

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.11.2013

+ **FAO (OS) 493/2013**

BALDEV RAJ GADHOK

.....Appellant

versus

SUMAN KUMAR GADHOK AND ORS.

.....Respondents

Advocates who appeared in this case:

For the Appellant : Mr Arun Nischal.

For the Respondents : Mr Sudhir Talwar for R-1 to R-4.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal has been filed challenging the order dated 26.09.2013 (hereinafter referred to as 'impugned order') passed by a learned Single Judge in I.A. No.17029/2012 filed in CS(OS) No.1004/2012. By the impugned order, the learned Single Judge has dismissed I.A. No.17029/2012 filed by the appellant/plaintiff under Order 39 Rule 1 & 2 of the Code of Civil Procedure, *inter alia*, seeking payment of the 1/3rd share of the monthly rent of ₹1,78,200/- and also the arrears of the monthly rent as received by the respondent nos.1 to 4, in respect of the property in question.

2. The appellant had filed the suit CS(OS) No.1004/2012, in respect of property bearing no. 36A, DLF Industrial Area, Najafgarh Road, Moti Nagar measuring 962 sq. yards (hereinafter referred to as the 'suit property'), whereby the appellant had sought a decree of declaration against defendant nos.1 to 8 declaring the Gift Deed dated 19.11.2001 in respect of the said property as being null and void. The appellant had also sought a decree of partition of the suit property and possession of 1/3rd share of the suit property. The reliefs sought by the appellant in the suit are premised upon the appellant being 1/3rd owner of the suit property which in turn is disputed by defendant nos. 1 to 8.

3. It is claimed by the appellant/plaintiff, in the suit CS(OS) No.1004/2012, that the suit property was a part of a larger plot measuring 1872 sq. yards which was purchased in the year 1959 and was owned by a partnership firm, which was carrying on business under the name and style of M/s Ruby Cycle & Accessories Manufacturing Co. At the material time, the said firm was constituted by 5 partners including the appellant and late Pushpa Gadhok. The other three partners were Raj Rani, Ram Chandra Sethi and one Yashwant Kumar Sethi.

4. It was stated by the appellant/plaintiff that on 19.08.1963, Raj Rani retired from the said partnership firm and transferred her share equally to the remaining four partners. On 20.08.1963, a Partnership Deed was executed between the remaining four partners and their shares in the assets of the partnership firm including the immovable property were agreed as under:-

PARTY NO.	NAME OF THE PARTY	SHARE IN PARTNERSHIP
1.	SHRI RAM CHANDRA SETHI	ONE THIRD
2.	SMT. PUSHPA GADHOK	ONE THIRD
3.	SHRI YASHWANT KUMAR SETHI	ONE SIXTH
4.	SHRI BALDEV RAJ GADHOK	ONE SIXTH

5. The aforementioned four partners entered into a Partition Deed on 18.05.1964, whereby they agreed to divide the plot of land measuring 1872 sq. yards and the buildings constructed thereon, which belonged to the firm, into two parts. One part measuring 962 sq. yards, which is the suit property, fell to the joint share of late Pushpa Gadhok and the appellant in proportion to their *inter se* shares in the assets of the firm - M/s Ruby Cycle & Accessories Manufacturing Co. Since the share of late Pushpa Gadhok in the assets of the said firm was $1/3^{\text{rd}}$ and that of the appellant was $1/6^{\text{th}}$, the appellant claims that $1/3^{\text{rd}}$ undivided share in the suit property belongs to him and the balance $2/3^{\text{rd}}$ undivided share in the suit property belonged to late Pushpa Gadhok.

6. The appellant has further stated that after the dissolution of the firm in 1964, the suit property was given on rent but subsequently, in 1979-80, the appellant got a part of the suit property vacated and established his own unit for production of cycle rims. The appellant shifted his activities to NOIDA, Uttar Pradesh in 1983-84 and asserts that the entire suit property has since been in the control of respondent nos. 1, 2 and 4 (defendant nos. 1, 2 and 4 in the suit).

7. As per respondent nos. 1 to 4, the property in question belonged to the appellant and late Pushpa Gadhok, who was the sister-in-law of the appellant. Whereas, the share of the appellant in the suit property was 1/3rd, the balance 2/3rd share was owned by late Pushpa Gadhok. The respondent nos. 1, 2 and 5 to 8 (defendant nos.1, 2 and 5 to 8 in the suit) are stated to be the legal heirs of late Pushpa Gadhok and are claiming their right, title and interest in the suit property through Pushpa Gadhok as her legal heirs. Respondent no. 4 (defendant no. 4 in the suit) is a firm constituted by respondent no. 1 and 2 as partners. Respondent no. 3 (defendant no. 3) is the son of respondent no. 1 (i.e., the grandson of late Pushpa Gadhok) According to respondent nos.1 to 4, there was an oral family partition that took place in 1985 and it was decided that the suit property including the 1/3rd undivided share of the appellant would belong to late Pushpa Gadhok exclusively. It is claimed that the appellant was also paid an amount of ₹1,00,000/- at the time of the aforesaid oral partition and thereafter, late Pushpa Gadhok became the sole and exclusive owner of the suit property. Late Pushpa Gadhok had gifted the suit property to respondent no. 3 and also executed a Gift Deed dated 19.11.2001. This Gift Deed has been challenged by the appellant in CS(OS) No.1004/2012. It was contended by respondent/defendant nos.1 to 4 that late Pushpa Gadhok and her family have been enjoying the exclusive benefits of the suit property since 1985. And, the appellant accepted the same and had not raised any objection with respect to the possession of the suit property and/or benefits therefrom being enjoyed by late Pushpa Gadhok and her family members to the exclusion of the appellant.

8. As per the appellant, he is an exclusive owner of the 1/3rd undivided share in the suit property. The appellant has disputed that there was any oral partition or that he received the consideration for his share in the suit property. The appellant has placed reliance on certain correspondence with late Pushpa Gadhok that belies the contention that there was an oral partition in 1985 or that the appellant had transferred his interest in the suit property to late Pushpa Gadhok. The correspondence produced by the appellant has been denied by respondents and the veracity of the same would have to be established in the course of trial of the suit.

9. It is contended by the appellant that a property measuring 1462 sq. yards including the suit property measuring 962 sq. yards has been leased to respondent no.9 at a lease rent of ₹2,72,000/- without the consent of the appellant and the said lease rent is illegally being collected exclusively by respondent nos.1 to 3. The part of the lease rent that is attributable to the suit property would amount to ₹1,78,200/- and the appellant is claiming one third of the same.

10. Therefore, the appellant filed the I.A. No.17029/2012 in CS(OS) No.1004/2012 claiming to be owner of 1/3rd undivided share of the suit property and, *inter alia*, seeking the following reliefs:-

- “a. direct respondent No.9 to pay Rs.59,400/- per month to the appellant i.e. one third of the total monthly rent of Rs.1,78,200/-;
- b. direct respondent No.1 to 4 to pay Rs. 13,06,800/- as arrears of rent, illegally received by respondent No.1 to 4, due to appellant;

- c. alternately to prayer a & b direct respondent No.9 to deposit the entire rent amount i.e. Rs.1,78,200/- per month in respect of property measuring 962 square yards, before the Registrar General of this Hon'ble Court, and direct respondent No.1 to 4 to deposit Rs. 13,06,800/- as arrears of rent, before the Registrar General of this Hon'ble Court;
- d. pass any other order(s) which this Hon'ble Court may deem fit."

11. The said I.A. No.17029/2012 was rejected by the learned Single Judge by the impugned order mainly for the reason that respondent nos.1 to 4 had been enjoying the rental from respondent no. 9 (defendant no. 9 in the suit) since more than 10 years. The relevant extract of the impugned order is as under:-

"9. The facts of the case show that the plaintiff received his alleged share based on a partition that took place in 1964. Thereafter, in 1985 on oral partition stated to have taken place by defendants No.1 to 4 and defendants No.1 to 4 have claimed to have exclusive ownership of the said property. Defendant No.9, the tenant has also been inducted as per the plaintiff himself about 9 to 10 years ago from the date of the plaint i.e., 2012 and defendants No.1 to 4 have been enjoying rental thereof. The plaintiff has now after a lapse of this considerable period of time in 2012 filed the present suit for partition and possession.

10. Clearly, defendants No.1 to 4 have been enjoying rental from the tenant/defendant No.9 for more than 10 years. It would not be appropriate to in any manner change this factual situation which has existed for such a long period. As far as the protecting rights of the plaintiff are concerned, on 19.07.2012 a direction was passed directing the parties to maintain status quo with regard to the title of the suit property till the next date of hearing. Learned senior counsel appearing for defendants No.1 to 4 submits that his clients will not sell, alienate or create any third party rights in the suit property till the pendency of the present suit. He further

submits that there is a possibility of defendant No. 9 vacating the suit premises on account of certain litigation that is pending against defendant No.9. He submits that in such eventuality, defendants No. 1 to 4 would rent out the property to another tenant. It is directed that defendants No.1 to 4 will once in six months file on affidavit a statement of accounts of rent received from any tenant including defendant No.9 from the suit property, till disposal of the suit.”

12. The controversy in the present matter essentially relates to whether the appellant is the owner of 1/3rd undivided share of the suit property or not. In order to substantiate his claim, the appellant has produced a certified copy of a registered deed dated 19.08.1963, wherein, the retirement of late Raj Rani from the firm M/s Ruby Cycle & Accessories Manufacturing Co. is recorded. The said deed, *inter alia*, records as under:-

“2. That in consideration of Rs.16000/- (Rupees Sixteen Thousand) only agreed upon to be the total amount due to Party No.1 from Party No.2 and the Ruby Cycle & Accessories Manufacturing Co., New Delhi, the First Party namely, Shrimati Raj Rani hereby conveys and transfers to the Second Party namely Shri Ram Chandra Sethi, Shrimati Pushpa Gadhook, Shri Yashwant Kumar Sethi and Shri Baldev Raj Gadhook above named to hold in absolute her share in the assets including Goodwill, Quotas etc., of the Partnership Firm, the amount due to her share of profit and losses including her 1/4th share in all that of plot of land No.36 DLF measuring 1872 Sq. Yards and all the buildings and structures of all kinds whatsoever constructed and now standing thereon and the machinery of all kinds fitted therein and bounded with North by Plot No.34, on the West by Plot No.35 and on the East by Plot No.37 and on the South by Road situated at 36 DLF Industrial Area, Najafgarh Road, New Delhi which had been purchased by the Partnership from Shri Ram Kishan Kathuria on 22nd January, 1959. That the Second Party will pay to the First Party the said

sum of Rs.16000/- (Rupees Sixteen Thousand) only in cash before the Sub-Registrar at the time of registration.”

13. The appellant has further produced a certified copy of the Partition Deed executed on 18.05.1964 wherein the property bearing no. 36A, DLF Industrial Area, measuring 1872 sq. yards was divided in two parts. Whilst the part measuring 910 sq. yards vested exclusively with Yashwant Kumar Sethi and Ram Chandra Sethi, the other part, which is the suit property, measuring 962 sq. yards (which included “two office rooms, three factory shades, one bank godown, one colouring Bhatti & room, two store rooms and latrine”) fell to the share of the appellant and late Pushpa Gadhok jointly in *inter se* the same proportion as their respective shares in the assets of the erstwhile firm. Thus, as per this deed, the appellant became the exclusive owner of 1/3rd undivided share in the suit property.

14. The abovementioned Partition Deed dated 18.05.1964 is a registered document and, *prima facie*, establishes the appellant’s title and interest in the suit property. Whereas, *prima facie*, the appellant has been able to establish that he is an owner of undivided 1/3rd share of the suit property, there is no document that has been produced by the respondents which would establish their title to the suit property. The respondent nos. 1 to 8 are also not disputing the Partition Deed dated 18.05.1964. According to respondent nos. 1 to 8, there was an oral family partition that took place in 1985 which was acted upon by all parties including the appellant. It is contended that in terms of the oral partition, 1/3rd undivided share of the appellant in the suit property was stood vested with late Pushpa Gadhok. The appellant disputes that there was any oral family settlement as claimed by the respondent nos. 1 to 8. The respondents have also not produced any

document where the alleged family settlement is acknowledged by the appellant, on the contrary the appellant has produced correspondence which indicates there was no concluded settlement in 1985. The issue whether there was any oral family settlement or not is the subject matter of trial in the suit. We feel that the appellant, having *prima facie* established his title to 1/3rd share of the suit property, would be entitled to interim relief. The respondents cannot be permitted to appropriate the benefit of the suit property entirely unless they are able to establish their right, title and/or interest in the suit property. The fact that the respondents have been enjoying exclusive benefit from the suit property does not necessarily imply that they should be permitted to continue to do so without establishing their title.

15. In our view, it would be appropriate if the respondents are directed to deposit 1/3rd of the lease rental from the suit property in this court pending the final determination in the suit. We, accordingly, direct the respondents to deposit 1/3rd of the lease rent received in respect of the suit property with the Registrar General of this court, who is directed to place the same in an interest bearing account.

16. The present appeal stands disposed of with no order as to costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

NOVEMBER 26, 2013
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