titled as Kishan Chand vs. Ram Parshad decided on 25.11.1958 and ledger accounts and cash book Ex.PW5/3A to J to arrive at the conclusion.

29. While discussing the authenticity of the agreement Ex.PW5/2A, learned Single Judge held that Sh.Nand Lal Sharma had in no uncertain terms, mentioned therein that the plot in question had been purchased jointly and both had paid the consideration of ₹550/- though the receipt was in the name of Sh.Nand Lal Sharma only. Both had spent equal amount on the construction of the house on the said plot and both were owners of the said house. The agreement also stipulated that if the company will execute the sale deed, then names of both the parties will be mentioned in the sale deed as purchasers of plot No.G-41, Radhey Puri, New Delhi. Learned Single Judge has also referred to the statement of Late Sh.Nand Lal Sharma while appearing as a defence witness in Suit No.122/1957 filed by Lala Kishan Chand against Sh.Ram Parshad Rohatgi for supply of timber for construction of that plot. During his examination as defence witness, Late Sh.Nand Lal Sharma not only admitted that timber was used for construction on the plot purchased and being constructed by both, correctness of accounts maintained about the cost of construction being incurred

was also admitted. Mortgaging 50% share in plot No.G-41, Radhey Puri, New Delhi with Sh.Hari Ram through registered mortgage deed is another consistent conduct by Sh.Nand Lal Sharma acknowledging the property to be owned by him and Ram Parshad Rohatgi.

30. Here it is worth mentioning that mortgaging the property was not a sham transaction which was done through registered mortgage deed. Not only that even a civil suit was also filed for recovery against legal heirs of Sh.Nand Lal Sharma. In that suit, conceding the claim of plaintiff, the defendants who were legal heirs of Sh.Nand Lal Sharma and their counsel made the following statement :-

'Statement of Smt.Kamla Wati defendant on S.A. for herself and on behalf of defendants 3 to 7 minors on S.A. and Shri Partap Singh, Senior Advocate without affirmation for defendants 1 to 7.

State that a decree be passed in favour of the plaintiff for ₹2231,25p with cost of the court fee according to mortgage deed Ex.P/1 against us. This is benefit for the minors. If I deposit ₹2100/- in all in the court or paid to the plaintiff after getting the receipt then the decree shall be fully satisfied.'

31. The appellant and respondents No.2 to 6 could claim their title only through their father Late Sh.Nand Lal Sharma. They were minors at the time of death of their father in November, 1958. Suit No.304/1964 filed against the widow and other legal heirs referred to above again is an acknowledgment by the widow that Sh.Nand Lal Sharma had only 50% share in plot no.G-41, Radhey Puri, New Delhi which he mortgaged with Sh.Hari Ram and that suit was decreed. There is absolutely no evidence available on record to shows that at any point of time Sh.Ram Parshad

Rohatgi was a tenant under their father in the suit property. Learned Single Judge has rightly come to the conclusion that Ram Parshad Rohatgi (plaintiff in CS(OS) No.2646/1998) is the joint owner in property in question having half share therein and even as per site plan the property stood equally divided with common portion like courtyard, latrine and bathroom in common use.

32. We have undertaken this mammoth exercise of dealing with all the contentions raised before us after making an effort to comprehend what the appellants want to convey, fully conscious of the fact that this appeal is barred by limitation and is not even fit for admission in view of incomprehensible drafting, irrelevant and illogical contentions.

33. Finding no illegality or infirmity in the impugned order and being barred by limitation, the appeal is dismissed.

34. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MARCH 07, 2012
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