

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

Judgment Reserved on: July 01, 2015

% *Judgment Delivered on: July 13, 2015*

+ **RFA(OS) 59/2015**

VINOD KUMAR SINGH & ORS Appellant
Represented by: Mr.G.S.Raghav, Mr.Pankaj
Kumar, Advs.

versus

DEVRAJ SINGH & ORS Respondents
Represented by: Mr.Rajiv Khosla,
Mr.R.R.Saini, Mr.Harshit Jain,
Advs.for R-1 to 10.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

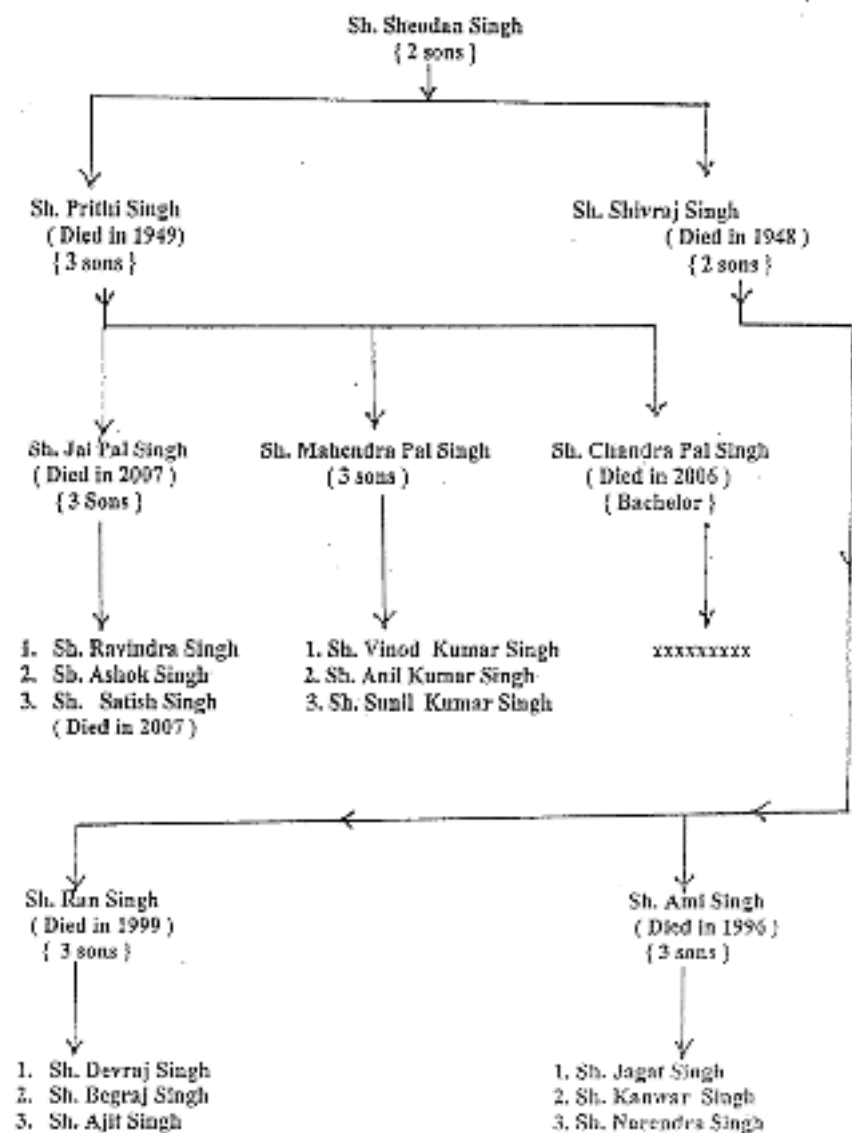
MUKTA GUPTA, J.

1. Vinod Kumar Singh, Anil Kumar Singh and Sunil Kumar Singh all S/o Mahinder Pal; and Ashok Kumar Singh S/o late Jai Pal filed a suit being CS(OS)No.1809/2009 against Devraj, Begraj and Ajit Singh all S/o late Ran Singh; and Jagat Singh, Kanwar Singh and Narendra Singh all S/o late Ami Singh; Mahendra Pal Singh S/o late Prithi Singh and Ravindra Singh S/o late Jai Pal Singh seeking partition, possession and permanent injunction in respect of the suit properties which comprised of a total area admeasuring 23 bighas and 8 biswas in Village Rithala in Khasra numbers as under:

189 (area 1 Bigha 15 Biswas)
190 (area 2 Bigha 14 Biswas)
191 (area 3 Bigha 10 Biswas)
193 (area 2 Bigha 16 Biswas)
208 (area 5 Bigha 4 Biswas)
209 (area 3 Bigha 19 Biswas)
210 (area 3 Bigha 10 Biswas)

2. In CS(OS) No.1809/2009 the defendants filed an application under Order VII Rule 11 CPC which was allowed vide the impugned order dated April 07, 2015 on the ground that the suit was barred by the principles of res-judicata giving rise to the present appeal.

3. Plaintiffs and defendants are all legal heirs of Sheodan Singh who owned the suit properties and the family pedigree is noted as under:



4. Prior to the filing of the present suit i.e.CS(OS) No.1809/2009 two suits were filed being Suit No.1299/1985 and CS(OS)No.1159/2001. Suit No.1299/1985 was filed by Ran Singh and Ami Singh, both S/o Shivraj Singh against Mahendra Pal Singh, Jai Pal Singh and Chandra Pal Singh all S/o of Prithi Singh seeking a degree of permanent injunction, restraining the defendants therein from interfering in the land in actual possession and ownership of Ran Singh and Ami Singh being Khasra Nos.209 and 210 and joint possession of khasra Nos.190 and 191. An ex-parte decree was passed in favour of Ran Singh and Ami Singh which was subsequently set aside. Since Ran Singh and Ami Singh died in the year 1999 and 1996 respectively and their legal heirs did not file any application under Order XXII Rule 3 CPC for substitution, Suit No.1299/1985 stood abated on April 09, 2001. The appeal filed by the legal heirs of Ran Singh and Ami Singh was also dismissed on January 29, 2007 and thus the order of abatement of Suit No.1299/1985 has attained finality.

5. Thereafter, Mahendra Pal Singh, Jai Pal Singh and Chandra Pal Singh all S/o of Prithi Singh filed a suit before this Court being CS(OS)No.1159/2001 against the three sons of Ran Singh i.e. Devraj Singh, Begraj Singh and Ajit Singh and three S/o Ami Singh i.e. Jagat, Kanwar and Narender seeking partition and possession in respect of suit properties as noted above. CS(OS)No.1159/2001 was transferred to District Court and was renumbered as Suit No.596/08. In the said suit an application under Order VII Rule 11 CPC was filed by the defendants therein pursuant to which the plaint was rejected on May 30, 2009. The reason for rejection of the plaint was that there was no cause of action and that the suit was barred by limitation. Defendants in CS(OS)No.1159/2001 did not challenge the

order dated May 30, 2009 and hence the said decision has attained finality.

6. After dismissal of CS(OS)No.1159/2001 renumbered as Suit No.596/08 Vinod Kumar Singh, Anil Kumar Singh and Sunil Kumar Singh all S/o Mahendra Pal Singh and Ashok Kumar Singh S/o late Jai Pal Singh filed the present suit i.e.CS(OS)No.1809/2009 seeking partition and possession. It may be noted that four plaintiffs in the present suit, are the sons of two plaintiffs in CS(OS)No.1159/2001 i.e.Mahendra Pal Singh and Jai Pal Singh. In the present suit again an application under Order VII Rule 11 CPC was filed by the defendants which as noted above was allowed and it was held that the suit was liable to be rejected on the ground of res-judicata.

7. In order to test whether the suit is barred by res-judicata it would be appropriate to note the pleadings and relief sought in the two suits. In CS(OS)No.1159/2001 Mahendra Pal Singh, Jai Pal and Chandra Pal sought a decree of partition of land against defendants separating the share of their land in khasra Nos.189, 190, 209 and 210 and separating the land of the share of defendants therein in khasra Nos.191, 193 and 208 declaring their bhoomadari and ownership rights, exclusive ownership, possession and injunction. Mahendra Pal, Jai Pal and Chandra Pal pleaded that they were S/o Prithi Singh who died in 1949 and that the entire suit property was ancestral land in the joint ownership/ bhoomidari and cultivation of the two deceased brothers i.e. Prithi Singh and Shivraj Singh. The suit property was mutually and orally partitioned and demarcated where after khasra Nos.189, 190, 209 and 210 came to the share of Prithi Singh who became the absolute and exclusive owner of the land and after his demise the same devolved on Mahendra Pal, Jai Pal and Chandra Pal whereas the land in khasra Nos.191,

193 and 208 fell to the share of Shivraj Singh and on his demise to his two sons and thereafter to the defendants therein i.e. three sons of Ran Singh and three sons of Ami Singh. The plaintiffs in the said suit also claimed actual physical and cultivatory possession of their respective portions. It is stated that after the dismissal of Suit No.1299/1985 the defendants therein were contemplating and attempting to sell the land in the share of the plaintiffs therein and trying to create third party interest without their consent. It was thus pleaded that cause of action arose when Suit No.1299/1985 was finally dismissed by the learned Civil Judge, Delhi on April 09, 2001.

8. In the present suit i.e. CS(OS) No.1809/2009 the averments are the same as in CS(OS) No.1159/2001 i.e. Sheodan Singh, the common ancestor of all the parties owned the suit properties in the Revenue Estate of Village Rithala, Rohini which has been urbanized in 1982. That as per the law of inheritance late Prithi Singh and late Shivraj Singh, the two S/o late Sheodan Singh were entitled to equal share of 50% each in the suit properties. However the respondents herein grandsons of late Shivraj Singh illegally claimed 17 bighas 18 biswas to their share which is clearly 6 bighas and 4 biswas in excess of their legal entitlement and is part of the share of grandfather of the plaintiffs late Prithi Singh. The appellant/plaintiffs came to know that in 2001 Mahindra Pal Singh, Defendant No.7 along with his two brothers late Jai Pal Singh and late Chandra Pal Singh filed CS(OS) No.1159/2001 seeking partition, declaration and injunction of the suit properties where Defendants No.1 to 6 herein filed a common written statement taking the plea that in the year 1975-76 consolidation of land in Village Rithala had taken place where under separate land was allotted to each party excepting land in khasra Nos.189, 190, 191 and 192 which was

kept in joint ownership of both parties and an oral partition thereof took in the year 1980. Defendants No.1 to 6 herein admitted exclusive ownership of Mahindra Pal Singh and his two brothers in khasra No.189. Similarly, claim in khasra No.190 (2.14) was also brought down from 50% share to 11.5 biswas only however, they enhanced their earlier claim of 50% share in khasra No.191 (3.6) to exclusive ownership and possession of entire land in khasra No.191 and their claim of exclusive ownership and possession qua khasra Nos.193, 208, 209 & 210 was maintained as alleged in Suit No.1299/1985. The aforesaid claim of the Defendants No.1 to 6 was specifically denied by the Defendant No.7 and his two brothers in their replication. In fact, no such alleged partition by metes and bound of the land in question had taken place in 1980.

9. It is thus claimed that the entries in the revenue records were fraudulent and illegal and are not binding on the plaintiffs/appellants and the whole of the land was liable to be partitioned. That after the rejection of the suit i.e.CS(OS) No.1159/2001 on May 30, 2009 Defendants No.1 to 6 are claiming that they will not permit the plaintiffs/appellants, defendant No.8 and Mahendra Pal Singh to have ancestral land partitioned and the excess land measuring 6 bighas and 4 biswas would not be given to them. It is claimed that the plaintiffs/appellant being the third generation lineal male descendants of Sheodan Singh have acquired ownership right by birth extending over the entire ancestral property conjointly with the rest of the members of the family and being co-owners seek partition.

10. It is trite law that before the plea of res-judicata is accepted the following conditions must be proved (i) that the litigating parties must be the same, (ii) that the subject matter of the suits must also be identical, (iii) that

the matter must be finally decided between the parties and (iv) that the former suit must be decided by a Court of competent jurisdiction. Applying these legal principles the learned Single Judge vide the impugned judgment held that the suit being CS(OS)No.1809/2009 was barred by the principle of res-judicata and thus allowed the application under Order VII Rule 11 CPC vide the impugned judgment.

11. Learned counsel for the appellant has strenuously relied on the decision reported in (1976) 1 SCC 214 Ratnam Chettiar and Ors.vs. S.M.Kuppuswami Chettiar and Ors. to bring home the point that if the partition effected between the members of Hindu undivided family is proved to be unjust and unfair and is detrimental to the interest of minors, the partition can certainly be re-opened whatever be the length of time when the partition took place, it is the duty of the Court to protect and safeguard the interest of the minors and the onus of the proof that the partition was just and fair is on the party opposing the partition. In Ratnam Chettiar (supra) the Supreme Court laid down the legal propositions regarding re-opening of the partition as under:

“(1) A partition effected between the members of the Hindu undivided family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

(2) When the partition is effected between the members of the Hindu undivided family which consists of minor coparceners it is binding on the minors also if it is done in good faith and in bona fide manner keeping into account the interests of the minors.

(3) Where, however, a partition effected between the members of the Hindu undivided family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the interests of the minors and the onus of proof that the partition was just and fair is on the party supporting the partition.

(4) Where there is a partition of immovable and moveable properties but the two transactions are distinct and separable or have taken place at different times, if it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair.”

12. As noted above in the plaint the only averment with regard to unfair partition is that the defendants/respondents have 6 bighas and 4 biswas of land in excess of their legal entitlement. The measurement of the land is not the only criteria to determine whether both the parties have equal shares in the immovable properties. There are a number of factors which govern the value and suitability of land, e.g. the location, condition of the land and for what purpose it can be utilised etc. Thus by the mere allegations as averred in the plaint it cannot be said that the partition was unfair to the plaintiffs/appellants who were minor at the time of the partition and hence these issues having not been considered in the earlier decision, the present suit was not barred by the principles of res-judicata.

13. The principle of res-judicata is not a technical principle but a fundamental doctrine aimed at putting an end to litigation. By merely

pleading fraud the applicability of the doctrine cannot be done away with and the plaintiff is required to plead substantial facts to overcome the doctrine of res-judicata. The doctrine of res-judicata is based on public interest and the object to confer finality of a former decision arrived at by the competent Court between the same parties.

14. Thus we find no illegality in the impugned order allowing the application of the respondents under Order VII Rule 11 CPC rejecting the suit being CS(OS)No.1809/2009 on the principles of res-judicata. Appeal is dismissed.

15. No costs.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 13, 2015
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