

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

% **Date of decision: 7th February, 2013**

+ **CS(OS) 92/2010**

NAWAL SINGH **..... Plaintiff**

Through: Mr. R.P. Sharma, Advocate.

Versus

CHAMAN LAL & ORS **..... Defendants**

Through: Mr. Virendra Singh, Adv. for D-1.
Mr. Sanjeev Sindhwani and Mr.
Anunya Mehta, Advocates for D-2, 3
& 7 to 11.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

**CS(OS) 92/2010, I.A. No.6036/2010 (of D-1 u/O VII R-11 CPC) & I.A.
No.2152/2013 (of plaintiff for amendment of plaint)**

1. This application was heard to an extent on 25th September, 2012 when counsel for the plaintiff had sought time to move an amendment application to amend the plaint and on such request the suit was adjourned to today. Today when the suit is called out, the counsel for the plaintiff states that an application for amendment has been filed only on 1st February, 2013 though has not been listed today. Time of more than four months having been given to the plaintiff to seek an amendment, the plaintiff was not to wait till the

last date for filing the application for amendment and even if has done so, ought to have got the same listed for hearing for today. The conduct of the plaintiff clearly shows that the plaintiff is not interested in pursuing the suit and is only interested in perpetuating the *ex parte* ad interim order dated 22nd January, 2010.

2. In the aforesaid circumstances, the application for amendment of plaint has been called from the Registry and is taken on record. During the course of hearing, an advance copy of the application supplied to the defendants, has been considered.

3. The counsels have been heard.

4. The plaintiff has sued for partition of land admeasuring 7 Bighas 5 Biswas out of Khasra Nos.490 & 500, Village-Chandrawali at Shahdara, Delhi and for rendition of accounts thereof. It is the case in the plaint as filed, (i) that the predecessor of the plaintiff and the defendants No.2 to 11 namely Mr. Hari Singh Yadav and the defendant No.1 Mr. Chaman Lal being cousins, has purchased the said land admeasuring 7 Bighas 5 Biswas and intended to carve out small plots out of the said land and to further sell the same; (ii) however before they could start selling, Mr. Hari Singh Yadav died intestate on 21st February, 1989; (iii) that the plaintiff and the

defendants No.2 to 11 are the present legal heirs of Late Mr. Hari Singh Yadav; (iv) that the plaintiff and the defendants No.2 to 6 are entitled to $1/7^{\text{th}}$ share each out of the share of Late Mr. Hari Singh Yadav and the defendants No.7 to 11 together are entitled to the remaining $1/7^{\text{th}}$ share out of the $1/2$ share of Late Mr. Hari Singh Yadav in the aforesaid land admeasuring 7 Bighas 5 Biswas; (v) however the defendant No.1 Mr. Chaman Lal became dishonest and has sold portions of the said land; (vi) that defendant No.1 persuaded the plaintiff, defendants No.2 & 3 and their brother Mr. Phool Singh to get executed a Sale Deed, pretending to sell plot admeasuring 160 sq. yds. to each of them even though the plaintiff, defendants No.2 & 3 and their brother Mr. Phool Singh as heirs of Late Mr. Hari Singh Yadav, were having a 50% share in the said land; (vii) that the plaintiff had filed Suit No.10/2007 for declaration and consequential relief owing to the said illegal acts of the defendant No.1 as well as of defendant No.2 and which at the time of institution of the plaint was pending in the Court of Mr. S.S. Rathi, Additional District Judge, Delhi; (viii) that Late Mr. Hari Singh Yadav was in exclusive possession of a plot admeasuring 640 sq. yds. out of the total land admeasuring 7 Bighas 5 Biswas and the plaintiff and the defendants No.2 to 11, on the date of institution of this suit also were in actual physical

possession of the same. The plaintiff, besides partition, claims rendition of accounts of the portions of the land sold by defendant No.1 Mr. Chaman Lal.

5. The defendant No.1 and the defendants No.2, 3 & 7 to 11 in their separate written statements have *inter alia* pleaded that the land already stands partitioned and thus the suit for partition is not maintainable. Both, in this regard rely on the plaint in Suit No.10/2007 (supra) of the Court of Mr. S.S. Rathi, Additional District Judge, Delhi filed by the plaintiff himself, where it is averred that the plaintiff also has admitted partition of the land.

6. Though the plaintiff has not filed a copy of the said plaint but a copy thereof has been filed by the defendants along with their written statement.

7. The defendant No.1 has filed this application for rejection of the plaint on the basis of the admission of the plaintiff in the plaint in the said Suit No.10/2007 of the Court of Mr. S.S. Rathi, Additional District Judge, Delhi of the land having already been partitioned.

8. It has at the outset been enquired from the counsel for the defendants No.2, 3 & 7 to 11 as to how the rejection can be ordered on a document though referred to in the plaint but not filed by the plaintiff himself and filed by the defendants.

9. The counsel has invited attention to ***Babita Pal Vs. Jagdish Bansal*** 196 (2013) DLT 792 (DB) where a Division Bench of this Court in para 14 of the judgment has held that for rejection of a plaint under Order VII Rule 11 CPC, not only the plaint but also the documents filed with the plaint and the documents which ought to have been filed with the plaint and which have deliberately been withheld by the plaintiff, can be seen.

10. It is thus contended that the plaintiff himself having referred to Suit No.10/2007, ought to have filed the plaint therein before this Court and which was deliberately withheld and a reading whereof shows the plaintiff to have admitted to partition and thus not having any cause of action for the present suit claiming partition.

11. The counsel for the defendant No.1 also in this regard has relied on ***S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs.*** AIR 1994 SC 853 and ***Geeta Devi Vs. Krishna Kumar Pandey*** AIR 2004 SC 3287.

12. The plaintiff herein, in the plaint in Suit No.10/2007 (supra) has *inter alia* pleaded that Late Mr. Hari Singh Yadav and Mr. Chaman Lal were the co-owners of 7 Bighas 5 Biswas of land. Thereafter, paras 5 to 10 of the said plaint are as under:

“5. That the defendant no.4 and the father of the plaintiff and defendant nos.1 to 3 then sold certain land after converting the same into plots of different dimensions to several persons. Some of the land which was not sold by them they made an oral partition among themselves and took into their own possession.

6. That the father of the plaintiff and defendant nos.1 to 3 out of the said land kept a piece of land measuring 640 Sq. Yards (96 x 60 Ft.) out of khasra no.490, in the revenue estate of Goverdhan Behari Colony, Bhola Nath Nagar, Shahdar, Delhi-32.

7. That Shri Hari Singh father of plaintiff and defendant nos.1 to 3 died intestate at Delhi, on 21-02-89 and thereafter the plaintiff and defendant nos.1 to 3 became the joint owners of the said land. The said land was bounded as under:-

EAST : Road	West : Road
NORTH : Others Property	
SOUTH : Property of Shri Chaman Lal.	

8. That to avoid any controversy and dispute between the plaintiff and defendant nos.1 to 3 they orally partitioned their portions out of land measuring 640 Sq. Yards in the year 1986 and separated that portion measuring 160 Sq. Yards (24 Ft. X 60 Ft.) and in the said oral partition the plaintiff acquired plot given number 1, measuring 160 Sq. Yds. (24 x 60 Ft.) which was bounded as under :-

EAST : Road
WEST : Road
NORTH : Property of Phool Singh (Defendant no.3)
SOUTH : Property of Chaman Lal.

and they got their respective plots numbered as 1, 1A, 1B and 1C respectively and since then the plaintiff is in possession of the said plot which is now the suit property and has been shown

in red colour in the site plan attached herewith.

9. That as the partition of the land measuring 640 S. Yards as mentioned above was made orally therefore, plaintiff and defendant nos. 1 to 3 amicably decided to execute a Partition Deed in writing and therefore, the plaintiff and defendant nos. 1 to 3 executed a Partition Deed dated 26.10.2005 to avoid any further controversy in future and they continued in their possession of their respective shares which they acquired from the partition.

10. That the said Partition Deed was duly signed and the parties put their thumb impression in presence of the witnesses. By virtue of the said Partition Deed as well as oral partition made between the plaintiff and defendant nos.1 to 3 the plaintiff becomes the exclusive owner of plot bearing no.1, measuring 160 Sq. Yards, out of khasra no.490 situated in the Revenue Estate of Village Chandrawali, Shahdara, in the abadi of Goverdhan Behari Colony, Shahdara, Delhi-110032.”

In the aforesaid, Mr. Chaman Lal is referred to as the defendant No.4 and the defendants No.2 to 4 herein being the brothers of the plaintiff are referred to as the defendants No.1 to 3.

The plaintiff in the said suit sought a declaration that he was the owner of plot bearing private No.1, measuring 160 sq. yds., out of the land admeasuring 640 sq. yds. which in partition between the father of plaintiff and the defendant No.1 Mr. Chaman Lal had fallen to the share of father of plaintiff and out of the total land admeasuring 7 Bighas 5 Biswas and further sought declaration that the Sale Deed executed by the defendant No.4 of the same plot of land in favour of plaintiff's brother (defendant No.1 therein) was bad.

13. The counsels for the defendants have argued that the plaintiff in the plaint in the aforesaid suit having admitted that out of the unsold portion of land admeasuring 7 Bighas 5 Biswas, 640 sq. yds. had fallen to the share of Late Mr. Hari Singh Yadav / his heirs, is now not entitled to claim partition against Mr. Chaman Lal and further that the plaintiff having admitted partition of the said 640 sq. yds. amongst the heirs of Late Mr. Hari Singh Yadav, is not entitled to claim partition against his branch of the family also.

14. It is not in dispute that the plaintiff, after institution of the present suit, withdrew Suit No.10/2007 (supra) on 2nd February, 2010 with permission to pursue the present suit.

15. The counsel for the plaintiff has argued that the admission in para 5 of plaint in Suit No.10/2007 of partition between Late Mr. Hari Singh Yadav and Mr. Chaman Lal is only relating to “some of the land” and not with respect to the entire unsold land. The plaintiff in the application for amendment now filed, also seeks to exclude the said 640 sq. yds. of land, out of the 7 Bighas 5 Biswas of land, of which partition is originally claimed in the suit.

16. The plaintiff was vide order dated 3rd August, 2011 in this suit directed to file an affidavit, as to how much of the land admeasuring 7

Bighas 5 Biswas had been sold as pleaded by him in the plaint in Suit No.10/2007. The plaintiff in compliance thereof has filed an affidavit verified on 29th August, 2011, in which the plaintiff has stated that as against plot of 640 sq. yds. which had fallen in the oral partition to the share of Late Mr. Hari Singh Yadav, land admeasuring 745 sq. yds., 130 sq. yds. and four plots admeasuring 175 sq. yds., 80 sq. yds., 40 sq. yds. and 40 sq. yds., i.e. total 1210 sq. yds. remained with Mr. Chaman Lal and out of which Mr. Chaman Lal has already sold 745 sq. yds. and 130 sq. yds. of land but remains in possession of the four plots.

17. It has been enquired from the counsel for the plaintiff that as against 640 sq. yds., which in the oral partition had fallen to the exclusive share of Late Mr. Hari Singh Yadav, how much land had fallen to the share of defendant No.1 Mr. Chaman Lal. The counsel for the plaintiff candidly states that the entire land admeasuring 740 sq. yds., 130 sq. yds. and the four plots aforesaid had fallen to the share of defendant No.1 Mr. Chaman Lal.

18. It has been enquired from the counsel for the plaintiff that if that be so, then how can the plaintiff claim partition of the portion which has fallen to the share of defendant No.1 Mr. Chaman Lal, even if that be larger than the portion of 640 sq. yds. which fell to the share of Late Mr. Hari Singh

Yadav.

19. No plausible explanation has been forthcoming.

20. Even if it were to be the case of the plaintiff that in the partition aforesaid in which only 640 sq. yds. of the unsold land had fallen to the share of Late Mr. Hari Singh Yadav, as against 1210 sq. yds. to the share of Mr. Chaman Lal, the remedy of the plaintiff still will not be of claiming re-partition but of setting aside the aforesaid partition on account of the same being inequitable.

21. Whichsoever way the matter is looked at, the cause of action for a claim for partition, cannot be deciphered.

22. The amendment claimed by the plaintiff, excluding 640 sq. yds. of land out of the 7 Bighas 5 Biswas of land of which partition is claimed, is also in the teeth of the admission of the plaintiff in para 5 of the plaint in Suit No.10/2007, where the plaintiff admitted the sale of the land by Late Mr. Hari Singh Yadav and defendant No.1 Mr. Chaman Lal and ‘some of the lands’ which were not sold, being orally partitioned between Late Mr. Hari Singh Yadav and Mr. Chaman Lal. The plaintiff cannot be permitted to now derive any advantage of the words “some of the land” to contend that some other land still remained joint. Moreover, the said contention ignores

the fact that as against 640 sq. yds. of the unsold land given to Late Mr. Hari Singh Yadav, some land must have been given to Mr. Chaman Lal also and which counsel for the plaintiff himself admits to be the remaining land admeasuring 1210 sq. yds. aforesaid.

23. The application for amendment is accordingly dismissed and the application under Order VII Rule 11 CPC is allowed.

24. The plaint on the basis of the averments contained in the plaint and in the suit earlier instituted by the plaintiff and which averments have not been explained, neither in the plaint in the present suit nor in the amendment claimed, is found to be without any cause of action.

25. The plaint is accordingly rejected, however in the circumstances, with no order as to costs. Needless to state that the interim order dated 22nd January, 2010 stands vacated.

RAJIV SAHAI ENDLAW, J

FEBRUARY 07, 2013

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