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

\+ CS(OS) 1117/2008 & I.A. 2099/2013

SHRI KULBHUSHAN DANIA ..... Plaintiff
Through: Mr. Sumit Kumar Khatri, Advocate.

versus

SHRI ASHOK KUMAR DANIA & ANR. .....Defendants
Through: None.

% Date of Decision: 16th April, 2013.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

<u>J U D G M E N T</u>

<u>MANMOHAN, J (Oral):</u>

1. Present suit was filed during the lifetime of the father of the plaintiff for partition, rendition of accounts, possession by way of separate share and permanent injunction.

2. From the plaint, it is apparent that plaintiff was fourteen years old when the suit property bearing Khasra No.445, House No.7, New Hari Nagar, Mandavali Fazalpur, Illaqa Shahdara, Delhi (New number House No.7 Daya Nand Block, Shakarpur Extension, Delhi-110092) was purchased. Further admittedly in 1969, when the plaintiff and defendants moved into the suit property, plaintiff was only aged about sixteen years.

3. No document has been placed on record to show that any part of the purchase price and/or construction cost was contributed by the plaintiff.

4. Mr. Sumit Kumar Khatri, learned counsel for plaintiff vehemently contends that improvements in the suit property were carried out with the contributions made by the plaintiff. In this connection, he relies upon exhibit Ex.PW1/32 to PW1/126 totalling to Rs.1,25,000/-.

5. In support of his contention, learned counsel for plaintiff relies upon the judgment of Supreme Court in ***Madanlal (Dead) by LRs. and others v. Yoga Bai (Dead) by LRs., AIR 2003 SC 1880*** wherein it has been held as under:-

> *"4. ....The High Court particularly noted the fact that even according to the defendants prior to alleged division in 1942 entire business belonged to all of them and the income therefrom was enjoyed by all. Therefore, the High Court found that the question which was to be considered was as to whether property acquired by the father and the sons by putting their efforts together in their family business would be amenable to partition at the instance of the sons or not. Referring to several decisions of different High Courts, namely, Bombay High Court, Oudh Chief Court, Madras High Court as well as Andhra Pradesh High Court on the point, it came to the conclusion that the property in question was raised and developed by the joint efforts of Purandas and his sons and therefore it was joint family property, amenable for partition among the father and sons etc. We do not find any flaw in the conclusion drawn by the High Court on the point enumerated above."*

6. However, in the instant case most of the bills/vouchers are on plain paper and for the year 2001. No income tax return of the plaintiff or any other statutory record has been filed showing that expenditure incurred by the plaintiff on construction and/or improvement of the suit property was mentioned in any contemporaneous statutory record. This fact is relevant because at the relevant time the plaintiff was an employee of the Government of India.

7. Similarly, it is difficult to believe that the plaintiff during the time he was working in government was devoting time and money to the business run by his brother and father.

8. In ***Srinivas Krishnarao Kango vs. Narayan Devji Kango & Ors., AIR 1954 SC 379***, the Supreme Court has held that proof of the existence of a joint family does not lead to a presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact.

9. In the present case, the plaintiff has failed to show that the suit property was a joint Hindu family property and/or the suit property was acquired by the father and plaintiff by putting joint efforts. Consequently, Supreme Court's judgment in ***Madanlal (Dead) by LRs. and others*** (supra) is clearly inapplicable to the facts of the present case. In fact, this Court is of the opinion that the suit property is a self acquired property of the plaintiff's father and was thus not amenable to partition during the lifetime of the father.

10. Consequently, present suit and pending application are dismissed. But as now the father of the plaintiff has unfortunately expired, plaintiff is granted liberty to file a fresh suit for partition if so permissible in accordance with law.

MANMOHAN, J

APRIL 16, 2013
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