

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.256/2014**

Decided on : 15th January, 2015

PREM NARAIN SHARMA & ORS. Appellants

Through: Mr.R. K. Tewari & Mr. Arun Kumar
Gupta, Advocates.

Versus

SH. MEHAR CHAND (DECEASED) THROUGH HIS LEGAL HEIRS
SMT. VEER WATI & ORS. Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant.
2. Before dealing with the submission made by the learned counsel for the appellant, it would be pertinent here to mention brief facts of the case.
3. Mr.Harpat is the person who originally owned the suit property, details of which are as under:
 - i) 1406 and 1407 situated in Gali Mandir, Jhajjarwali, Chandni Chowk, Delhi.

ii) A house situated in Gali Misran, District Jhajjar, Rohtak, Haryana (portion of which is used as a private temple by the family). **{known as Rohtak property}**

4. It is not in dispute that he died leaving behind three sons namely Mr.Mehar Chand, Mr.Amar Nath and Mr.Jagan Nath and three daughters.

5. Mr.Mehar Chand during his life time filed a suit for partition against his two brothers i.e. Mr.Amar Nath and Mr. Jagan Nath and three sisters. He claimed 1/3rd share in the suit property. In the suit, the court after hearing the learned counsel for the parties passed a preliminary decree giving shares of the parties as under:

Name of the Party	Share in the Suit Properties
Mr.Mehar Chand (Plaintiff)	7/24
Mr.Amar Nath (Defendant No.1)	7/24
Mr.Jagan Nath (Defendant No.2)	7/24
Smt.Dropadi Devi (Defendant No.3)	1/24
Smt.Rukmani Devi (Defendant No.4)	1/24
Kumari Darshan (Defendant No.5)	1/24

6. It is not in dispute that all the three brothers have died as on date.

7. During the course of the pendency of the suit itself, the legal heirs of Mr.Mehar Chand and Mr.Jagan Nath made a statement that so far as the property situated in Rohtak is concerned, they do not want partition of

the same. This statement was made on behalf of Sh.Mehar Chand by one of the legal heirs on his behalf as well as on behalf of the remaining legal heirs of Sh.Mehar Chand while a similar statement was by Mr.Jagan Nath on his behalf as well as on behalf of attorney off defendant Nos.3 to 5. (Page Nos.95 and 96)

8. Despite this statement having been made, the court proceeded to pass a final decree noting the shares of the parties. The legal heirs of the third brother Mr.Amar Nath namely Mr. Prem Narayan Sharma, Sh.Ram Chander Sharma, Sh.Rajeev Kumar Sharma and Ms.Shashi Bala filed an appeal in which they were unsuccessful. The said legal heirs of Sh.Amar Nath, still feeling aggrieved, have preferred the present regular second appeal.

9. The contention of the learned counsel for the appellants is that the court could not have passed a final decree for partition in respect of the property in Rohtak as a statement had been made on behalf of the original plaintiff Sh.Mehar Chand one of his sons Sh.Pradeep Kumar on his behalf and on behalf of the remains legal heirs of late Sh.Mehar Chand and by Sh.Jagan Nath on his behalf as well as on behalf of attorney of defendant Nos.3 to 5 (who are the daughters of late Sh.Harpat) that they do not want partition of the property situated in Rohtak and therefore the

final decree could not have been passed in respect of the same. Accordingly this is stated to be a substantial question of law as to whether a final decree for partition can be passed by the court when the original plaintiffs are not asking for the same.

10. I have considered this submission made by the learned counsel for the appellants. Whether a final decree in suit for partition is to be passed or not on the facts of a particular case is a question of fact and not a question of law much less a substantial question of law. Even otherwise, in a suit for partition, every party which has a share in the suit property assumes the role of a plaintiff and therefore even if after filing of the suit, the original plaintiff is not interested in the partition of the suit property and the other co-sharers want partition, as has been done in the instant case, the property has to be necessarily partitioned.

11. For these reasons, I feel that the trial court as well as the first appellate court has rightly upheld that the final decree of partition and this issue does not raise any question of law much less a substantial question of law. Therefore, the appeal is dismissed.

CM No.15772/2014

In view of the dismissal of the appeal, no further directions are called for on this application.

Dismissed.

V.K. SHALI, J.

JANUARY 15, 2015
dm