

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

Date of decision: 9th May, 2014.

+ FAO(OS) 210/2014

SURENDRA PAL SINGH Appellant

Through: Mr. Rakesh Kumar Singh, Adv.

Versus

RAVINDRA PAL SINGH Respondent

Through: Mr. Vijay Gupta and Mrs. Geeta Gaur,
Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This intra court appeal impugns the order dated 13th March, 2014, of a learned Single Judge of this Court (exercising ordinary original civil jurisdiction, in CS(OS) No.2115/1999 for partition of immovable property) appointing a Court Commissioner to suggest the mode of partition of the property and to on behalf of the appellant/defendant execute documents and take other steps for conversion of leasehold rights in the land underneath the property into freehold, in pursuance to a preliminary decree for partition declaring the respondent/plaintiff and the appellant/defendant to be having 50% undivided share each in the property.

2. The impugned order is admittedly not appealable under the Civil

Procedure Code (CPC), 1908 and the appeal has been preferred under Section 10 of the Delhi High Court Act, 1966. Though the appeal comes up today for the first time but since the counsel for the respondent/plaintiff appears on caveat, we have, without entering into the question of maintainability of the appeal (which is doubtful), heard the counsels on merits.

3. The respondent/plaintiff instituted the suit from which this appeal arises *inter alia* for partition of house No.15, Babar Road, Bengali Market, New Delhi. Vide order dated 28th August, 2012 in the suit, a preliminary decree declaring the appellant/defendant and the respondent/plaintiff to be having 50% undivided share each, was passed. The contention of the appellant/defendant that the property being situated on leasehold land could not be partitioned, was held to be misconceived, observing that this Court in ***Chiranji Lal Vs. Bhagwan Das*** AIR 1991 Delhi 325 and ***Inderjit Singh Vs. Tarlochan Singh*** (1991) 20 DRJ 281 has held that where the land is leasehold, parties / co-owners will be left with undivided share in accordance with the preliminary decree in the leasehold rights in the land and the superstructure will be partitioned, if possible and if the superstructure is not capable of being partitioned, the property will be sold (I may add that in

Madan Lal Vs. Kuldeep Kumar MANU/DE/4039/2013, ***Mohinder Singh Vs. Kartar Lal*** MANU/DE/1309/1997, and ***Ram Lal Sachdeva Vs. Sneha Sinha*** AIR 2000 Delhi 92 also the same view has been taken).

4. The appellant/defendant preferred RFA(OS) No.98/2012 against the aforesaid preliminary decree which was dismissed vide judgment dated 31st October, 2012 with costs of Rs.2 lakhs on the appellant/defendant for having not only taken a frivolous defence in the suit but having also delayed the disposal of the suit by persisting in the said defence. The reasoning aforesaid given by the learned Single Judge on the contention of the appellant/defendant of the leasehold tenure in the land underneath the property being not capable of being partitioned, was affirmed by observing that if on land which is impartible a superstructure is constructed, the superstructure is capable of being partitioned.

5. The appellant/defendant preferred Special Leave Petition (SLP) (Civil) No.CC 10665/2013 to the Supreme Court against the judgment aforesaid of the Division Bench and which was dismissed *in limine* on 15th July, 2013.

6. The preliminary decree for partition having so attained finality, the learned Single Judge, as aforesaid, appointed Court Commissioner to report

whether the property i.e. the superstructure could be partitioned by metes and bounds. The contention of the counsel for the respondent / plaintiff that, if the property were to be ultimately sold, such sale would be expeditious and beneficial to the parties if the leasehold rights in the land were to be converted to freehold (as is now possible) was also accepted and since the appellant / defendant was not agreeable thereto, the Court Commissioner was also empowered to do all acts / deeds and things on behalf of appellant / defendant for such conversion.

7. The counsel for the appellant/defendant has argued:

(i) that the land admeasuring 287.5 sq. yds. underneath the property is leasehold property, lease whereof was granted in or about November, 1938 by the Governor General of India in Council in favour of the father of the parties; attention is invited to the copy of the perpetual lease filed as annexure to this appeal;

(ii) that the Land & Development Office (L&DO), Ministry of Urban Development, Government of India being the successor of the Governor General of India in Council, who had granted the lease as aforesaid, vide its letter dated 17th January, 2005 substituted the

leasehold rights in the name of the appellant/defendant and the respondent/plaintiff; attention is invited to the copy of the said letter also annexed to the memorandum of appeal and which also provides that “sub-division of the property will not be allowed at any stage”; (iii) attention is next invited to the clause of the perpetual lease deed of the land underneath the property which provides that the same was granted in consideration of the premium of Rs.1,575/- paid by the father of the parties before the execution of the lease deed and of yearly rent payment in advance of Rs.78.12 paise or such other sum as may be assessed by the Deputy Commissioner, Delhi or by such Officer as may from time to time appointed by the Local Government in this behalf;

(iv) attention is also invited to Section 54 of CPC which is as under:

“54. Partition of estate or separation of share—Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.”

and to Order XX Rule 18 of the CPC, which is as under:

“Order XX

.....

18. Decree in suit for partition of property or separate possession of a share therein—Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then—

- (1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54;*
- (2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties, interested in the property and giving such further directions as may be required.”*

(v) that since the perpetual lease of the land underneath the property provides for payment of annual rent, the preliminary decree for partition is of an undivided estate assessed to the payment of revenue to the Government, within the meaning of Section 54 CPC and Order XX Rule 18(1) of the CPC and the learned Single Judge erred in

appointing a Court Commissioner to suggest the modalities for partition of the property, when as per the said provisions, the learned Single Judge should have referred the matter to the Collector, Delhi to affect the partition;

(vi) that the appellant/defendant having not agreed to the conversion of the leasehold rights in the land underneath the property into freehold as suggested by the respondent/plaintiff, could not be compelled to agree to such conversion and the learned Single Judge erred in authorizing the Court Commissioner to act on behalf of the appellant/defendant in the matter of such conversion;

(vii) reliance is place on *Narasu Vs. Narayan Krishnaji* AIR 1959 Mysore 233 (DB), *Keshao Raghunath Deosant Vs. Waman Keshao Deosant* AIR 1971 Bombay 26 and on *Annasaheb Rajaram Nagane Vs. Rajaram Maruti Nagane* AIR 2001 Bombay 303 to contend that the order of the Civil Court of referring the question of partition of revenue paying estate to a Court Commissioner for suggesting the mode of partition, is without jurisdiction and has to be set aside;

(viii) reliance is also placed on *Muthangi Ayyana Vs. Muthangi*

Jaggarao AIR 1977 SC 292 laying down that a final decree cannot amend or go behind the preliminary decree on a matter determined by the preliminary decree to contend that the direction for conversion of the leasehold rights in the land underneath the property into freehold, is beyond the preliminary decree for partition.

8. Per contra, the counsel for the respondent/plaintiff has taken us through the falsity of the defence set up by the appellant/defendant and has contended that the said falsity now stands established by the preliminary decree for partition having attained finality and has also drawn attention to the dilatory tactics practised by the appellant/defendant to deprive the respondent/plaintiff of his share in the property. It is also argued that the appellant/defendant has not even paid the interim compensation which he was ordered to pay for depriving the respondent/plaintiff of the beneficial use and enjoyment of his share in the property or the compensatory costs of Rs.2 lakhs imposed on the appellant/defendant and upheld by the Supreme Court by dismissal of the SLP preferred thereagainst.

9. We have enquired from the counsel for the appellant/defendant, whether not “estate assessed to the payment of revenue to the Government” connotes ‘agricultural land’ for which land revenue is payable.

10. Though the counsel for the appellant is unable to show any material as to what is meant by “estate assessed to the payment of revenue” but contends that the lease rent payable under the perpetual lease aforesaid is also ‘revenue’ and the perpetual leasehold interest in the land underneath the property is “estate assessed to payment of revenue”; rather, he contends that payments of all taxes to the Government is revenue.

11. We have further enquired from the counsel for the appellant/defendant that if that were to be criteria, would not all properties assessable to payment of house tax/property tax, as indeed all properties wherever situated, are, under the Municipal Laws of each State, be “estate assessed to payment of revenue”, partition whereof can be affected only by the Collector and not by the Civil Court.

12. No answer was forthcoming.

13. We have further invited attention of the counsel for the appellant/defendant to the clause of the perpetual lease deed aforesaid which provides that the arrears of rent thereunder shall be recoverable in the same manner as arrears of land revenue under the provisions of the Punjab Land Revenue Act, 1887 and have enquired that if the rent payable under the said

perpetual lease deed was indeed 'revenue' as contended, what would have been the need for providing for recovery thereof 'as' arrears of land revenue.

14. Again, no answer was forthcoming.

15. We have yet further invited attention of the counsel for the appellant/defendant to the Government Grants Act, 1895 which governs the grant of the perpetual lease aforesaid (see *Sunil Vasudeva Vs. Delhi Development Authority* AIR 1988 Delhi 184, *Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. Vs. Govt. of T.N.* AIR 1997 SC 1368 and *Edward Keventers (Successors) Pvt. Ltd. Vs. Union of India* AIR 1983 Delhi 376) and Section 3 thereof provides for all provisions, restrictions, conditions and limitations ever contained in such grant to have effect, according to their tenor and enquired, whether not the clause in the perpetual lease, making a distinction between the rent payable thereunder and land revenue, by making the rent payable thereunder recoverable in the same manner as arrears of land revenue, means that the rent payable thereunder is not land revenue.

16. Again, no answer was forthcoming.

17. We also find that Section 54 CPC provides for partition of estate assessed to payment of revenue by the Collector, in accordance with law if

any for the time being in force relating to partition of such estate. The law for partition of such estate is to be found in the Delhi Land Reforms Act, 1954 and the Delhi Land Revenue Act, 1954, both of which are applicable to agricultural land susceptible for payment of land revenue and are not applicable to properties situated in urban areas as the subject property is. Order XX Rule 18(1) also provides for partition to be made by the Collector in accordance with Section 54 and which as aforesaid provides for partition in accordance with law applicable to such revenue paying estates. The same is also indicative of the said provisions being applicable to land revenue paying agricultural lands and not to urban properties.

18. Though neither the CPC nor the Reforms Act defines 'revenue' and the Revenue Act defines 'revenue' as meaning land revenue but we find the Punjab Land Revenue Act to be defining 'land revenue' as including assigned land revenue and any sum payable in respect of land, by way of quit rent or of commutation for service, to the Government. 'Estate' is defined in the Reforms Act as meaning the area included under any entry in any of the registers prepared and maintained under the Punjab Land Revenue Act or the U.P. Land Revenue Act, 1901; similarly, the Punjab Land Revenue Act defines 'Estate' as meaning an area of which a separate record of rights has

been made or which has been separately assessed to land revenue. Going by the said definitions also, the expression “estate assessed to the payment of revenue” cannot include the subject property and thus Section 54 and Order XX Rule 18(1) would have no application to the partition of the subject property. Else, it is not in dispute that under Order XX Rule 18(2), for other immovable properties, the procedure as followed by the learned Single Judge is applicable.

19. There is another aspect of the matter. Even if the leasehold land underneath the subject property were to be held to be “estate assessed to the payment of revenue” it has been held in *Tikaram Khupchand Vs. Hansraj Hazarimal* AIR 1954 Nagpur 241, *Priyanath Roy Vs. Sreedhar Chandra Roy* AIR 1945 Calcutta 28, *Debi Saran Singh Vs. Rajbans Nath Dubey* AIR 1918 Patna 63 and *Keshao Raghunath Deosant Vs. Waman Keshao Deosani* AIR 1971 Bombay 26 that Section 54 does not apply to decrees for partition save where, as a result of partition, the revenue might be affected and that where no separate allotment of revenue is asked for and joint liability for shares of revenue in respect of whole estate is left unaffected, the said Section would have no application.

20. It has already been held in the preliminary decree for partition and

which decree has attained finality till the Supreme Court that the leasehold rights in the land underneath the property are to subsist in the parties in equal undivided share and it is only the superstructure which is to be divided. Thus, the partition is not to affect the payment of the rent under the perpetual lease deed supra and which is not to be divided / sub-divided.

21. Not only so, with the introduction of the scheme of conversion of leasehold rights into freehold, the land even if held to be revenue paying estate, is capable of being freed therefrom and thus the occasion for the Collector affecting partition thereof does not arise.

22. Thus the contention of the counsel for the appellant/defendant, on the basis of Section 54 CPC and Order XX Rule 18 CPC, is misconceived and is rejected.

23. As far as the objection to the empowerment of the Court Commissioner to take steps on behalf of the appellant/defendant for conversion of leasehold rights in the land underneath the property into freehold is concerned, the same is yet another instance of the appellant/defendant taking frivolous pleas to somehow or the other, delay/defer partition. Though the counsel for the appellant/defendant also

agrees that such conversion is in the benefit of the parties but still contends that the choice thereof is of the appellant/defendant and the appellant/defendant is entitled to refuse the same in his absolute discretion.

24. We are unable to agree. The appellant/defendant is not the sole/absolute owner of the property. The interest of the appellant/defendant in the property is intertwined with that of the respondent/plaintiff. The appellant/defendant in such a situation does not have a right to act in whimsical fashion to the prejudice of other co-owner of the property. The learned Single Judge has rightly noticed that, whether for partition by metes and bounds or for partition by sale and sharing of sale proceeds, it is beneficial for both the parties to have the said leasehold rights converted into freehold. The reasoning therefor is not far to fathom. The perpetual lease deed prohibits the parties from assigning the same, without permission of the lessor L&DO and even if such permission is to be granted, the same is to be subject to payment of 50% of the unearned increase charges to the L&DO and which charges are much more than the conversion charges.

25. We are of the opinion that the power of the Court to partition a property extends to ordering all such things which are necessary/essential for effectively, economically and beneficially partitioning the property between

the parties. The said contention of the counsel for the appellant/defendant is also thus thoroughly misconceived.

26. Resultantly, the appeal is dismissed with costs of Rs.25,000/- payable to the respondent/plaintiff within three months of today. If the said costs are not paid, the same shall also be a charge on the appellant/defendant's share in the property as earlier ordered in these proceedings.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

MAY 9, 2014
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