

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.239/2007 and CM No.15135/2011 (Stay)**

Decided on : 12th September, 2013

KANWAR INDERJIT SINGH Appellant

Through: Mr. Y.D.Nagar, Advocate.

Versus

K.P.DHINGRA (DECEASED) THROUGH LR'S AND ORS.
..... Respondents

Through: Mr.Bharat Sachdeva, Advocate for LR's
of R-1.

Mr.Arun Sukhija, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 21.03.2007. Vide the impugned judgment, the appeal of the appellant against the judgment of final decree of partition dated 12.07.2006 passed by the trial court was dismissed.

2. I have heard the learned counsel for the appellant as well as the learned counsel for the respondents.

3. Before dealing with the submissions made by the learned counsel for the appellant, it will be pertinent to give the brief facts of the case.

4. A suit for partition was filed by R-3/Mr.Kewal Prakash Dhingra against his two brothers namely R-2/Mr.Gurbachan Inderjit Singh and the appellant herein/Kanwar Inderjit Singh. It may also be pertinent to mention here that R-1/Kewal Prakash Dhingra (since deceased) and now represented by legal heirs in the present appeal, is purported to have purchased the share of R-2/Mr.Gurbachan Inderjit Singh. The case which was set up by R-3/Mr.Mohan Singh in the suit was that there was a shop bearing no.20/41, Old Market, West Patel Nagar, New Delhi, which was owned by their late father Sh. Sampuran Singh, who is alleged to have made a Will in respect of this shop on 29.10.1958 creating a life interest in respect of the said shop in favour of his widow Smt.Parkash Kaur so long as she was alive and after the demise of Smt.Parkash Kaur, 50% of the interest in the shop was bequeathed in favour of R-3/Sh.Mohan Singh and 25% each in favour of R-2/Mr.Gurbachan Inderjit Singh and the appellant herein/Kanwar Inderjit Singh.

5. The trial court after passing a preliminary decree in respect of the shares of the parties, appointed a local commissioner for the purpose of finding out as to whether the property in question can be divided by metes and bounds.

6. The learned local commissioner is stated to have given a report giving the details as to how the shop in question can be divided by metes and bounds, the said report has been accepted by the trial court and thereafter the final decree of partition was passed in favour of all the parties.

7. The present appellant is stated to have filed an application under Section 22 of the Hindu Succession Act, 1956 having a preferential right to purchase the share of R-2 herein as it was alleged against him that he had sold his 25% share to the present R-1/Sh.Kewal Prakash Dhingra for a total consideration of ₹15,000/-. This application of the appellant was disallowed by the trial court.

8. The appellant feeling aggrieved by the said order of rejection of his application under Section 22 of the Hindu Succession Act, 1956 is

purported to have preferred CM(M) No.1979/2005 which was disposed of by the High Court vide order dated 12.12.2006 by observing that the question of preferential right of purchase of the share of R-2/Mr.Gurbachan Inderjit Singh can be taken by the appellant as and when he files an appeal with regard to the final decree. This is how this point with regard to the preferential right has been taken by the appellant in the present appeal.

9. The main contention raised by the learned counsel for the appellant before this court is that his preferential right under Section 22 of the Hindu Succession Act, 1956 has not been considered favourably by the trial court or even by the first appellate court, which was a statutory right vested in him. In support of his contention, he has stated that he had made his willingness known to the court concerned on 31.05.2000 that he was prepared to purchase the share of R-2/Mr.Gurbachan Inderjit Singh. The appellant is also stated to have deposited a sum of ₹34,000/- which was the sale consideration for which the share of R-2/Mr.Gurbachan Inderjit Singh is purported to have been sold to R-1/Sh.Kewal Prakash Dhingra. The reason for dismissal of this plea of preferential right of purchase has been

dealt with in detail by the first appellate court in the impugned judgment. I have gone through the same.

10. There are two reasons given by the learned first appellate court in rejecting this preferential right to the appellant to purchase the share of R-2/Mr.Gurbachan Inderjit Singh. The first ground which has been given by the learned appellate court is that Section 22 of the Hindu Succession Act, 1956 is not applicable to the facts of the present case inasmuch as the preferential right to purchase as envisaged under Section 22 of the Hindu Succession Act, 1956 is applicable only in case the property devolves intestate and not by testamentary succession while as in the instant case admittedly the parties have become the owners of their respective shares on the basis of a testament dated 29.10.1958 purported to have been made by Mr.Sampuran Singh in favour of the appellant and R-2 and R-3. The Section 22 of the Hindu Succession Act, 1956 reads as under:

“22. Preferential right to acquire property in certain cases.

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs

specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.- In this section," court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf."

11. A plain reading of the aforesaid Section would clearly show that the trial court was perfectly right and justified in dismissing the plea of the appellant of preferential right to purchase the share of R-2 on the ground that in the instant case the succession or devolution of the property in

question is not by way of intestate succession, therefore, Section 22 of the Hindu Succession Act, 1956 had no applicability.

12. The second ground on which the learned trial court has dismissed the application of the appellant is that it is hopelessly barred by time. In this regard, the first appellate court has taken note of the fact that the agreement to sell between R-1 and R-2 is purported to have taken place on 12.06.1981 so far as the 25% share of R-2 is concerned. It is not the case of the appellant that he was not aware of this transaction having been entered into by R-2 in favour of R-1. If at all, the appellant wanted to invoke the provisions of Section 22 of the Hindu Succession Act, 1956 to assert his pre-emptory right to purchase the share of R-2 dehors the fact as to whether it was applicable or not, then such an application ought to have been filed within a period of three years which is the maximum period of limitation fixed under Article 137 of the Schedule of Limitation Act, 1963 while as according to the appellant himself it is for the first time that he made his willingness known to the court by way of getting his statement recorded on oath. Therefore, on this score also, the application of the

appellant for peremptory purchase of the share of R-2 has been rightly rejected.

13. The learned counsel has strenuously placed reliance on two judgments *Ghantesher Ghosh v. Madan Mohan Ghosh and Ors.*, AIR 1997 SC 471 and *R.Ramamurthi Aiyar (dead) by LRs v. Raja V.Rajeswara Rao*; AIR 1973 SC 643.

14. I have gone through both these judgments. These are not applicable to the present case. So far as, *Ghantesher Ghosh's case (supra)* is concerned, this has only dealt with the scope and applicability of Section 4 of the Partition Act. Section 4 of the Partition Act deals with shares of a transferee in the case of a dwelling house. It is in this contingency when there is a dwelling house belonging to an undivided family and the owner of the property who is not a member of the family is sought to be vested with the right in the said dwelling house, that a restraint has been put by law and a preferential right of purchase has been given to the co-sharer. In the instant case, the subject matter of partition is not a dwelling house but a shop and, therefore, the said Section has no applicability.

15. So far as the second judgment in *R.Ramamurthi Aiyar (dead) by LRs' case (supra)* is concerned, no doubt the Supreme Court has observed that no formal application is necessary for the purchase of a right of a co-sharer in the event the property is sought to be divided and there will be a question of preferential right of one co-sharer qua the other, but that right would be applicable only in case the property which is the subject matter of partition, is not divisible and the property has to be sold to the public, in such a contingency one of the co-sharers can purchase the share of the others. In the instant case, admittedly, the local commissioner has given a report that the suit property is divisible and has suggested the division by metes and bounds, which has been accepted not only by the trial court, but also by the first appellate court. Therefore, both these judgments are not applicable.

16. The regular second appeal is permissible only if there is a substantial question of law involved.

17. No substantial question of law has been shown to be involved in the present regular second appeal by the learned counsel for the appellant.

18. Accordingly, I feel that there is no merit in the appeal and the same is dismissed.

V.K. SHALI, J.

SEPTEMBER 12, 2013/dm