

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

% *Judgment Reserved on : April 10, 2012*
Judgment Pronounced on : May 04, 2012

+ RFA (OS) 75/2007

SHIKHA SHARMA & ORS Appellants
Represented by: Mr.B.B.Sawhney,
Sr.Advocate instructed by
Mr.Sunil Kumar, Advocate.

versus

DALJIT SINGH & ORS Respondents
Represented by: Mr.Arun Kumar Varma
with Ms.Mansi Wadhwa and
Mr.Ashish Bansal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. Present appeal assails judgment and decree dated 31st August, 2007 passed by the learned Single Judge in a suit for partition, rendition of accounts and permanent perpetual injunction.

2. The facts as are necessary for the determination of the present appeal are as adumbrated below:-

- (i) The dispute revolves around a property belonging to late Shri Prem Singh Bedi, the father of the litigating parties. That his relations with his wife were not cordial is a fact not in dispute between the parties and that some children resided with their mother and the other with late Shri Prem Singh is also not in dispute.
- (ii) It is the case of the appellants that on the death of the father of late Shri Prem Singh Bedi in the year 1916, he

became the Karta of a joint Hindu family having property bearing No.524, Mohalla Lotian, Bazar Ganj Gali Kotla, Peshwar City, Pakistan, which belonged to his father and devolved upon late Shri Prem Singh Bedi.

- (iii) It is the admitted case of the parties that the maternal grandfather of late Shri Prem Singh Bedi, purchased a house in Peshawar, which also devolved on late Shri Prem Singh Bedi on the death of the former.
- (iv) On partition of the country in 1947, late Shri Prem Singh Bedi came to Delhi and was assessed to a compensation claim in sum of ₹4,666/- for the properties which he left behind in Pakistan. The compensation claim was assessed by taking half share in property No.524, Mohalla Lotian, Bazar Ganj, Peshawar inasmuch as the other half-share was that of his brother Raghubir Singh Bedi as also the property which was inherited by Prem Pal Singh Bedi through his maternal grandfather.
- (v) The order assessing the compensation Ex.PW-2/1 dated April 26, 1951 notes that the construction on half property No.524, Mohalla Lotian, Peshawar was from out of the funds of late Shri Prem Singh Bedi.
- (vi) The property in dispute i.e. shop No.30, Central Market, Lajpat Nagar-II was allotted to Prem Singh Bedi for a consideration of ₹4,003/- and the amount was adjusted from the compensation assessed in his favour in sum of ₹4,666/-.

3. Whereas appellants claimed that Prem Singh Bedi died intestate and hence all his children were entitled to an equal share in all the properties left behind by him, and staked a claim for partition of various properties, including Shop No.30, Central

Market, Lajpat Nagar-II, New Delhi, the respondents asserted a right under a Will dated July 27, 1982 and disputed the extent of properties left behind by their father. In rejoinder, the appellants took a stand that the Will propounded was not the last legal and valid testament executed by their father, alternatively pleading, that if the Will was executed, it would operate only with respect to the personal share of their father in the joint family properties.

4. On the pleadings of the parties, the following issues were settled:-

1. To what extent of share in the property the plaintiffs are entitled to? OPP.
2. Whether Sardar Prem Singh Bedi was capable of executing a Will and if so to what extent? OPP.
3. Whether the properties mentioned in the Schedule of properties are joint family properties as purchased from Joint Family Funds.
4. Whether the Will dated 27th July, 1982 of Sardar Prem Singh Bedi is genuine? OPD.
5. Whether the property shop No.30, Central Market, Lajpat Nagar, Delhi was allotted to Sardar Prem Singh Bedi in lieu of claim property? OPP.
6. Whether the properties Double Storey House at A-49, Lajpat Nagar, New Delhi and Flat No.23, Central Market, Lajpat Nagar II, New Delhi (shown as no.1 and 2 in the schedule of properties) have been acquired by defendant No.1 and 2 by separate funds? OPD.
7. Whether the defendants are liable to render the accounts of Joint Family Business and Properties? OPD.
8. Relief?

5. The learned Single Judge vide the impugned order decided all the issues against the plaintiffs and consequently, dismissed

the suit with costs.

6. Aggrieved by the impugned judgment dated 31st August, 2007 the appellants have preferred the present appeal.

7. On the 13th November, 2007 when the appeal came up for admission, the Division Bench recorded the following order:-

“Counsel for the appellant on instructions from the appellant submits that the appellant confines the claim in appeal to Shop No.30, Central Market, Lajpat Nagar-II, which according to him was acquired out of the funds wherein the nucleus of the ancestral funds are also utilised. Counsel submits that the learned Single Judge in holding that the deceased had carried out the construction from his own funds had overlooked the fact that the deceased, Sh.Prem Singh Bedi, who was at Peshawar at the relevant time, was around of 10 years of age only.

Issue notice to show cause as to why the appeal be not admitted confine to the appellant's claiming a share in Shop No.30, Central Market, Lajpat Nagar-II, New Delhi on the basis that for the acquisition of the said property a nucleus of the ancestral fund was utilised.

Renotify on 18th February, 2008.”

8. On the 10th April, 2012, we heard the present appeal finally and penned the following order:-

“1. Arguments heard.

2. It is urged by learned counsel for the appellant that Ex.PW-2/1, being the order dated April 26, 1951, would reveal that Late Sardar Prem Singh Bedi was held entitled to a claim assessment in sum of ₹12,608/-. The same is the

sum total of ₹2,608/- and ₹10,000/-. It is urged by learned senior counsel for the appellant that Ex.PW-2/1 would reveal that whereas assessment claim in sum of ₹2,608/- is relatable to the house acquired by Late Sardar Prem Singh Bedi from his father, ₹10,000/- is directly linkable to the house which he had acquired from his maternal grandfather.

3. With reference to the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, learned senior counsel, in the context of Appendix VIII to the Rules, highlights that for claim assessed in sum of ₹12,000/- compensation payable is ₹2,400/- and grant payable is ₹2,296/-. Total amount payable would be ₹4,666/-.

4. With reference to Ex.P1, the Conveyance Deed, pertaining to Shop No.30, Lajpat Nagar, learned senior counsel urges that the value at which the shop was allotted to late Sardar Prem Singh Bedi was ₹4,003/- i.e. within the amount payable.

5. Learned senior counsel urges that with reference to the sum of ₹2,608/- and ₹10,000/- which have resulted in compensation being assessed in sum of ₹4,666/-, the ratio of the property inherited by late Sardar Prem Singh Bedi from his father would be 20.68% and the remainder would be from what he acquired by way of inheritance from his maternal grandfather.

7. Learned senior counsel would urge that the appellant accepts the Will executed by their father and also the personal nature of the interest in the shop relatable to what he acquired from his maternal grandfather and thus urges that under the Will, late Sardar Prem Singh Bedi could have made a bequest of 79.32% in the shop which was his personal interest plus another 2.58% which would be his personal interest with reference to 20.68% for the reason when he died in the year 1991 a deemed partition would take place in which he, his six sons and his wife would each be entitled to 1/8th share.

8. Extending the arguments further, learned

senior counsel would urge that excluding the 2.58% share of the deceased, with reference to 20.68% share in the total shop, 18.10% interest in the shop would liable to be partitioned amongst the 10 children of the deceased for the reason even the mother is dead and in this way the appellants would be entitled to 1.81 % share each in the property and so would be the interest of respondent No.5 and 6.

Learned senior counsel urges that in terms of the order dated November 13, 2007 the appellants restrict their claims as aforesaid only in Shop No.30, Central Market, Lajpat Nagar, Part-II.

9. Learned counsel for the contesting respondents has relied upon four judgments to bring home the point that where there is a personal property of a person and he has acquired an ancestral property; both of which merge into a third property, the entirety of the third property is to be treated as the self acquired property of the person concerned. They are:

(i) AIR 1938 Lahore 180 Labh Singh & Anr. Vs. Mt Jasso & Anr.

(ii) AIR 1964 SC 1821 Mara & Ors. vs. Nikko & Ors.

(iii) R.S.A. No.149 of 1979 decided on 11.07.1991 Pholo Ram & Anr. Vs. Manohar Lal & Ors.

(iv) PLR Vol. CXXXVIII-(2004-3) Inder Singh (Dead) Through LRs vs. Chhano & Ors.

10. In rejoinder, learned senior counsel for the appellants submits that in view of the law declared by the Supreme Court in decision reported as 1997 (9) SCC 692 Parshotam Singh (Dead) Through LRs vs. Harbans Kaur & Anr., the property would not blend as urged, and ancestral and personal interest in the third property would exist in the ratio of value of the two properties.

11. Judgment reserved."

9. From the aforesaid order(s) dated 13th November, 2007 and 10th April, 2012, it is evident that the present appeal is confined to the appellants claiming a share in Shop No.30, Central Market, Lajpat Nagar-II, New Delhi on the basis that for the acquisition of the said property a nucleus of the ancestral fund was utilized.

10. Therefore, the issue that arises for consideration in the present appeal is: If there is a personal property of a person and he has acquired an ancestral property; both of which merge into a third property, can the entirety of the third property be treated ancestral.

11. In this behalf learned counsel appearing on behalf of the appellants relied upon the decision of the Supreme Court reported as 1997) 9 SCC 692 Parshotam Singh (Dead) vs. Harbans Kaur & Anr.

12. Per contra, learned counsel appearing on behalf of the respondents relied upon the following four judgments:-

- (i) AIR 1938 Lahore 180, Labh Singh & Anr. vs. Mt. Jasso & Anr.
- (ii) AIR 1964 SC 1821, Mara & Ors. vs. Nikko & Ors.
- (iii) RSA No.149/1979 decided on 11th July, 1991, Pohlo Ram & Anr. vs. Manohar Lal & Ors.
- (iv) PLR Vol.CXXXVIII-(2004-3), Inder Singh (Dead) vs. Chhano & Ors.

13. In Parshotam Singh's case (Supra), the facts were that one Harsukhjiti Singh had succeeded not only to the properties of his father but also to the properties held by his mother. Under these circumstances, the property which he inherited from his mother would be his self-acquired property; whereas the property succeeded through his father would assume the character of joint property. The Trial Court dismissed the suit filed for joint possession and declaration that the plaintiff was entitled to half the share in the property succeeded by the said Harsukhjiti Singh.

The decision of the Trial Court was affirmed by the Appellate Court which recorded a finding that since Harsukhjit Singh has blended his private property and the joint family property, it assumes the character of self-acquired property and, therefore, not partible. The Supreme Court held as under:-

“The view taken by the appellate court is clearly wrong in law. Though Harsukhjit Singh had blended the joint family property with his private property inherited from his mother, the joint family property still remains to be the joint family property until it is divided between the heirs of Harsukhjit Singh. The appellants being the heirs of the father of the respondents – Parshotam Singh, they are entitled to the half share in the property succeeded by Harsukhjit Singh from his father and the rest of the half share would go to the respondents.”

14. In Labh Singh's case (Supra) the Lahore High Court while holding that *‘if the Court is unable to find what proportion of land is ancestral and which is non-ancestral, the whole must be held to be non-ancestral’* observed as under:-

“In other words, if before consolidation he held 40 kanals ancestral and 60 kanals non-ancestral that out of his new consolidated holding 40 per cent should be recorded as ancestral and 60 per cent as non-ancestral. This indeed was the argument adopted by the learned trial Judge and it has undoubtedly the advantage of equity. But I do not myself see and the appellants counsel was unable to explain how this rule of proportion can be brought into line with any legal principle. Ever since the well known Privy Council ruling, 42 P R 1910 [Attar Singh vs. Thakkar Singh], the principle has been followed that if a Court is unable to find what proportion of land is ancestral and which is non-ancestral, the whole must be held to be non-ancestral.”

15. In Mara's case (Supra) the Supreme Court considered the issue whether the properties of Jhalli Jats of Tehsil Ludhiana were

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ancestral or non-ancestral and held as under:-

“Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral, portions cannot be separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in Avtar Singh v. Thakar Singh 35 I.A. 206. It was held by Mr. Justice Kapur (as he then was) in Indar Singh v. Gulzara Singh and others A.I.R. 1951 Pb. 345 basing himself upon Saif-ul-Rahman vs. Mohammad Ali Khan I.L.R. 9 Lah. 95 and Jagtar Singh v. Raghbir Singh I.L.R. 13 Lah. 165 that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent.

16. In Pohlo Ram's case (Supra) a learned Single Judge of the Himachal Pradesh High Court, following the decision of the Supreme Court in Mara's case (Supra) held as follows:-

“The property ceases to be ancestral if it comes into the hands of an owner otherwise than by descent or by reason merely of his connection with the common ancestor. In case the property is acquired by gift, it ceases to be ancestral except when the gift is made of ancestral property by the donor to the person/persons who would succeed to it by inheritance on his death and the gift amounts to acceleration of succession, that is, the donor completely effaces himself and makes a gift of his whole property to the entire body of heirs, who would be entitled to inherit it in the event of his death.”

17. In Inder Singh's case (Supra) a Single Judge of the Punjab and Haryana High Court came to the conclusion that if ancestral and non-ancestral part of the land has been mixed in such a way that it is difficult to find out as to which part of the land is ancestral and non-ancestral, it has to be held that the entire land is non-ancestral.

18. In the present case, it is observed that the only surviving

issue was whether the property i.e. Shop No.30, Central Market, Lajpat Nagar-II, New Delhi was allotted to late Shri Prem Singh Bedi in lieu of ancestral property or alternatively, did he blend his personal interests with the joint interests. In this behalf, both the parties had relied upon Ex.PW-2/1 being the order dated 26th April, 1951 passed by the Claims Officer on the application made by late Shri Prem Singh Bedi. In Ex.PW-2/1 there is a mention of two properties one of which was House No.524, Mohalla Lotian, Bazar Ganj Gali Kotla, Peshwar City, Pakistan about which it is noted that the same was divided into two equal shares, one going to late Shri Prem Singh Bedi and the other to his brother Shri Raghubir Singh Bedi. The other property mentioned in the said order is the one, late Shri Prem Singh Bedi inherited from his maternal grandfather. Further, it is noted that the claim passed against the house inherited from his father was ₹2,608/-. It is also noted that late Shri Prem Singh Bedi had thereafter made construction thereon and the cost of the building was assessed at ₹1,328/- and after adding the value of the site, total value of the house was assessed as ₹2,608/-. It is, therefore, evident that out of ₹2,608/- once the cost of construction/building is excluded, the value of the site/land which late Shri Prem Singh Bedi inherited from his father comes to ₹1280/- only. On the other hand, with regard to the house inherited from maternal grandfather, the claim is to the extent of ₹10,000/-. Consequently, it is seen that out of the total claim awarded, value of the portion inherited from the father was very meagre. Further, substantial claim awarded is from the other property inherited from his maternal grandfather.

19. In the present case, it is also noticed that the validity of the Will is not under challenge in this appeal and, therefore, no discussion is required regarding the Will. Consequently, the bequest made by late Shri Prem Singh Bedi by a registered Will

dated 27th July, 1982 in favour of respondents 1 to 4 cannot be questioned.

20. In the present case, the parties belong to Punjab. The land, both ancestral and non-ancestral, was also situate in erstwhile Punjab. In Mara's case (Supra), the Hon'ble Supreme Court, dealing with property situated in Punjab, ruled that in Punjab, where there is a personal property of a person and he has acquired an ancestral property; both of which merge into a third property, the entirety of the third property is to be treated as the self-acquired property of the person concerned. Therefore, we are of the opinion that in Punjab it has been consistently ruled that where land comprises of both ancestral and non-ancestral portions and cannot be reasonably separated, they must be regarded as non-ancestral. Further, in Labh Singh's case (Supra), the Court negatived the argument being sought to be raised by the appellant before us with respect to the shares of ancestral and non-ancestral property. The consistent legal rule settled by the Privy Council in the decision reported as 42 PR 1910 Attar Singh Vs. Thakkar Singh has consistently been followed.

21. In the circumstances, we find ourselves in complete unanimity with the decision of the learned Single Judge in dismissing the suit. Consequently, we hereby dismiss the appeal but without any order as to costs.

(SIDDHARTH MRIDUL)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 04, 2012

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