$~13

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

% *Date of Decision : August 07, 2015*

\+ **RFA(OS) 76/2015**

CHANCHAL CHOPRA & ANR ..... Appellants

Represented by: Mr.M.K.Pandey, Advocate with Mr.A.K.Thakur, Advocate

versus

SUNIL CHOPRA & ORS ..... Respondents

Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.14239/2015

For the reasons stated in the application the delay of 63 days in re-filing the appeal is condoned.

RFA (OS) No.76/2015

1. As per practice directions issued by this Court record of CS (OS) No.1241/2008 has been sent along with the appeal and since learned counsel for the appellants desire to argue the matter today itself, we dispense with fixing a date for hearing the appellants as required by Order 41 Rule 11 of the Code of Civil Procedure and hear the appellants through their counsel.

2. Late Ms.Lajwanti was the owner of two tenements bearing No.1/5 and 1/5A Moti Nagar, New Delhi. The two are a composite property evidenced by Ex.PW-1/1, the conveyance deed executed by the Government of India in the name of Lajwanti. The ground floor area of the tenements is 255 sq.ft. Lajwanti was blessed with three sons named Dilbagh Rai, Om

Prakash and Suraj Prakash. She was blessed with a daughter named Raj Chopra who died issueless. The appellant No.1 : Chanchal Chopra and the appellant No.2 : Deepak Chopra are the wife and son of late Shri Suraj Prakash Chopra. They along with Sunita Marwah (daughter of appellant No.1) were the plaintiffs in the suit. The defendants in the suit, save and except Rajiv Chopra are the children and the wife and children of Dilbagh Rai and Om Prakash. Rajiv Chopra is the son of Chanchal Chopra and has been impleaded as a defendant in the suit because he was not supportive of the case set up by his mother and his brother. Pleading that Lajwanti died intestate, the suit was filed in the year 2008 claiming partition of the suit tenements stating that till the year 2008 the appellants were in possession of a room on the rear of the tenements and alleged that they were illegally dispossessed therefrom by the defendants and that after the lock in their room was broken by the defendants, silver idols and jewellery kept in the room by them were stolen.

3. Case put up by defendants was that in the year 1965 money was given by Om Prakash and Dilbagh Rai to Late Sh.Suraj Prakash from which out of the fund provided to him he acquired House No.A-1/9, Moti Nagar, Delhi in the year 1965 and moved out with his family from the house with the understanding that Dilbagh Rai and Om Prakash would be owners of the property and that the same had the approval of the mother. It was pleaded that since the year 1965 Suraj Prakash and his family members had no concern with the suit property which was maintained and benefit thereof enjoyed initially by Om Prakash and Dilbagh Rai and thereafter by their children. It was asserted that after the death of Lajwanti, Late Sh.Suraj Prakash lived on for about 10 years and never claimed any title to the suit

property. It was highlighted that the suit for partition was filed nearly 22 years after the death of Lajwanti.

4. From the pleadings of the parties it is apparent that the core issue was whether an oral family understanding/settlement took place under which Late Sh.Suraj Prakash took some money or for that matter was given some money in the year 1965 and he moved out of the property with the express understanding that his two brothers would be the owners thereof.

5. The appellants examined the appellant No.2 as PW-1 and relevant would it to be highlight that to prove the appellants being in possession of a portion of the suit property he proved Ex.PW-1/2, Ex.PW-1/3, Ex.PW-1/4, Ex.PW-1/5 and Ex.PW-1/6 being the complaints made to the police and the municipal authorities on April 13, 2008 and April 15, 2008 in which it was stated that after the defendants broke the lock of the room in possession of the appellants and removed silver idols and jewellery kept by the appellants in the room unauthorized construction was resorted to by the defendants. He also proved Ex.PW-1/7 being an assessment order pertaining to the assessment year 1978-79, Ex.PW-1/8 being an assessment order pertaining to the assessment year 1978-79, Ex.PW-1/9 being an assessment order pertaining to the assessment year 1977-78, Ex.PW-1/10, being an assessment order pertaining to the assessment year 1977-78, Ex.PW-1/11 being an assessment order pertaining to the assessment year 1975-76, Ex.PW-1/12 being an assessment order pertaining to the assessment year 1975-76, Ex.PW-1/13 being an assessment order pertaining to the assessment year 1976-77, Ex.PW-1/14 being an assessment order pertaining to the assessment year 1976-77. All orders relate to assessment of tax under the Central Sales Tax Act, 1956 and the Delhi Sales Tax Act, 1975. The

assessments pertained to the firm M/s.A.L.Allen and related to different quarters of the years in question to which the assessments related. He also proved Ex.PW-1/15 being an assessment order under the Income Tax Act relating to the firm M/s.A.L.Allen. He proved Ex.PW-1/16, Ex.PW-1/17, Ex.PW-1/18 and Ex.PW-1/19 being either notice of demand or assessment of Income Tax pertaining to the firm M/s.A.L.Allen. The firm being the sole proprietary firm of Late Sh.Suraj Prakash. The relevance of these assessment orders and notice of demand is that they are addressed to Suraj Prakash Chopra as the proprietor of M/s.A.L.Allen at the address A-1/5, Moti Nagar.

6. The defendants No.1, 2, 4 and 5 who had contested the suit and had filed a joint written statement examined Sunil Chopra (defendant No.1) as DW-1. They also examined one Yashpal Mahindroo as DW-2 and one Shiv Darshan as DW-3.

7. As regards DW-2 and DW-3 they deposed that in their presence the family settlement as pleaded by the defendants had taken place. Sunil Chopra as DW-1 deposed as per the defence. Ignoring documents which were marked because they were not proved as per law, it would be enough for us to highlight that Ex.D-1 to Ex.D-10, being the documents admitted by the plaintiffs and relied upon by the defendants showed that Suraj Prakash and his family started residing at A-1/9, Moti Nagar since the year 1965 as owner of the property and paid house tax for the same.

8. Disbelieving the testimony of DW-2 and DW-3 who were aged about 18 years when the oral family settlement pleaded by the defendants took place, the learned Single Judge has held that it was unbelievable that when Dilbagh Rai, Suraj Prakash and Om Prakash entered into an oral settlement

the witnesses would be the friends of the son of Dilbagh Rai.

9. We concur with said reasoning of the learned Single Judge because if elders of the family sit down to discuss a family issue of importance and if they desire witnesses to witness the settlement, surely teenaged friends of their children would not be the witnesses.

10. Though neither party gave the exact date of death of Lajwanti, it was the admitted case that she died somewhere in the year 1985-86 and that Suraj Prakash, the husband of Chanchal Chopra and the father of Deepak Chopra died on April 13, 1996.

11. The learned Single Judge has highlighted that Suraj Prakash lived for around 10 years after his mother Lajwanti died and during his lifetime never staked a claim to the suit property. Therefrom the learned Single Judge has concluded that this conduct was indicative of some kind of an arrangement as pleaded in the defence i.e. Suraj Prakash moving out in the year 1965 from the suit property along with his family. The learned Single Judge has further highlighted that for 22 years after Lajwanti died and 12 years after Suraj Prakash died no claim was made to the property by the appellants.

12. The plea of the appellants that since they were in possession of a room in the suit property till when they were illegally dispossessed in April, 2008 and hence they did not assert their right before a Court of law, has been dealt with by the learned Single Judge in paragraphs 19 to 24 of the impugned decision, and the reasoning takes into account the documentary evidence proved by the appellants. It reads as under:-

> *"19. I will now deal with the submission of the plaintiffs that no steps were taken to claim title to the suit property as it is averred that the plaintiffs were in possession of rear portion of the ground floor of property 1/5 Moti Nagar, New Delhi and*

they continued to be in possession till 13.04.2008 when they were dispossessed. In my opinion, from the facts on record, there is no reason to accept the said explanation given by the plaintiffs for this belated suit now filed. The plaintiff have not been in possession of any portion of the suit property since 1965.

20. The claim of the plaintiff regarding possession of a small portion of the suit property is sought to be proved by two different sets of facts. The first set of facts is the series of complaints made in 2008 to the police and the municipal authorities about illegal dispossession of the plaintiff and unauthorised construction being carried out by some of the defendants. PW1/2 is a letter dated 13.4.2008 written to SHO Moti Nagar pointing out about the lock having been broken open and unauthorised construction being carried out. PW1/3 is a similar complaint by plaintiff No.1 to Deputy Commissioner of Police dated 15.4.2008. On the same date complaint is sent to Executive Engineer, MCD by plaintiff No.2. PW1/4 is also a complaint dated 15.4.2008 sent to Commissioner of Police. Ex.PW1/6 is a complaint to Deputy Commissioner dated 18.4.2008. Present suit is filed on 28.5.2008. It is obvious that several complaints have been made within a short period prior to filing of the present suit. As is apparent the police and Municipal authorities have taken no proper action pursuant to the complaints. Plaintiff No.2 has thereafter failed to approach the Court with a private complaint or with a petition for registration of an FIR before the Metropolitan Magistrate.

21. It is apparent that all the complaints had been filed repeatedly in a short frame of time creating flurry of activity only as an excuse or justification to file the present suit to overcome the difficulty of delay, latches and limitation. These complaints inspire no confidence.

22. The next leg of arguments of the plaintiff regarding the alleged possession of a portion of the suit property till 2008 *revolves around certain documents placed on record which are addressed to plaintiff's father/father's proprietorship concern with the address of the suit property. The reliance of the plaintiff on Ex.PW1/7 to Ex.PW1/19 is baseless. These are orders and notices received from the Sales Tax and Income Tax Department showing address of 1/5, Moti Nagar, Delhi. The existence of this address can be on account of various reasons and not necessarily has anything to do with the actual physical possession of the suit property. Admittedly, the parents of plaintiff No.2 had been residing in the suit property till 1965. The plaintiffs have given the explanation that they were in possession of the back portion of the suit property 1/5 Moti Nagar till 2008. In the plaint it is urged that on 13.4.2008 defendants No.1,2 and 5 have broken the locks of the area in possession of the plaintiff and have taken away metal statues of gods and goddesses along with silver jewellery of the plaintiff and have put their lock. In his evidence by way of affidavit PW-1 has reiterated the averments of the plaint. He adds that there was a sole proprietorship firm in the name of ALLEN which was being run by his late father from the suit premises. He relies on various forms, orders of assessment of sales tax, demands under the Income Tax Act, the Assessment Orders under the Income Tax Act to claim that the address in all these statutory documents is that of the rear portion of the suit property 1/5, Moti Nagar, New Delhi.*

23. In his cross-examination the relevant portion regarding the alleged possession till 2008 of property No.1/5 Moti Nagar is as follows:-

> *"My parents had stayed there till the year 1965. (Vol. They shifted to a new house later). It is incorrect to suggest that the plaintiffs have no concern with the property 1/5 and 1/5A, Moti Nagar, New Delhi at any point of time or that I have wrongfully or falsely claimed the same to be under our possession or occupied by my parents. (Vol.We were having a office in the premises-1/5,*

Moti Nagar, New Delhi, till 1985).

I had informed my counsel about the above office, before filing of the plaint. It is incorrect to suggest that I am trying to improve upon or that since I or my parents were never having any office in the said premises, it is for this reason that the same does not find any mention in the plaint.

Q. As you claimed that you were running an office in the premises-1/5, Moti Nagar, New Delhi till the year 1985, can you tell as to in whose name the electric/water connection existed?

Ans. The same was in the name of my grandmother Smt.Lajwanti. It is incorrect to suggest that the above fact shows that no such office was ever being run in the said premises.

....

"Have you placed on record any proof of your possession over property-1/5, Moti Nagar, New Delhi?

Ans. Yes. Copies of the ITR as well as Sales Tax registration of the business of my father at that address has been placed on record.

I had informed my counsel about the existence of such records at that time of preparation of the plaint. I do not know whether the same were not filed along with the plaint or that there were no pleadings in that regard or that it is only subsequently that the same were placed by the plaintiffs on record.

It is correct that my stand is that the office being run at 1/5, Moti Nagar, New Delhi, belonged to the

> *business of my father. My father was the Sole Proprietor of the said business. As of now I am the sole proprietor of the said business. It is correct that there was a shop being run from the front portion of the premises-1/5, Moti Nagar, New Delhi.*"

PW-1 also admits that the manufacturing unit from which he is doing his business is at Okhla and the office is at B-65 Moti Nagar.

24. Clearly the evidence of plaintiff is unreliable. The plaintiff has his manufacturing unit in Okhla. The office is at B-65, Moti Nagar where he has been residing since 1986. He also clarifies that he is in business since 1986. Why would there be a need to run two parallel offices i.e. one at B-65 Moti Nagar and one at the suit property is not known. Further the office at 1/5, Moti Nagar he claims was the office of his father. If it was an office, it is not clear as to why idols and silver jewellery were kept there. If it was an office normally only office furniture, files and office equipments was required to be kept over there."

13. We have perused the documents proved by the appellants and concur with the reasoning of the learned Single Judge regarding the effect of said documentary evidence. The learned Single Judge is not wrong in taking the view that merely because Sales Tax and Assessment Tax Department was addressing notices etc. at 1/5, Moti Nagar does not lead to an inference of appellants being in possession of a room therein. Indeed, there could be various reasons, and one of which could be sheer in action in intimating a change of address. The reasoning by the learned Single Judge that if the room in question was used as an office it would logically follow that some office furniture and files would be in the room and not statues of Gods and Goddesses along with silver jewellery.

14. The learned Single Judge, in paras 28 to 30 of the impugned judgment has referred to case law concerning family arrangements and we find that correct principles of law have been culled out and applied by the learned Single Judge.

15. While agreeing with the conclusions arrived at by the learned Single Judge we would be failing not to highlight that when a claim to a suit property is made years after the death of the owner thereof and the defence is that the predecessors-in-interest of the parties had entered into an oral family arrangement, due to death of the predecessors-in-interest it would be very difficult for the defendants to prove a family settlement by way of direct evidence and in such circumstances the conduct of the parties would assume great importance. As in the instant case where one branch of the family has moved out and the head of the family during his lifetime has made no claim to the suit property and two brothers with their families continue to occupy the property in question, they maintain the property, they look after the property and pay taxes for the same, it would be good evidence of a family arrangement.

16. The appeal is dismissed in limine but without any order as to costs.

<u>CM No.14238/2015</u>

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 07, 2015
mamta