

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

Decided on: 26th April, 2016

+ **RFA 99/2006**

DR. BALDEV RAJ ANAND & ANR. Appellants

Through: Appellant No.1 in person.

versus

DEWAN CHAND DECD. THR.LR'S & ORS Respondents

Through: Mr. Kuldeep Gola, Advocate for LR's of
R-1 except Ms. Garima Anand.
Ms. Seema Singh, Adv. for R-Garima
Anand.

+ **RFA 120/2006**

VAS DEV Appellant

Through: Mr. , Advocate (*Appearance not given*)

versus

DR. BALDEV RAJ ANAND & ORS. Respondents

Through: Mr. Kuldeep Gola, Advocate for LR's of
R-1 except Ms. Garima Anand.
Ms. Seema Singh, Adv. for R-Garima
Anand.

+ **RFA 235/2006**

BRIJRAJ & ORS. Appellants

Through: Mr. A.K.Dewan, Adv. with
Mr. Sameer Dewan, Advocate

versus

DR.BALDEV RAJ ANAND & ORS. Respondents

Through: Mr. Kuldeep Gola, Advocate for LR's of
R-1 except Ms. Garima Anand.
Ms. Seema Singh, Adv. for R-Garima
Anand.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. These are three appeals bearing RFA No.99/2006, 120/2006 and 235/2006. All the three appellants are assailing the preliminary decree dated 22.11.2005 passed by the learned Additional District Judge, Delhi in a suit for partition.

2. During the pendency of these appeals for the last almost a decade, my learned predecessor had permitted the appellants or even the respondents to file additional grounds giving them an opportunity of urging additional grounds with regard to the passing of a final decree which was passed on 17.01.2016. None of the appellants or even the

respondents have filed any additional ground challenging the final decree. Therefore, not only the preliminary decree has attained finality by confirmation of the passing of a final decree. Moreover, the final decree itself having not been assailed, nothing survives in the matter. However, without standing on this technicality, I proceed to decide all these appeals after consideration of the submissions of the appellants herein in all the three appeals.

3. In RFA No.99/2006 the appellant is appearing in person and is totally incoherent and is raking up the issues which are not at all of concern before this Court while as the other persons are represented by their counsel and are also heard.

4. The sum and substance of their submission has been that the preliminary decree in suit for partition which has been passed granting them 1/7th share in half of the suit property bearing No.28, Road No.1, Punjabi Bagh, New Delhi, measuring 2222.22 sq. yds., while as their case

is that their share should be 1/7th in the 100% or whole of the suit property. This submission is the crux of the entire matter.

5. Before dealing with this submission, it may be pertinent to give brief background of the case. Dr. Baldev Raj Anand, one of the appellants appearing in person and one Ramesh Anand is appellant No.2 who is shown as defendant No.7 in the original plaint filed a suit No.243/1983 titled Dr. Baldev Raj Anand vs. Smt. Mayawanti (since deceased) for partition of the property bearing No.28, Road No.1, Punjabi Bagh, New Delhi, measuring 2222.22 sq. yds. It was alleged in the plaint that the aforesaid property was purchased by their father Late Tej Ram, who died on 20th June, 1969 leaving behind six sons and three daughters, whose pedigree is as under:-

PEDIGREE CHART

Tej Raj
(died on 20.06.1969)

<u>Widow</u>	<u>Sons</u>	<u>Daughters</u>
Smt. Mayawanti	1. Sh. Dewan Chand	1. Smt. Balwant Rani

(died on 20.10.1994) 2. Shri Arjun Das 2. Smt. Agaya Rani
 3. Shri Vas Dev 3. Smt. Pushpa Rani.
 4. Shri K.B. Anand
 5. Shri Krishan Lal
 6. Shri Ramesh Anand

6. All the defendants were served and the defendant Nos. 8 to 10 were proceeded ex-parte being sister as they did not put any appearance. While as counsel appeared for defendants No.2 to 7 and defendant No.1 died during the pendency of the suit, i.e. 20.10.2014. It was also not disputed that the suit property was purchased from the vender on 07.10.1963 by duly registered document for a total sale consideration of Rs.41,000/- in the name of Tej Ram and his eldest son Dewan Chand.

7. During the pendency of the suit as defendant No.1 had died, it was pleaded by defendant No.7 Ramesh Anand that the share of Smt. Mayawanti, widow of Tej Ram was bequeathed vide Will dated 23.04.1985 in the proportion of 1/4th each to different beneficiaries.

8. On the pleadings of the parties, the following four issues were framed:-

“1. What are the respective shares of the parties in the property in suit?

2. Relief.

3. Whether Smt. Mayawanti, the deceased defendant no.1 had left a Will dated 23.04.1985 executed in favour of plaintiff and defendant no.7?

4. Whether the plaintiff and the defendants no.7 are entitled to 1/4th share each in the suit property after the death of Smt. Mayawanti bequeathing her property in equal shares in their favour by the Will dated 23.04.1985?”

9. The parties adduced their evidence and proved documents. The Sale Deed was also proved which was of vital importance. On the basis of the Sale Deed, the Court vide order dated 22.11.2005 ruled that both Shri Tej Ram, the father and his son Shri Dewan Chand owned the property in the proportion of one-half each and therefore, so far as the appellants and the other six sons of Shri Tej Ram are concerned, they would get only 1/7th share each in the one-half of the suit property as the remaining one-half was owned by Shri Dewan Chand. It is against this decree the present appeals were filed. Since the stay application against the preliminary decree was filed but not allowed, therefore, the Court

proceeded to pass a final decree which has been done on 17.01.2016.

Incidentally, the other two issues with regard to Will and 1/4th share of the deceased defendant No.1 having gone to him, was decided against him on account of the fact that the part of the suit property of Shri Tej Ram was stated to be HUF property in which only a male member could be coparceners. That aspect has not been assailed by any party before this Court. I feel that the sisters too ought to have got the share in the suit property despite the fact that they are *ex-parte*.

10. Be that as it may since the preliminary decree has already been confirmed by passing of a final decree and the liberty was given to the appellants as well as to the other respondents have not challenged the final decree, the only aspect which remains to be considered is the oral submission which has been made by the appellant Dr. Baldev Raj Anand himself and the learned counsels for the respondents. This submission as

has been stated hereinabove is with regard to having 1/7th share each in the entire suit property.

11. I do not find any merit in this submission of the appellants that they can get 1/7th share each in the entire suit property. The reason for this is that admittedly the Sale Deed in respect of the property has been proved as Ex.PW-1/2 which is a document duly registered with the Sub-Registrar.

12. Section 17 (b) of the Registration Act, 1908 clearly lays down that no right, title or interest in a property of value of Rs.100/- or upwards is conferred on any person unless and until the document is duly registered with the Sub-Registrar of the area concerned. The document of registration conferring title in respect of the suit property measuring 2222.22 sq. yds. bearing Plot No.28, Road No.1, Punjabi Bagh, New Delhi in favour of Shri Tej Ram and his son Shri Dewan Chand cannot be ignored because that is the only document which confers title. This

document was known to the appellant at the time when he had filed a suit for partition and if it was their case that the entire suit property be partitioned then they had to necessarily challenge the title of Shri Dewan Chand, their brother so far as his half interest in the suit property is concerned, they had to seek a declaration to this effect.

13. Section 34 of the Specific Relief Act specifically lays down that a party who is entitled to any legal character and if a cloud is casted on the same then a suit for declaration would lie. The exact language of Section 34 of the Specific Relief Act, 1963 is as under:-

“34. Discretion of court as to declaration of status or right

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation:”.

14. In the instant case, no prayer for declaration has been made by the appellant or any other party. Therefore, this plea of the appellants that they have 1/7th share each in the entire suit property is not at all sustainable in the eyes of law as no amount of argument for which no foundation has been laid down in the Court by way of pleadings can be relied upon.

15. For the above mentioned reasons, I feel that the appeals of the appellants wherein challenge to the preliminary decree is led with regard to the quantum of their share is totally misconceived and accordingly, the same are dismissed.

16. Therefore, all the sons including the appellant/plaintiff or their successor-in-interest will have only 1/7th share each in the one-half of the suit property

17. Now remains the question of actual partition of the suit property by metes and bounds. In this regard, the learned trial Court has already

observed that the suit property cannot be divided or sub-divided in terms of Master Plan 4.4.3 and therefore, the only method of giving effect to the final decree of partition is to auction the property in a transparent manner and permit the parties to share the sale proceeds in the proportion of 1/7th share each in terms of the judgment and decree passed by the trial Court.

18. In this regard, it may be clarified that so far as auction of the suit property is concerned under Section 3 of the Partition Act, 1893 the other coparceners has a preferential right to purchase. After the price in the open transparent auction is settled an offer shall be given to the legal heirs of respondent No.1 to purchase the suit property and in case they fail to exercise the option in a positive manner, the same shall be then sold to the prospective highest bidder. In order to identify the highest bidder, the suit property deserves to be auctioned in the proportion of 1/7th each of vertical having area of one-half of the entire suit property.

19. I accordingly, appoint Mr. Sanjay Ghosh, Standing Counsel as the Court Commissioner for the purpose of conducting the auction for which he shall devise guidelines including fixation of the earnest money so as to invite serious bids which shall be opened in the presence of the parties.

20. As regards conducting of auction, Mr. Sandeep Kumar, 8860492346 shall also assist the Court Commissioner as a junior counsel to the learned Court Commissioner for the purpose of conducting the auction.

21. The fees of the Court Commissioner is fixed at Rs. 2 lacs and that of the junior at Rs.1 lac, which shall be shared by all the beneficiaries of the properties in equal proportion.

22. Pending applications also stands disposed of.

V.K. SHALI, J.

APRIL 26, 2016

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