

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

+ **RFA Nos. 601/2007 and 606/2007**

% **10th February, 2012**

1. **RFA 601/2007**

SHER SINGH Appellant
Through: Mr. Avadh Kaushik, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr. H.S. Sachdeva, Advocate for
respondent No.1.
Mr. S. Paul, Advocate with Mr. V.K.
Jain, Advocate for respondent No.8.

AND

2. **RFA 606/2007**

BALVINDER KUMAR BANSAL Appellant
Through: Mr. S. Paul, Advocate with Mr. V.K.
Jain, Advocate.

versus

SHER SINGH & ORS. Respondents
Through: Mr. Avadh Kaushik, Advocate for
respondent No.8.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. By this judgment, two appeals being RFA Nos. 601/2007 and 606/2007 are being disposed of. Both these appeals arise out of one

impugned judgment and decree dated 17.8.2007 passed by the trial Court. RFA No. 601/2007 has been filed by the plaintiff, against the impugned judgment and decree, inasmuch as, the suit for declaration, injunction and possession was dismissed. RFA No. 606/2007 is filed by defendant No.8 in the suit, inasmuch as, the impugned judgment, although dismissed the suit, however, directed that the sale deed dated 24.6.1999, Ex.DW2/3, executed in favour of defendant No.8 by defendant No.1 be cancelled and defendant No.8 was restrained from parting with possession of the suit property.

2. The facts of the case are that the subject suit for declaration, injunction and recovery of possession was filed by the plaintiff/appellant-Sh. Sher Singh against his father-Sh. Kanhiya Lal/defendant No.1 and his brothers and sisters who are impleaded as defendant Nos. 2-7 in the suit claiming rights as a co-owner in the property No. 1182 Deva Ram Park, Tri Nagar, Delhi. The case as set up in the plaint was that the suit property was owned by the grandfather of the plaintiff, namely, Sh. Chatru Ram i.e. the father of defendant No.1. The property was situated on a plot admeasuring 205 sq. yds. This property was partitioned among all the legal heirs of Sh. Chatru Ram i.e. defendant No.1/Kanhiya Lal, Sh. Kishan Chand, Sh. Noor Singh, Sh. Maan Singh and Sh. Suraj Bhan, who all were the sons of late Sh. Chatru Ram. It was pleaded that 40 sq. yds., out of plot admeasuring

205 sq. yds., belonging to Sh. Chatru Ram fell to the share of Sh. Kanhiya Lal, and since defendant No.1 inherited this property as ancestral property, the plaintiff/appellant had a right as a co-owner in this property (hereinafter, referred to as suit property). It was further pleaded that defendant No.1 wrongly sold his share of the suit property to defendant No.8. It was also pleaded that late Sh. Chatru Ram had purchased the entire property, of which the suit property was a part, from ancestral funds on 23.1.1953, and that defendant No.8 was aware of this fact, inasmuch as, his father-Sh. Daulat Ram was a party to settlement deed dated 16.12.1996, when the plot of 205 sq. yds. was distributed in a family arrangement. The subject suit, therefore, prayed for a relief of ownership rights of 1/5th share in the suit property comprising of 40 sq. yds. in the property bearing No. 1182 Deva Ram Park, Tri Nagar, Delhi.

3. The suit was contested on behalf of all the defendants. One written statement was filed by defendant Nos. 1-4 and another written statement was filed by defendant Nos. 5-7. Defendant No. 8/purchaser filed a separate written statement. The basic stand in all the written statements was that the suit property was not an ancestral property of the grandfather of plaintiff and that it was a self-acquired property of Sh. Chatru Ram. It was pleaded that defendant No.1 had already disowned and debarred the

plaintiff/appellant by publication in a newspaper. It was, additionally, pleaded by defendant No. 8 that he is a *bona fide* purchaser for the value of the suit property by a registered sale deed dated 24.6.1999, and he had paid a sum of ₹12,00,000/- to defendant No.1. Details of the chain of title deeds are given which showed the transfer of the suit property by Sh. Kanhiya Lal, and thereafter, how the suit property again revested with Sh. Kanhiya Lal, who then sold the suit property to defendant No. 8 by the registered sale deed dated 24.6.1999.

4. After the pleadings were completed, the trial Court framed the following issues:-

“1) Whether the plaintiff has no locus standi to file the present suit? OPD

2) Whether the suit property is self acquired property of Late Sh. Chatru Ram? OPD

3) Whether the partition of the suit property has taken place vide settlement deed dated 16.12.96? OPD

4) Whether the suit is barred by limitation? OPD.

5) Whether the plaintiff is entitled for 1/5th share of property bearing No. 1182, Main Road, Deva Ram Park, Tri Nagar against the defendants? OPP

6) Whether the plaintiff is entitled to declaration against the defendant as per para 2 & 3 of the prayer of the plaint? OPP

7) Whether the plaintiff is entitled for permanent

injunction against the defendant No.8, his assignees, representatives, etc, as per para 4 of the prayer of the plaint? OPP

8) Whether the plaintiff is entitled to the relief prayed in para 5 of the plaint? OPP.

9) Relief.”

5. The basic issue argued on behalf of the appellant in RFA No. 601/2007 (the plaintiff in the trial Court) was that the suit property was an ancestral property, inasmuch as, the suit property was purchased by Sh. Chatru Ram from ancestral funds. It was argued on behalf of the plaintiff/appellant that Sh. Chatru Ram had purchased the suit property by means of the sale deed, Ex.PW2/1 dated 2.2.1953 out of the ancestral funds and, therefore, defendant No.1 Sh. Kanhiya Lal inherited the suit property i.e. 40 sq. yds. out of the total plot area of 205 sq. yds., as ancestral property. It was pleaded that since defendant No.1 had no exclusive rights in the suit property, therefore, the suit property could not have been sold in favour of defendant No.8 by defendant No.1 by the sale deed dated 24.6.1999, Ex.DW2/3.

5. In reply, on behalf of the defendants in the suit, including defendant No.8 (who is the appellant in RFA No. 606/2007) it was urged that the sale deed executed in favour of Sh. Chatru Ram dated 2.2.1953 did not show that Sh. Chatru Ram had purchased the property out of ancestral funds. It

was argued that even assuming that the property which Sh. Chatru Ram purchased from the ancestral funds, however, since defendant No.1 had inherited the suit property on the death of Sh. Chatru Ram in 1976, and when the Hindu Succession Act, 1956 was applicable, consequently, defendant No.1/Sh. Kanhiya Lal-father of the plaintiff, received share in the suit property, not as ancestral, in the sense of a Hindu Undivided Family (HUF) property, but the property was self-acquired in the hands of defendant No.1. Reliance is placed upon the judgments of the Supreme Court in the case titled as *Commissioner of Wealth Tax, Kanpur etc v. Chander Sen AIR 1986 SC 1753* and which was then followed in *Yudhishter v. Ashok Kumar AIR 1987 SC 558*, and as per the ratio of which judgments, whenever, any male Hindu, and who is not a member of a Hindu Undivided Family, receives property from his paternal ancestors, he receives such property after passing of the Hindu Succession Act, 1956, as his individual property. It is also vehemently argued on behalf of the defendant No. 8 (appellant in RFA No. 606/2007) that the decision of the trial Court, although the same rightly dismissed the suit for declaration and injunction of the plaintiff, however, the trial Court erred in cancelling the sale deed executed by Sh. Kanhiya Lal/defendant No.1 in favour of defendant No. 8, inasmuch as, once the plaintiff failed to prove any claim

in the suit property and since the plaintiff himself had otherwise admitted that the suit property was inherited by defendant No. 1 from his father-Sh. Chatru Ram, therefore, it could not be disputed that the property was owned by defendant No. 1-Sh. Kanhiya Lal. It is argued that the trial Court hence could not doubt the ownership of Sh. Kanhiya Lal and cancel the Sale deed in favour of defendant No.8 as the only issue was whether the property in his hands is ancestral in the sense of being a Hindu Undivided Family property or was the individual property of defendant No.1 i.e. the property was owned by Sh. Kanhiya Lal whether as ancestral or individual.

6. In my opinion, the trial court, though was justified in dismissing the suit filed by the plaintiff/Sh. Sher Singh (appellant in RFA No. 601/2007), the trial Court however erred in simultaneously directing cancellation of the sale deed in favour of defendant No. 8. Firstly, a reading of the sale deed dated 2.2.1953, Ex.PW2/1, shows that it is nowhere mentioned in the sale deed that Sh. Chatru Ram purchased the property out of ancestral funds, much less, out of the Hindu Undivided Family funds, and that there was existing a Hindu Undivided Family of which Sh. Chatru Ram was a coparcener or *Karta*. Secondly, merely because a property is an ancestral property, it would not mean that the male heirs of the person who has inherited ancestral property will automatically have a right in such property

after passing of the Hindu Succession Act, 1956 because in view of the above judgments of the Supreme Court in the cases of *Chander Sen* (supra) and *Yudhishter* (Supra) it is no longer *res integra* that a male Hindu receives in his hands the paternal ancestral property as a self-acquired property. In the present case, Sh. Chatru Ram died in the year 1976, and therefore, the defendant No.1/Sh. Kanhiya Lal-son of Sh. Chatru Ram and father of plaintiff/Sh. Sher Singh, received the property as individual or self-acquired property in his hands. At this stage, it is necessary to refer to the fact that there is absolutely no credible evidence on record, much less any documentary evidence to show that there was ever a Hindu Undivided Family existing between the parties. In fact, there is no evidence that the property which was purchased by Sh. Chatru Ram vide sale deed dated 2.2.1953, Ex.PW2/1, was even purchased out of ancestral funds. The following admissions made by the plaintiff-Sh. Sher Singh in his cross-examination are relevant, and the same read as under:-

“... I have not filed any document to show that property in question has been purchased for the ancestral funds. It is correct that I have not filed any document to show that the property in question is ancestral property. It is correct that even till today I am not in possession of any document to show that the property in question is the ancestral property of Chatru Ram.”

7. Accordingly, there remained no doubt that Sh. Chatru Ram did not

purchase the property out of the ancestral funds, much less that there was existing a Hindu Undivided Family between the parties. The property therefore inherited by defendant No. 1 was self-acquired in his hands, and hence it could not be said that the appellant in RFA No. 601/2007 i.e. plaintiff in the suit, can claim any ownership rights in the suit property. If that be so, surely, the sale deed which has been executed in favour of defendant No. 8 by defendant No. 1 was valid. I may note that none of the intermediaries to whom the property was sold, and who thereafter resold the same to defendant No.1 are, in any manner, challenging the title of defendant No.8 acquired by means of a registered sale deed dated 24.6.1999, Ex.DW2/3, and therefore, it was surely illegal and impermissible for the trial Court to cancel the sale deed executed in favour of defendant No.8, and especially because the trial Court had already arrived at a finding that the plaintiff-Sh. Sher Singh had no right in the suit property.

8. A resume of the aforesaid shows that the following conclusions can be arrived at:-

- (i) There is nothing in the sale deed dated 2.2.1953, Ex.PW2/1 executed in favour of Sh. Chatru Ram that the property of 205 sq. yds., of which the suit property of 40 sq. yds. formed a part, was purchased out of the ancestral funds in the hands of Sh.Chatru Ram.

(ii) Even assuming the property was purchased by Sh. Chatru Ram from ancestral funds, however, existence of ancestral funds would not mean existence of Hindu Undivided Family, and in the facts of the present case, it has not been established that there was ever any Hindu Undivided Family existing between the parties.

(iii) The case of the plaintiff, at the best, is an entitlement on account of the fact that the property which was inherited by his father-defendant No.1 from his own father-Sh. Chatru Ram, and the latter allegedly purchased it out of the ancestral funds, however, the defendant No.1 had inherited the property only in 1976 when Sh. Chatru Ram died when the Hindu Succession Act, 1956 was applicable, and therefore in terms of the judgments of Supreme Court in the cases of *Chander Sen* (supra) and *Yudhishter* (Supra) the property as inherited by defendant No.1 from Sh. Chatru Ram was not ancestral in his hands and that it was his self-acquired property.

(iv) The property in the hands of defendant No. 1, not being ancestral in his hands, his son-the plaintiff can claim no co-ownership rights in the same.

(v) Defendant No.1 was therefore fully entitled to transfer the suit property to anyone, including to defendant No.8 to whom it was sold by means of sale deed executed on 24.6.1999, Ex.DW2/3. Once defendant No.1 was the owner, and the plaintiff had no rights in the suit property, the trial Court fell into a clear error in cancelling the

sale deed in favour of defendant No.8 by the defendant No.1.

9. In view of the above, the appeal being RFA No. 601/2007 is dismissed. The appeal being RFA No. 606/2007 is allowed and the conclusion of the trial Court with respect to issue No. 9 under the heading of “Relief”, by which the trial Court directed cancellation of the sale deed Ex.DW2/3 dated 24.6.1999 in favour of defendant No.8 and also passed an injunction restraining defendant No.8 from parting with possession of the suit property, is set aside. The sale deed dated 24.6.1999, Ex.PW2/3 in favour of defendant No. 8 will be treated as a valid document and all legal rights on the basis of such documents will flow to defendant No.8 (appellant in RFA No. 606/2007).

10. Both the appeals are accordingly disposed of.

VALMIKI J. MEHTA, J.

FEBRUARY 10, 2012

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