

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RSA 391/2014

MEHAR CHAND Appellant
Through: Mr.Gaurav Singh, Mr. Tribindh
Kumar & Mr. Trivendu
Chauhan, Advs.

DHARAM SINGH & ORS Respondents
Through: Mr. Vinod Dubey & Mr. A.K.
Shukla, Advs. for R-1 to R-4.

ASHUTOSH KUMAR, J. (ORAL)

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biswas in Village Karawal Nagar, Delhi. Out of the aforesaid property land measuring 350 sq. yds. remained in joint possession of the appellant/plaintiffs and respondents/defendants No.1 to 3. The aforesaid plot of land which fell in the abadi area was sold by defendants No.1 to 3 to defendant No.4 in an unauthorised and illegal manner. The appellant/plaintiffs could learn about such fraudulent conveyance of the suit property when respondent/defendant No.4 tried to get forcible and illegal possession of plot by raising a boundary wall and constructing a room. Since the respondent/defendants were not agreeable for handing over their 2/3rd share of the suit property, a partition suit was filed seeking allotment of 2/3rd share in the suit property and possession of the aforesaid demarcated plot.

3. The suit was contested by respondent/defendant No.4 on the ground that it was barred by Delhi Land Reforms Act and that that it was a collusive suit filed in cahoots with respondent/defendants No.1 to 3 and thus was not maintainable. Respondent No.4 in his written statement had raised the plea that the suit property was purchased for consideration after an oral settlement between the appellant/plaintiffs and respondents/defendants No.1 to 3.

4. The suit was not contested by the other defendants.

5. On the basis of the pleadings of the parties, the following issues were framed on 04.12.2003 by the Trial Court:

- (i) *Whether the suit is maintainable in view of the provisions of Delhi Land Reforms Act? (OPD)*
- (ii) *Whether the suit is of collusive nature between the plaintiff and defendant no. 1, 2 & 3, if so, to what effect? (OPD4)*

- (iii) *Whether the suit is bad for non-joinder of necessary parties?(OPD)*
- (iv) *Whether the suit has been properly valued for the purpose of court fees and jurisdiction? (OPP)*
- (v) *Whether the defendant No. 4 is a bonafide purchaser for value, if so to what extent? (OPD)*
- (vi) *Whether the plaintiff is entitled for relief claimed in the suit? (OPP)*
- (vii) *Relief*

6. The appellant/plaintiffs got himself examined as PW1 whereas one Ram Singh was examined as PW2. PW2 deposed that the suit property fell in the extended lal dora abadi, which testimony was supported by PW3 in his evidence by affidavit as also in his deposition before the court. The aforesaid witnesses were only cross-examined by the respondent/defendant No.4. Thus, the prosecution examination was closed.

7. Smt. Savitri Devi, wife of respondent/defendant No.4, got herself examined as DW1 and claimed to have purchased the suit property from respondents/defendants No.1 to 3 on 17.12.1989. Two other witnesses namely Pramod Kumar and Gopal Singh were examined on behalf of the defendants as DW2 and DW3.

8. The Trial Court did not agree with the contention of respondents/defendants that the suit was barred for non-joinder of necessary parties as when the suit was filed, the suit property was agricultural land and only after the filing of the suit, it fell in the extended lal dora abadi. The Trial Court also did not find the suit to be collusive.

9. The issue with regard to respondent No.4 being a bona fide

purchaser of the property was decided against the appellant/plaintiffs. The Trial Court held that the purchase of the suit property by defendant/respondent No.4 stood admitted in the pleadings of the appellant/plaintiffs.

10. Thus, what was left to be decided was whether the appellant/plaintiffs was entitled for relief in the suit namely the partition of the suit property to the extent of 2/3rd share.

11. The Trial Court came to the conclusion that had there not been any partition between the appellant/plaintiffs and respondents/defendants No.1 to 3, the other part of the larger property which was co-owned and shared by them could not have been sold. Thus, there was no basis for claiming that out of the entire property of 19 biswas, 350 sq. Yards which was sold without portion.

12. The contention of the respondent/defendant No.4, (the purchaser of the suit property) was, therefore, accepted. The Trial Court further held that joint ownership and partition could not be claimed with respect to one fragment of the property and therefore relief of partition could not have been allowed.

13. The appellant/plaintiffs challenged the finding of the Trial Court about respondent/defendant No.4 having purchased the property for consideration by way of regular civil appeal No.17/14. The Appellate Court held that the appellants could not have got the relief in a simple suit of partition in the suit property when they were admittedly, not in the possession of the suit property when the suit was filed. At the time of filing the suit, the appellants were aware of the suit property having been purchased by respondent/defendant No.4. It was, therefore,

imperative upon the appellant/plaintiffs to have sought cancellation of the sale documents and were also required to seek relief of possession. This could not have been done without payment of appropriate court fee. The appellant/plaintiffs had only got the suit valued for the relief of partition and consequently court fee with respect to 2/3rd share in the suit property was filed. There was no valuation for the relief of possession.

14. It is noticed that during the trial, the appellant/plaintiffs had preferred an application under Order 11 Rule 14 CPC which was allowed on 05.08.1992 and the respondent/defendant No.4 produced, for inspection, the title/transfer documents of the suit property in his favour. Despite this, no attempt was made by the appellant/plaintiffs to get the plaint amended for incorporating the relief of cancellation of those documents and possession after partition.

15. The appellant/plaintiffs were, admittedly, not in possession of the suit property at the time of filing of the suit and were aware of the factum of transfer of the suit property to respondent/defendant No.4. The aforesaid fact also came to the knowledge of the appellant/plaintiffs when pursuant to the orders of the Court, the sale documents were produced by respondent/defendant No.4. Thus, the suit for partition simplicitor could not have been maintained by the appellant/plaintiffs without amendment of the suit, incorporating the relief of cancellation of the sale document and recovery of possession.

16. Both the courts below were, therefore, correct in holding that the suit was not maintainable in the form in which it was filed and was liable to be dismissed. Even on the merits with regard to the

appellants being the co-sharers of the suit property, the Trial Court was justified in holding that without the partition, the major part of the property in whole could not have been disposed of or sold.

17. Thus, this Court finds no reason to interfere with the impugned judgement and orders of the courts below.

18. No substantial question of law has been raised by the appellant.

19. The present second appeal, therefore, is dismissed but without costs.

ASHUTOSH KUMAR, J

FEBRUARY 11, 2016

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