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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: January 23, 2014

Judgment Pronounced on: February 19, 2014

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RFA(OS) 16/2013

ASHOK SARDANA & ANR.

..... Appellants

Represented by: Mr.Kuldeep Singh, Advocate
for the appellants with
appellant No.1-in-person.

versus

PRAMOD SARDANA & ANR.

..... Respondents

Represented by: Mr.Pramod Sardana,
Respondent No.1-in-person.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present Regular First Appeal under Section 96 CPC is filed against order and decree dated October 15, 2012 passed in CS(OS) No.2515/1991 by the learned Single Judge.
2. The appellant No.1 filed the present suit seeking a preliminary decree of partition declaring the plaintiffs share as 1/2 in the property (a) B-39, West Nizamuddin, New Delhi and 1/5th in the properties (b) A-82, New Friends Colony, New Delhi and (c) agricultural land situated at village Nangal, Tehsil Fatehbad, District Hissar, Haryana and for appointment of a Local Commissioner to suggest mode of partition and for a final decree thereof.

3. It is averred in the plaint that respondent No.1 is the brother, and appellant No.2 (who was impleaded as defendant No.4 in the suit) and respondent No.2 are the sisters of the appellant and respondent No.1. The mother late Smt.Dropadi Devi was impleaded as defendant No.1 in the suit but died on July 05, 2009 leaving behind the parties to the present appeal as the legal representatives.

4. It is further averred that the father of the parties Late Dr.R.N.Sardana was a medical practitioner and migrated after partition from Karachi. He died on November 11, 1965. Before his death he filed claims with the Ministry of Rehabilitation and was allotted agricultural land at District Hissar, Haryana which is also the subject matter of the present partition suit and parties claim equal undivided share in this property. The father was also allotted land at West Nizamuddin measuring 200 sq.yards against the rest of the claims as a migrant after partition and he is stated to have constructed a two and a half storied residential house on the said land. It is stated that appellant No.1 and respondent No.1 are joint owners in equal share of this property at Nizammudin as other legal heirs relinquished their shares.

5. It is further averred that in 1972, a residential plot measuring 486sq.meter bearing No.A-82, New Friends Colony, New Delhi was acquired in the name of the mother of the parties, namely, Late Smt.Dropadi Devi being the head of the family. Smt.Dropadi Devi did not have funds to make payment for the said plot. The same was paid for by the amounts belonging jointly to the parties and inherited by them through their predecessor-in-interest, namely, their father-Dr.R.N.Sardana. The entire payment of ₹25,000/-(Rupees twenty five thousand only) for the plot was made by cheques from the account of Smt.Dropadi Devi which money was credited after realizing proceeds from the FDRs, rent, agricultural land

income as well as gratuity of Late Dr.R.N.Sardana. The construction is also stated to have been raised from the sale of shares, realization of amounts of FDRs, sale of agricultural land and other resources available with the family members jointly inherited from Dr.R.N.Sardana. The appellant also claims to have contributed to the cost of construction of the house. It is stated that the parties had a common mess till 1980. On the basis of above, it is averred that Late Smt.Dropadi Devi was acting jointly on behalf of the family members of the parties being the eldest member. She had also been granted a succession certificate without any objection from the parties though it is claimed that this was on the understanding that the entire family members shall have equal shares in all the movable and immovable properties. Hence, it is stated that the parties to the suit have equal shares in the New Friends Colony property. Hence, the present suit is filed seeking partition and also claiming share of the rental income.

6. Defendants No.1 and 2 in their written statement have denied the contention of the plaintiff(appellant No.1) pertaining to the property at New Friends Colony(defendant No.1 was late Smt.Dropadi Devi and defendant No.2 is respondent No.1). It is further averred that the said plot was acquired by Sh.Bulaqui Dass the father of Smt.Dropadi Devi who was a member of New Friends Co-operative House Building Society Ltd. He executed a Will dated February 27, 1966 whereby he bequeathed the said land to his daughter. The Perpetual Sub-Lease dated December 18, 1972 of the said plot was executed by the President of India and the New Friends Co-operative House Building Society Ltd. in favour of Late Smt. Dropadi Devi, daughter of Late Sh.Bulaqui Dass Chhabra and was duly registered. It is further stated that the building was built by Late Smt.Dropadi Devi and the property stands in the records of the Delhi Municipal Corporation in her name. It is

denied that property was acquired with funds left by the father of the parties. It is further averred that after the death of Dr.R.N.Sardana, income from rental of the properties, agricultural land and proceeds of sale of agricultural land etc. were utilized in the maintenance of the family and in the marriages of appellant No.2 in 1969, of appellant No.1 in 1970 and respondent No.1 in 1974. It is further averred that the claim of the plaintiff is barred by Benami Transaction (Prohibition) Act, 1988. It is averred that the said property is the exclusive property of Smt.Dropadi Devi and the appellants have no right, title or interest to the same.

7. Regarding house No.B-39, Nizamuddin, defendants No.1 and 2 stated that they have no objection to the partition of the same. It is admitted that in the records of L&DO the property is jointly mutated in the name of the appellant No.1 and respondent no.1 in equal share as all other parties wrote to L&DO renouncing their share. Regarding the agricultural land at District Hissar, Haryana, it is stated that the civil court would have no jurisdiction to hear a suit for partition of the agricultural land, though they have no objection for a partition if this court has the jurisdiction.

8. Respondent No.2 also filed written statement separately supporting the contentions of defendants No.1 and 2. Appellant No.2 who was impleaded as defendant No.4 also filed a separate written statement where she supported the case of appellant No.1 to the extent stating that every party is entitled to 1/5th share in the joint properties.

9. Issues in the suit were framed on 10.02.1999 which read as follows:-

“1. Whether the plot No.A-82, New Friends Colony was acquired by the parties in the name of the defendant No.1 being the head of the family as alleged in para No.8 of the plaint?

2. Whether the plaintiff and his wife made substantial contribution towards the construction of the house A-82. New Friends Colony, New Delhi?

3. *Whether the plaintiff's claim with regard to the property bearing No.A-82, New Friends Colony, New Delhi is barred under Section 4 of the Benami Transaction Prohibition Act?*
4. *Whether the present suit for partition of the agriculture lands in Haryana is outside the cognizance of this Court?*
5. *Whether the suit properties are liable for partition? If so, what is the share of parties?*
6. *Whether the defendants are liable to render accounts to the plaintiff in respect of the rental income collected by the defendants in respect of the suit properties.*
7. *Relief and costs."*

10. Appellant No.1 examined eight witnesses. He has himself filed evidence by way of affidavit as PW-1. He has exhibited eight documents Ex.PW-1/1 to Ex.PW-1/8. Eight documents of appellant No.1 were marked as Ex.P-1 to Ex.P-7. Appellant No.2 (defendant No.4) has tendered her evidence as D4W-1. Defendant No.1, namely, Late Smt.Dropadi Devi also gave her evidence by way of affidavit. However, before she could be cross-examined she expired. Respondent No.1(defendant No.2) gave his evidence as D2W-1. He has exhibited ten documents.

11. The basic controversy pertains to the title of the New Friends Colony property. As per appellant though the property stands in the name of the mother Late Smt.Dropadi Devi, it was purchased from joint family funds and hence each party has an equal share.

12. The impugned order decided issues No.1 to 3 together, namely, the rights to property No.A-82, New Friends Colony. After going through the evidence, the impugned order concludes that appellant No.1 has failed to adduce evidence to establish that there existed any coparcenary in which the parties were coparceners or there existed any HUF of which late Dropadi Devi was a Karta. The impugned order holds that late Smt.Dropadi Devi acquired the membership of the society with respect to the plot as an

individual and not as Karta of her own family. The order further holds that Smt.Dropadi Devi showed the property in her individual capacity in her IT Returns. She has paid the house tax and dealt with the property as her own. The Perpetual Sub-Lease Ex.DW-1/2 is witnessed by appellant No.1. The submission of the appellant No.1 that the suit is barred under Section 4 of the Benami Transaction (Prohibition) Act, 1988 was rejected. Hence, issues No.1 to 3 were decided against appellant No.1.

13. The present appeal was admitted on November 19, 2013 and an opportunity was given to the appellants to file brief synopsis which was to be filed within one week before the next date of hearing. The matter was adjourned for January 23, 2014 for arguments. The appellants never filed written submissions whereas the respondents filed notes of arguments. On January 23, 2014, proxy counsel who appeared for the appellants sought adjournment which was opposed by the respondent No.1, a senior citizen. Hence, the request for adjournment was declined and time was given to the appellants to file their written submissions.

14. After the judgment was reserved on January 01, 2014, on February 10, 2014, the appellant filed an application being CM No.2702/2014 for seeking permission to confront respondent No.1 with certain documents which were stated to be placed in a sealed cover. In view of order dated 19.03.2009 whereby it is clear that the sealed cover documents had been placed on record, the said application was dismissed. Two more applications being CM No.2703/2014 and CM No.2704/2014 were also moved. CM No.2703/2014 which was for correction of certain typographical error was allowed. CM No.2704/2014 which sought for re-hearing of the matter after further cross examination of respondent No.1 was dismissed.

15. Appellants have filed their brief synopsis of arguments. As per the written submissions, it is again stressed that the payments for the purchase of the plot and construction have been made from the joint family funds. It is stated in the written submission that Smt.Dropadi Devi paid ₹17,050/- (Rupees seventy thousand fifty only) on May 31, 1969 vide cheque No.0078118 drawn on Bank of India, Ajmeri Gate Extension , New Delhi and ₹3,000/-(Rupees three thousand only) on April 04, 1972 vide cheque No.124185 dated April 04, 1972 drawn on the same Bank. Another payment of ₹972/-(Rupees nine hundred seventy only) from the same Bank was made on February 15, 1978. It is urged that this was a joint family saving account. It is further urged that as per the Income Tax Returns of Smt.Dropadi Devi, the documents filed by the appellant No.1, the respondents and the cross-examination of respondent No.1, an investment of ₹56,000/- (Rupees fifty six thousand only) was made in the New Friends Colony house including the cost of construction from money received as dividends and interest, sale of joint family's 13 Bigha agricultural land at District Hissar, sale of shares of various companies and on maturing of FDRs. Hence, it is urged that Smt.Dropadi Devi made the entire investment from her joint family funds/sources. Reliance is also placed on an Estate Duty Assessment Order dated May 25, 1967 which says that the deceased Smt.Dropadi Devi was a member of HUF. It is further urged that there is no substantive proof given by the respondents that late Smt.Dropadi Devi from her own individual sources of income acquired the plot.

16. The respondents have also filed written submissions. On the basis of evidence filed including the Will of Sh.Bulaqui Dass, respondents urge that late Smt.Dropadi Devi inherited the New Friends Colony property from her father Sh.Bulaqui Dass. She carried out construction herself. She gave the

list of source of fund for construction of the house to the Income Tax Department. The Perpetual Sub-Lease deed is registered in her name. They have relied heavily on the cross-examination of appellant No.1. Reliance is also placed on Section 14 of the Hindu Succession Act, 1956 and Section 3 of the Benami Transactions (Prohibition) Act, 1988. Existence of coparceners and joint family is denied. It is further urged that late Smt.Dropadi Devi executed her last Will/Testament dated September 08, 1988 by which she bequeathed the property bearing No.A-82, New Friends Colony in favour of the respondents for which probate proceedings are pending.

17. The submission also rely upon the judgment of the Orissa High Court in AIR 1995 Orissa 300 Santanu Kumar Das and Others vs. Bairagi Charan Das and Others to state that if a property purchased in the name of a female member of the joint family, the presumption that the said property is joint family property does not arise. Reliance is also placed on judgment of the Madras High Court in AIR 1977 Mad 38 Kistappa Naicker and Another vs. Elumalai Naicker to assert that once the title deeds stand in the name of a person and somebody asserts that the person in whose name the title deed stands is a benamidar, the burden of proving the same is on the person who so asserts.

18. The onus to prove issues No.1 and 2 was on appellant No.1. We may look at the evidence led by the appellants.

19. PW-1, appellant No.1 states in his evidence that the entire payment to the society for the plot was made by Smt.Dropadi Devi between 1969 to 1972. It is urged that the money was deposited for the plot from the funds that the family used to receive from the agricultural income, realization of deposits including FDRs with companies like Goodwill India Ltd, etc. The

said deposit was held in the joint name of the mother, sisters, brother and the wife of appellant No.1. Similar averments are made regarding construction of the residential house. It is urged that the payment was made from amounts lying in Bank of India, Ajmeri Gate Extension, New Delhi and State Bank of Patiala, Darya Ganj which late Smt. Dropadi Devi held jointly with wife of appellant No.1. It is stated that the account in the Bank of India in the name of late Smt. Dropadi Devi was in fact continuing from the time when the father was alive and was depositing moneys. It is further averred that appellant No.1 and his wife used to handover their income to their mother and she used the funds in the ongoing construction of the house. He admits that he is not in possession of details of amounts which would show how much he contributed at various points of time for the construction of house. But he claims that he and his wife used to give substantial part of their income to their mother. On the basis of these submissions, it is urged that the said property at New Friends Colony is purchased from joint family funds belonging to the parties to the suit. The said witness PW-1 filed an additional affidavit where he has placed on record 15 documents.

20. PW-2 Ajay Prakash Narain working for Delhi Floor Mills Co.Ltd has brought the general ledger for 1979 where he has stated the existence of certain FDRs in favour of Smt. Dropadi Devi. PW-3 Mr. M.S. Kaushik is a clerk from Bank of India, Asaf Ali Road, New Delhi. He states that the relevant record being 36 years old is not available. PW-4 Sh. O.N. Khanna, Account Officer of Motors and General Finance Ltd has also stated that summoned record being 27 years old is not available. PW-5 Mr.Brij Mohan Sharma who is from Modi Spinning and Weaving Mills Co.Ltd. has stated that there is no FDR in the name of Smt. Dropadi Devi. PW-6 Sh.Nakul

Chand, Superintendent of New Friends Co-operative House Building Society Ltd. has stated that Smt. Dropadi Devi had applied for membership on March 03, 1969 by making initial payment of ₹110/- (Ex.PW-6/D3). She signed the application in her own writing. A sum of ₹17,050/- (Rupees seventeen thousand fifty only) was deposited vide cheque No.0078118 dated May 31, 1969 by Smt.Dropadi Devi (Ex.PW-6/D5). Another payment of ₹3,000/- (Rupees three thousand only) was also made by her vide cheque No.124185 on April 04, 1972 and another payment was made of ₹972/- (Rupees nine hundred seventy two only) by cheque No.514243 on February 15, 1978. In cross examination he admitted that originally Bulaqui Dass had become the member of the society on March 03, 1967 and that after the death of Mr.Bulaqui Dass the membership was transferred in the name of Smt.Dropadi Devi. He was recalled for further re-examination where he stated that Mr.Bulaqui Dass was enrolled as a member of the society vide DDA letter dated December 12, 1968 but no share certificate was issued to him. Smt.Dropadi Devi was asked to submit fresh application for membership. He further stated that Mr.Bulaqui Dass never made any payment. PW-7, Mohd.Nazar Ali Khan who is a tenant of the property in Nizamuddin West has said that he used to pay rent to Smt.Dropadi Devi and Mr.Pramod Sardana (Respondent No.1). He has further stated that w.e.f. July 1, 2002, he has started paying rent to Mr.Ashok Sardana (appellant No.1). He has stated that the entire family lived together as joint family till 1978-79. In cross examination he has further stated that the entire family lived together in the ground floor of the said house in Nizamuddin and that he presumes there was a joint mess. PW-8 is a clerk of SBI Darya Ganj.

21. PW-1 has filed along with his additional affidavit various documents. It is claimed in the written submissions that these documents which are filed

by PW-1 along with additional affidavit are lying in a sealed cover. The statement is incorrect in as much as the documents are placed in the suit file. One such document which is relied upon in the written submissions filed by the appellant is a photocopy of what purports to be an assessment order passed on May 29, 1967. This document purports to be the Estate Duty Assessment of late Dr.Sardana. There is some reference in the order that Dr.Sardana had one twelfth share in his joint family consisting of his two brothers, his wife and his two sons and that the joint family owned the agricultural land in Hisar District, Haryana. The house at West Nizamuddin is shown as an individual property. Shares and cash deposits etc. are also shown as individual properties. This document which is only a photocopy has not been proved and has also not been marked as an exhibit. Even if the document is however taken into account, it does not show that the property at New Friends Colony is a joint family property. Just because this document refers to the agricultural land in Hisar District in Haryana as a joint family property that would not imply that New Friends Colony property would also become a joint family property.

22. The whole thrust of the evidence led by appellant No.1 is that the property at New Friends Colony has been purchased and constructed from funds left behind by late Dr.R.N.Sardana, the father of the parties or from incomes including rental incomes from assets left behind by Dr.R.N.Sardana or from proceeds from sale of agricultural land which is a property belonging to the ancestors or from funds contributed by appellant No.1 and his wife. The evidence is inchoate, is without details and particulars and is only a general statement. PW-3 from Bank of India has said that no records are available. The payment for the plot was said to have been made partly from this account. Hence there is nothing to show that this account had any

‘Joint Family Funds’. Again regarding funds for carrying out construction, no proper details of the source of funds are given. Some payments might have been made by appellants but that does not change the position. Appellants have failed to establish existence of a Joint Hindu Family or Joint Family Funds or to prove that the property at New Friends Colony was bought or constructed from any Joint Family Funds.

23. We may also have a look on the evidence led by respondent No.1. Though Smt.Dropadi Devi filed her evidence by way of affidavit, she died before she could be cross examined. Evidence was filed by way of affidavit by respondent No.1 (D2W-1). The said D2W-1 has averred that late Sh.Bulaqui Dass left a Will dated February 27, 1966 (Ex.D2W-1/1). He has identified the signatures of his grandfather late Sh.Bulaqui Dass on the Will. He has further pointed out that the Will is attested by Sh.J.D.Jain, who is no longer alive and Sh.R.L.Thusoo, the husband of respondent No.2 who stays in USA. He had stated that after the death of Sh.Bulaqui Dass the membership of the society was transferred in the name of Smt.Dropadi Devi. It is further stated that Smt.Dropadi Devi constructed the building from her own funds raised from her daughter respondent No.2, respondent No.1 and Smt.Shashi Sardana, wife of respondent No.1 and by sale of shares in the name of Smt.Dropadi Devi and respondent No.1 and withdrawal of amounts from FDs which were in the name of Smt.Dropadi Devi. He has further stated that Smt.Dropadi Devi had a bank account with United Commercial Bank, Nizamuddin West which was in the joint names of Smt.Dropadi Devi and the respondents and that moneys were withdrawn by Smt.Dropadi Devi for the construction of the house from this account. He has further pointed out that after completion of construction, Smt.Dropadi Devi was paying house tax. House tax receipts have been marked as Ex.D2W-1/4 and

Ex.D2W-1/5. It is further stated that Smt. Dropadi Devi was assessed to Income Tax where she has shown this property as her personal property. Assessment Order for assessment year 1979-80 is marked as Ex.D2W-1/6. She disclosed her source of investment in the house in a statement to the Income Tax Authorities which is marked as Ex.D2W-1/7.

24. It is worthwhile to have a look at the letter written by Smt.Dropadi Devi to the Income Tax Officer regarding assessment year 1979-80 which is marked as Ex.D2W-1/7. The same reads as follows:-

“17-12-1980

*The Income-Tax Officer,
District VIII (14),
New Delhi.
Dear Sir,*

RE: ASSESSMENT YEAR 1979-80

Further to my previous letter regarding source of investment and amount spent for construction of house property I again confirm that Rs.240,000/- (Rupees Two hundred Forty thousand only) was spent but the source was classified inadvertently by mistake which should read as under:-

- | | | |
|------------------------------|-------------------------|--------------|
| 1. Mr.R.L. Thusoo through | | |
| Mrs. Urmil Thusoo, | Rs.111,250/- instead of | Rs.117,000/- |
| 2. Mr. Parmod Sardana | Rs.33,750/- instead of | Rs.82,750/- |
| 3. Mrs. Shashi Sardana | Rs.39,000/- | |
| 4. Mrs. Dropadi Devi Sardana | Rs.56,000/- instead of | Rs.40,250/- |

Rs.240,000/-

As regards 1 to 3 sources respective affidavits are enclosed.

Regarding my source I give below the following details:-

- | | |
|--|-------------|
| 1. Proceeds from sale of shares | Rs.18,000/- |
| 2. Withdrawal from Fixed Deposits with | |
| A. Goodwill India Ltd. | 7,500/- |
| B. Motor & General Finance Ltd. | 21,000/- |
| C. Modi Spg. & Wvg. Mills Co. Ltd. | 10,000/- |

Rs.56,000/-

I am enclosing herewith Power of Attorney as well.

*Yours faithfully,
Sd/-*

(DROPADI DEVI SARDANA)”

25. There is no specific cross examination of respondent No.1 on this

document or on Ex.D2W-1/6. The only cross examination of respondent No.1 pertaining to the issue of Income Tax and the Returns of Smt.Dropadi Devi is on August 10, 2010 which reads as follows:-

“I know that Smt.Dropadi Devi, my mother used to file Income Tax Return but I do not recollect, since when she was filing the same.(Vol.As she used to file Income Tax Return through plaintiff). It is correct that Smt.Dropadi Devi was continue to file Income Tax Return even after 1978, when she started living with me. After 1978, myself, my brother-in-law (Ratan Lal Thusoo) and my accountant used to lookafter her income tax matter.”

26. The evidence of the respondents shows that the said property has been acquired from the personal funds of late Smt.Dropadi Devi or funds generated from the respondents.

27. Certain obvious facts are also quite relevant. The registered Perpetual Sub-Lease dated December 18, 1972 for the said property (Ex.D2W-1/2) is in the name of late Smt.Dropadi Devi. She has inherited the said property from her late father Sh.Bulaqui Dass. She paid the property tax. A portion of the property was rented and that Smt.Dropadi Devi was receiving the rent. In the Income Tax Records she has shown the property as her personal property. The appellants have also woken up about 20 years after the property was acquired to file this suit. There is no challenge by the appellants to the registered Perpetual Sub-Lease executed by the President of India as Lessor and the New Friends Co-operative House Building Society Ltd. as Lessee. Clearly there is no intention of the parties or Smt.Dropadi Devi to treat the said property as Joint Family Property.

28. Reference may also be had to the judgment of the Orissa High Court in the case of Santanu Kumar Das (Supra). Para 8 of the judgment reads as follows:

“8. It would be apposite to point at this stage that both the Courts were under the misconception of law that when a property is purchased in the name of a female member of the joint family and there is sufficient nucleus, the said property should be presumed to be

joint family property. Such a presumption would be available only in the case of a male member of the family, but not a female member as has been held in the case of Manahari Devi v. Choudhury Sibanava Das reported in AIR 1983 Orissa 135, where this Court after referring to various decisions held that the presumptive doctrine available in respect of the property in the name of a male is not available as in the case of a female member. The party pleading a contrary case should establish the same adducing necessary evidence that the property so purchased was from the joint fund.”

29. In view of the above, the appellants have not been able to prove that the recorded owner of the property Smt.Dropadi Devi was not the actual owner.

30. We hence affirm the judgment of the learned Single Judge on issues No.1 to 3. The said property was the personal property of Smt.Dropadi Devi.

31. As far as issue No.4 is concerned, the impugned order holds that civil suit would not be maintainable as the Competent Court under Land Reforms Act would have jurisdiction. There are no serious or cogent submissions made in the written submissions grounds of appeal regarding the same. The finding of the learned Single Judge on the said issue is upheld.

32. Regarding issues No.5 to 7, the same is not a subject matter of this appeal as there is no challenge to the same.

33. Accordingly, the order and decree passed by the learned Single Judge dated October 15, 2012 is upheld. The present appeal is dismissed. No orders as to costs.

**JAYANT NATH
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

FEBRUARY 19, 2014
rb/raj