

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

% Judgment pronounced on: 11th September, 2015

+ **CS(OS) 417/2012**

CHANDRA KANT BHAGERIA & ORS. Plaintiffs
Through Mr. Dilpreet Singh, Adv.

Versus

TEJ PAL SINGH AND ORS. Defendants
Through Defendants are *ex-parte*

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiffs have filed a suit for declaration and possession against the defendants. The defendants are *ex-parte*. Despite of service, no written statement was filed by the defendants. The plaintiffs have led their evidence by way of affidavits of two witnesses. The plaintiffs gave up their prayers for damages/mesne profits during the course of hearing.

2. The brief facts of the case as per plaint are that the property bearing number 151 E, Kamla Nagar, Delhi - 110007 (hereinafter referred to as the "suit property") was originally owned by Sh.Mata Din Bhageria, which was purchased by him for the benefit and enjoyment of the HUF consisting of himself, his two sons namely Sh.Shri Kant Bhageria and Sh. Rama Kant Bhageria and his wife Smt.Kesar Devi.

3. Upon the death of Sh.Mata Din Bhageria on 11th April, 1974, notional partition in terms of the Hindu Succession Act took place and in furtherance of the same, the two sons and widow became the co-owners of one fourth share each on the bases of survivorship, which was held by them as co-parcenary property to the benefit of HUF's constituted by them with their heirs, and the one fourth share of Sh.Mata Din devolved upon his son namely Sh. Shri Kant by virtue of his will.

4. At the time of the death of Sh.Mata Din, Shri Kant had three living sons and his wife, who amongst themselves constituted a Hindu Undivided Family. The one fourth share, inherited by Shri Kant Bhageria from his father was also thrown by Shri Kant, into the hotch potch of the undivided family constituted by him with his wife and children, who are the plaintiffs and defendant No.4 before this Court.

5. Smt.Kesar Devi expired on 12th September, 1992 and by way of her Will dated 21st June, 1976, she also bequeathed her one fourth share in the suit property to her son Shri Kant, who again threw the said one fourth share to the benefit of the Hindu Undivided Family, constituted between him and his family members. The one fourth share, inherited by Sh. Rama Kant was released in favour of Shri Kant, which again was put to the benefit and within the domain of the Hindu Undivided Family, constituted by Shri Kant with his three sons namely Sh.Chandra Kant, Sh.Kamal Kant and Sh.Balkrishan Kant and his wife. Thus, as per the case of the plaintiffs, the entire suit

property was owned by the Hindu Undivided Family of Shri Kant Bhageria.

6. On 29th October, 2008 a sale deed was executed by Shri Kant in favour of defendant No.3, Sh.Shekhar Bajaj with respect to the front half ground floor of the above suit property which is registered at Sl.No.7646 Additional Book No. 1 Vol No.2741 from pages 1 to 9 on 29th October, 2008. The said sale deed was executed with intention to develop the ground floor of the property. However, as it later transpired that it was not possible to develop only the ground floor, Shri Kant entered into an agreement with Sh.Shekhar Bajaj to repurchase the front half of the ground floor, so that steps for the complete redevelopment of the property may be taken. In the meantime, Shri Kant came in contact with defendant No. 1, who claimed himself to be a builder and who in turn introduced defendant Nos.2 (a) to (d), who were projected to be financiers. Defendant Nos. 1 and 2 (a) to (d) offered to develop the whole of the suit property and in furtherance of the said project, a sale deed dated 5th February, 2009 was executed directly in favour of the defendant Nos. 2 (a) to (d), with respect to the front half of the ground floor by Sh.Shekhar Bajaj and in the said sale deed Sh.Shri Kant Bhageria gave up his pre-emptive right, conferred upon him by virtue of the buy back agreement in his favour, and the consideration paid by him to Sh.Shekhar Bajaj for re-purchasing the property was appropriated in favour of defendant Nos. 2 (a) to (d) and to their benefit. The said

sale deed was registered at Sl.No.897 in additional book No.I Vol No.2827 from pages 105 to 112.

7. On 5th February, 2009 two more sale deeds were executed by Sh.Shri Kant, one with respect to the back half portion of the ground floor and the other with respect to the non existing basement. The said sale deeds were executed in favour of defendant Nos. 2 (a) to (d), as consideration as his share in the developed property, which he was to develop the suit property at his own cost. The said sale deeds were registered at Sl. No.896 additional book No.I Vol No.2827 from pages 97 to 104 and Sl. No.895 additional book No.I Vol No. 2827 from pages 89 to 96.

8. At the same time on 5th February, 2009, a collaboration agreement was entered between the defendant No. 1 and Sh.Shri Kant for the development of the suit property. After the project was delayed for more than seven months, a meeting was arranged between Sh.Shri Kant and defendant Nos. 1 and 2(a) to (d) and a supplementary agreement, tripartite, amongst Shri Kant on the first part, defendant No. 1 on the second part and defendant Nos. 2 (a) to (d) collectively on the third part was executed on 2nd September 2009, defining and putting into writing the rights and obligations *inter se* the parties with respect to the development of the property. At the time of the execution of the supplementary agreement, the defendant Nos. 1 and 2 (a) to (d) also swore affidavits in support of the agreement and recognized their obligations under the Collaboration agreement and Supplementary agreement.

As per the terms of the said agreement, it was clearly agreed and covenanted that the sale deeds dated 5th February 2009 were in consideration to the development of the property and were to have legal force only after complete development of the property and only after the terms and conditions and obligations placed upon defendant Nos. 1 and 2 (a) to (d), in furtherance of the Collaboration and Supplementary agreement dated 2nd September, 2009 were fulfilled.

9. It was also agreed that defendant No. 1 was to make available alternate accommodation to Sh. Shri Kant so as to enable him to vacate the property for development. Defendant Nos. 1 and 2 (a) to (d) were under obligation to get the building plans sanctioned and raise and complete the construction within 17 months from the date of the execution of the supplementary agreement. i.e. 2nd September, 2009.

10. It is stated in the plaint that defendant No. 1 failed to arrange alternate accommodation as agreed by him within the stipulated period. In view of this reason, the project got delayed. The defendants were able to arrange an accommodation only in the month of July, 2010, when Shri Kant was able to shift from the property. In spite of the property being vacated in the month of July 2010, no steps were taken by defendant Nos. 1 and 2 (a) to (d) for the demolition of the property or obtaining the sanction plans for the development of the property.

In the meantime Sh.Shri Kant Bhageria expired on 19th December 2010 while residing in the makeshift premises arranged by defendant Nos. 1 and 2 (a) to (d). It was at the time of shifting to the makeshift property that some of the plaintiffs obtained knowledge with respect to the execution of the above stated sale deeds for the first time.

11. Thus, the plaintiffs submitted that firstly, all the sale deeds in favour of defendant Nos. 2 (a) to (d), are null and void, firstly because Sh.Shri Kant was not the exclusive owner of the suit property which was owned by a Hindu undivided family and secondly he in his personal capacity had no right, title or interest which he could have transferred to the defendants. Presuming but not admitting, that he was able to transfer the title, the said sale deeds are legally null and void, fictitious and being without consideration as defendant Nos. 1 and 2 (a) to (d) have failed to fulfil their obligations, undertaken by them while signing the supplementary agreement dated 2nd September 2009. In terms of sub para (iv) and (v) appearing on page 3 of the said agreement, the sale deeds dated 5th February 2009 are deemed to be without any consideration and the title in the said properties, is liable to revert back and vest in the plaintiffs. The said sale deeds are void ab initio and do not confer any kind of right upon defendant No. 2. Further, the sale deed executed with respect to the non existing basement is a document void ab initio as the property with respect to which the sale deed has been executed neither was

nor is in existence and any contract with respect to a non existing subject is otherwise null and void.

12. In spite of the service of the notice, the defendants failed to even send a reply to the same and they failed to hand over the possession of the property or to take steps for the cancellation of the sale deeds. Therefore, it is prayed by the plaintiffs that defendant Nos. 1 and 2 (a) to (d) be directed to hand over the vacant and peaceful possession of the ground floor of the suit property shown in red in the attached site plan and the sale deeds stated above are liable to be declared to be null and void and the plaintiffs and defendant No. 4 are entitled to be declared to be the owners of the suit property and the possession of the defendant Nos.1 and 2 (a) to (d), over the ground floor is without any title and they are trespassers in the same.

13. PW-1 Sh. Chandra Kant Bhageria has filed his affidavit as Ex.PW1/A as ex-parte evidence. The affidavit has been filed in the same lines of the plaint and has proved certain documents.

14. Certified copy of the sale deed dated 29th October, 2008 has been exhibited as Ex.PW1/1. Copy of the sale deed dated 5th February, 2009 has been exhibited as Ex.PW1/2.

15. It is deposed in the affidavit of PW-1 that on 5th February, 2009 two more sale deeds were executed by Shri Kant, one respect to the back half portion of the ground floor and the other with respect to the non existing basement. The said sale deeds were executed in favour

of defendant No. 2, as consideration as his share in the developed property, which he was to develop the suit property at his own cost. The said sale deeds were registered at Sl. No. 896 additional book No.I Vol no.2827 from pages 97 to 104 and Sl. No. 895 additional book No.I Vol no.2827 from pages 89 to 96. Certified copies of the said sale deeds have been exhibited as Ex. PW 1/3 and 4.

16. A bare perusal of the sale deeds dated 29th October, 2008 and 5th February, 2009 (Ex.PW 1/1, 3 and 4) would reveal that though the sale deeds clearly described the property to be owned by an HUF, but the sale deeds have been executed by Shri Kant in his personal capacity.

17. Original Collaboration Agreement dated 5th February, 2009 has been exhibited as Ex.PW1/5 and the original supplementary agreement dated 2nd September, 2009 has been exhibited as Ex. PWI/6. At the time of the execution of the supplementary agreement, the defendant Nos. 1 and 2 (a) to (d) also swore affidavits in support of the agreement and recognized their obligations under the collaboration agreement and supplementary agreement. The original affidavit sworn by defendant No.1 has been exhibited as Ex. PWI/7 and those sworn by defendant Nos. 2(a) to (d) have been exhibited as Ex. PWI/8 to Ex.PW1/11 respectively.

18. It is deposed by PW-1 that defendants No.1 and 2 (a) to (d) were under obligation to get the building plans sanctioned and raise and complete the construction within 17 months from the date of the execution of the supplementary agreement. i.e. 2nd September, 2009.

The defendant No. 1 failed to arrange alternate accommodation as agreed by him within the stipulated period and because of this reason, the project got delayed. The defendants were able to arrange an accommodation only in the month of July, 2010, when Sh.Shri Kant was able to shift from the property. In spite of the property being vacated in the month of July 2010, no steps were taken by defendant Nos. 1 and 2 (a) to (d) for the demolition of the property or obtaining the sanction plans for the development of the property. In the meantime Sh.Shri Kant Bhageria expired on 19th December 2010 while residing in the makeshift premises arranged by defendant Nos. 1 and 2 (a) to (d). It was at the time of shifting to the makeshift property that some of the plaintiffs obtained knowledge with respect to the execution of the above stated sale deeds for the first time.

19. The plaintiffs and defendant No. 4 got issued legal notice dated 2nd January, 2012 to the defendants No. 1 and 2 (a) to (d) apprising them of the above facts and calling upon them to take steps for the cancellation of the sale deeds stated above and further calling upon them to hand over the vacant and peaceful possession of the ground floor of the suit property to the plaintiffs. A copy of the said legal notice has been exhibited as Ex. PW1/12. The registered receipts have been exhibited as Ex. PW1/13 to Ex.PW1/17 and the computer generated proof of delivery of the above stated legal notices have been exhibited as Ex.PW1/18 to Ex.PW1/22.

20. The site plan showing the portion with respect to which the decree for possession is sought has been exhibited as Ex.PW1/23.

21. PW-2 Prateek Bhageria has also filed his affidavit as evidence as PW-2/A on the same lines as PW-1 deposed. He is the grandson of Late Shri Kant Bhageria.

22. From the case of the plaintiffs, it is evident that the plaintiffs have filed a suit seeking declaration that sale deeds Ex. PWI/1 to PWI/4 to be null and void and have also sought that the plaintiffs along with defendant No.4 be declared to be the owners of the suit property.

23. The plaintiffs have sought the declaration on two counts; the first being that the executor of the sale deeds, being Sh. Shri Kant Bhageria had executed the sale deeds in his personal capacity, whereas the sale deeds, themselves state and traces the title in capacity of being Karta/coparcener in HUF.

24. The plaintiffs have produced the sale deeds themselves, which are Ex. PWI/1 to PWI/4. In the said sale deeds-, in paragraph No.2 under the heading 'the brief facts/previous acts are as under', the following description is appearing;

"4. And Whereas the above mentioned property was actually H.U.F of Sh. Rama Kant Bhageria, Sh.Shri Kant Bhageria and their father Sh.Mata Din Bhageria and their mother Smt. Kesar Devi were the owners of H.U.F property No.151-E, Kamla Nagar, Delhi".

25. From the sale deeds PW1/1 to PWI/4 it is clear that at least 25% share owned by Sh. Shri Kant Bhageria is coparcenary property and not his personal property. The said 25% share becomes the

coparcenary property of Sh. Shri Kant Bhageria, upon the death of Sh. Mata Din Bhageria, on account of the notional partition which took place in terms of Section 6 of the Hindu Succession Act. With respect to the remaining 75%, it is been stated in the plaint, and proved on affidavit by the PW1 and PW2, who have appeared as witnesses to prove the case, that upon inheriting 25% share on the basis of the Will of their father, another 25 % inherited by him on the basis of the Will of his mother, and the remaining 25% acquired by him by way of release deed executed by his brother Sh. Rama Kant, Sh. Shri Kant Bhageria kept on adding the inherited/acquired property to the hotch potch of the HUF of Sh. Shri Kant Bhageria with his sons and wife, thereby making the complete suit property, a HUF/coparcenary property.

26. On the basis of the testimonies of PW1 and PW2 and contents of the sale deeds themselves, it is clear that the suit property is coparcenary property of the HUF consisting of Sh. Shri Kant Bhageria, his wife and children of which he was the Karta. Therefore, as the sale deeds exhibited as Ex. PW1/1 to PW1/4 have been executed in his personal capacity by Sh. Shri Kant Bhageria and not in capacity of Karta/coparcener of HUF, thus the sale deeds are liable to be declared to be null and void.

27. The second ground on the basis of which the declaration has been sought is that, the sale deeds have been executed without consideration. The consideration mentioned in the sale deeds was

never paid and whatever was received was returned in cash by Sh. Shri Kant Bhageria.

28. It is the case of the plaintiffs that the actual consideration against the execution of the sale deeds in favour of the defendant No. 2 (a) to (d) (jointly) was that they had to develop the suit property by reconstructing it. For this purpose, a collaboration agreement dated 5th February, 2009 exhibited as Ex. PWI/5 was entered into between the defendant No 1 and Sh. Shri Kant Bhageria and the same was modified by way of supplementary agreement dated 2nd September 2009 which has been exhibited as Ex. PWI/6. The important covenants of the said agreement which has been exhibited as Ex.PWI/6 are as follows :

“iv) The FIRST PARTY has executed Sale Deed Dtd:05/02/2009 as consideration in favor of THIRD PARTY being nominee of SECOND PARTY. It is agreed that the said Sale Deed shall be enforced only after the full implementation and compliance of Collaboration and Supplementary Agreement.”

29. The sale deeds were to become enforceable only after construction in terms of Ex. PWI/5 and 6 was completed. The relevant covenants of the agreement Ex. PWI/6 are as follows :

“3. That both the SECOND PARTY &THIRD PARTY hereby assure the FIRST PARTY that they will complete the entire building according to the bye-laws of MCD as well as the terms and conditions of the said Collaboration and Supplementary Agreement within due period agreed therein with best quality material as agreed between the parties in

Annexure and Site plan attached with the Collaboration and Supplementary Agreement.

5. That the SECOND PARTY shall complete all the construction work within Seventeen months (including five months of grace period and sanctioning period) failing which the SECOND PARTY shall be liable to pay Rs. One Lac only per month as a penalty amount for three months to the FIRST PARTY and after three months of consecutive default in construction period the FIRST PARTY shall take initiative to complete the construction work as its own by encashing the security money of Rs. Fifty Lakhs as mentioned in clause-4 of this agreement.

6. That if the security cheques of Rs. Fifty lakhs of the SECOND PARTY & THIRD PARTY get dishonoured/bounced /returned unpaid then the FIRST PARTY is liable to initiate legal action in the court of Law to declare the said Sale Deeds of Basement and Ground Floor Null &Void at the costs and expenses of the SECOND PARTY & THIRD PARTY AND apart from that, the SECOND PARTY shall also pay a sum of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) to the FIRST PARTY as compensation/ penalty with respect to non-construction of the said above property.”

30. Besides the collaboration and supplementary agreement, the defendant No.1 and all the defendant Nos. 2 (a) to (d), executed affidavits which are Ex. PWI/7 to 11, duly accepting and recognising that the sale deeds have been executed in their favour in capacity of being collaborators, and in consideration of the proposed construction. From the terms of agreement and the affidavits, it is clear that the actual consideration against the sale deeds Ex.PWI/1 to

PWI/4 was construction and development of the property, and it was agreed that in case the construction was not completed, the plaintiffs were entitled to get the sale deeds declared to be null and void. The plaintiffs are also entitled to a declaration that they be declared to be the owners of the complete ground floor.

31. After the entering into of the collaboration and supplementary agreements, the defendant Nos. 1 and 2 (a) to (d) did not even demolish or remove even one single brick from the property and also failed to take any steps at all towards fulfillment of their obligations of the construction and development of the property. No demolition, construction or building activity was even started by the defendants which has been proved in the evidence of PW I and PW2.

32. In light of the complete failure on the part of defendant Nos. 1 and 2 (a) to (d), to construct and develop the property in terms of Ex. PWI/5 and PWI/6, the plaintiffs are entitled to declaration with respect to the sale deeds as null and void. Consequently, it is evident that since the sale deeds are declared as null and void, the plaintiffs are also entitled to the possession of the ground floor.

33. The suit of the plaintiffs is accordingly decreed declaring that the four sale deeds i.e. SL. No. 7646 dated 29th October, 2008, SL. No. 897 dated 5th February, 2009, SL. No. 896 dated 5th February, 2009, SL. No. 895 dated 5th February, 2009 as null and void and it is declared that the plaintiffs and defendant No.4 are the joint owners of the ground floor of the suit property bearing No. 151-E, Kamla Nagar,

Delhi. Consequently, a decree of possession in favour of the plaintiffs and against the defendant Nos. 1 and 2 (a) to (d) is passed directing the defendant Nos.1 and 2 (a) to (d) to hand over the vacant and peaceful possession of the ground floor of the suit property. The other reliefs are not pressed during the course of hearing. The same are rejected as not pressed. Decree be drawn accordingly. No costs. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 11, 2015