

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

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Date of decision: 24th February, 2016

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RFA 673/2014

AMARJEET SINGH @ RINKU

..... Appellant

Through: Mr. Pushpender Shukla, Adv.

Versus

SURJEET SINGH & ORS

..... Respondents

Through: Mr. G.S. Suri, Adv. 1&3.

Mr. Sanjeev Sabharwal, Adv. for R-4/NrDMC.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 impugns the judgment and decree dated 31st March, 2014 of the Court of Sh. Devender Kumar Jangala, Additional District Judge (ADJ) West, Tis Hazari Courts, Delhi of dismissal of civil suit (No.414/2014 filed by the appellant for partition of property No.2264-A (Left Side), Mandir Wali Gali, Shadi Khampur, Ranjeet Nagar, New Delhi and for declaration that the documents of transfer / sale of the said property executed by the respondent / defendant no.1 in favour of the respondent / defendant no.3 Sh. Onkar Singh are null and void and for injunction restraining the respondent / defendant no.4 from dealing with the said property) consequent to rejection under

Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) of the plaint on the ground of the claim therein being barred by Section 11 and Order XXIII Rule 1 of the CPC.

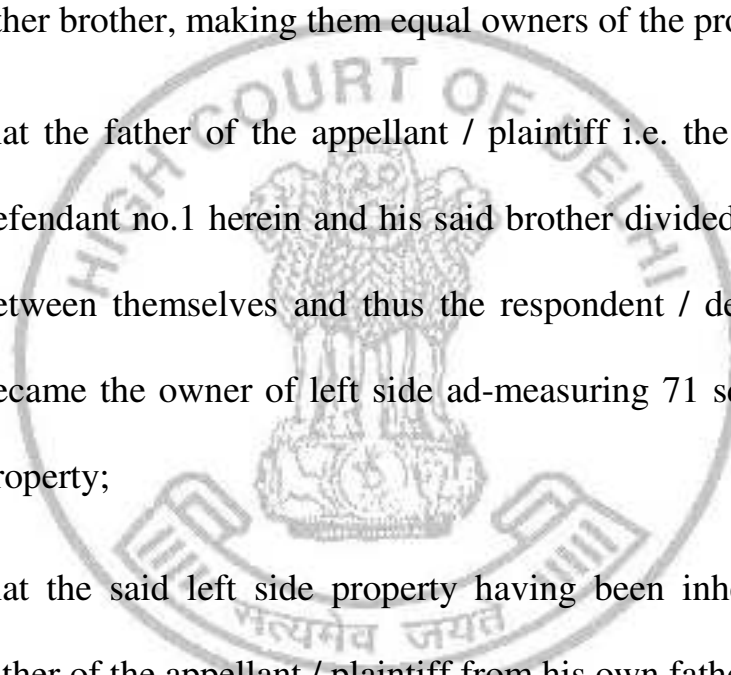
2. Notice of the appeal was issued and the Trial Court record requisitioned. The counsels for the respondents no.1 to 3 and respondent no.4 North Delhi Municipal Corporation (NrDMC) appear.

3. Admit.

4. Considering the fact that if the appeal was to be allowed the suit will have to proceed, the appeal with the consent of the counsels is taken up for hearing at this stage only.

5. The appellant instituted the suit from which this appeal arises pleading:

- (i) that the entire property No. 2264-A, Mandir Wali Gali, Shadi Khampur, Ranjeet Nagar, New Delhi, measuring 142 sq. yds. was purchased by his grandfather Sh. Harnam Singh in the year 1957;

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- (ii) that Sh. Harnam Singh died intestate on 23rd May, 1976 leaving the father of the appellant / plaintiff i.e. the respondent / defendant no.1 and two other sons as his only legal heirs;
- (iii) that one of the other sons of Sh. Harnam Singh relinquished his share in favour of the father of the appellant / plaintiff and the other brother, making them equal owners of the property;
- (iv) that the father of the appellant / plaintiff i.e. the respondent / defendant no.1 herein and his said brother divided the property between themselves and thus the respondent / defendant no.1 became the owner of left side ad-measuring 71 sq. yds. of the property;
- (v) that the said left side property having been inherited by the father of the appellant / plaintiff from his own father is ancestral property and the appellant / plaintiff was also residing therein;
- (vi) however the respondent / defendant no.1 and the respondent / defendant no.2 Smt. Charanjeet Kaur being the mother of the

appellant / plaintiff by deceit made the appellant / plaintiff leave the said property on the pretext of carrying out repairs therein;

(vii) that the appellant / plaintiff upon learning that his parents i.e. the respondents / defendants no.1&2 were intending to sell the property, filed a suit for partition and possession and in the written statement whereto the respondents / defendants no.1&2 informed of having sold the property to the respondent / defendant no.3 Mr. Onkar Singh;

(viii) that an oral compromise was arrived at between the appellant / plaintiff on the one hand and the respondents / defendants no.1&2 on the other hand and owing whereto the appellant / plaintiff withdrew the suit;

(ix) that however since the respondents / defendants no.1&2 did not abide by the compromise, the appellant / plaintiff filed the suit from which this appeal arises.

6. The respondents / defendants no.1 to 3 applied under Order VII Rule 11 of the CPC for rejection of the plaint on the ground of the same being

barred by Section 11 of the CPC for the reason of the appellant / plaintiff having withdrawn the suit earlier filed by him for the same relief. In addition, it was stated that yet another suit filed by the appellant / plaintiff for the same relief also stood withdrawn “expressly without liberty to file fresh suit on the same cause of action”.

7. The aforesaid plea of the respondents / defendants no.1 to 3 found favour with the learned ADJ who has as aforesaid rejected the plea.

8. The counsel for the appellant / plaintiff states that since in the two previous suits there was no adjudication on merits, the learned ADJ has erred in invoking Section 11 of the CPC. He further states that the appellant / plaintiff cannot be left remediless.

9. At this stage it is found that the appellant / plaintiff has not even paid the requisite court fees in this appeal. In this regard, it may be noticed that the appellant / plaintiff had originally filed CM (M) No.599/2014 under Article 227 of the Constitution of India and upon the same being found to be not maintainable, was converted into this appeal subject to the appellant / plaintiff paying the Court fees; in spite of Court fees having not been paid,

the Registry did not raise any objection and the appeal was entertained for the last two years.

10. The Registry of this Court is again found to be negligent in ensuring the collection of the Court fees leading to huge revenue loss.

11. The counsel for the appellant /plaintiff on behalf of the appellant / plaintiff undertakes to this Court to pay the Court fees within 15 days. Accepting the said undertaking and binding the appellant / plaintiff thereto, I proceed to consider the appeal.

12. In my view, leave aside the grounds mentioned by the learned ADJ for rejecting the plaint in the suit from which this appeal arises, the plaint otherwise also does not disclose any cause of action and has been rightly rejected.

13. The suit from which this appeal arises is yet another instance of the common misconception prevalent of ancestral property and inspite of repeated dicta of this Court as also noticed recently in ***Jai Narain Mathur Vs. Jai Prakash Mathur*** MANU/DE/0379/2016.

14. The entire claim of the appellant / plaintiff for a share in the property is premised on the factum of his father i.e. the respondent / defendant no.1 having inherited the property from his own father, the appellant / plaintiff has a share therein. The said premise is in contravention of the provisions of the Hindu Succession Act, 1956. The grandfather of the appellant / plaintiff who is not disputed to have been the sole and absolute owner of the property and which was his self-acquired property is stated to have died only on 23rd May, 1976 i.e. long after the coming into force of the Hindu Succession Act. The property in accordance with the said law would be inherited by the father of the appellant / plaintiff in his personal individual capacity and the appellant / plaintiff as grandson would have no share therein. There is no plea, of the property belonging to any joint Hindu family or a coparcenery.

15. As far as the grounds given by the learned ADJ for rejection of the plaint are concerned, from the Trial Court record, I find that the appellant / plaintiff on or about 4th June, 2012 filed two suits in the Court of the Civil Judge, Delhi. One for permanent injunction for restraining his father and mother from selling, alienating or parting with the property or from demolishing the same or carrying out any reconstruction thereof and the other for the reliefs of partition and possession. The suit for permanent

injunction was dismissed as withdrawn on 5th February, 2013 without liberty to file a fresh suit on the same cause of action. The other suit for partition was also dismissed as withdrawn / settled on 6th October, 2013.

16. Though undoubtedly there has been no adjudication on merits as contended by the counsel for the appellant / plaintiff but Order XXIII Rule 1 of the CPC bars the appellant / plaintiff from bringing a suit on the same cause of action. Even if it be the plea of the appellant / plaintiff that the respondents / defendants no.1&2 have not abided by the compromise / settlement in terms whereof the appellant / plaintiff withdrew the earlier suit for partition, the remedy of the appellant / plaintiff is to apply in the same suit and not by filing a fresh suit.

17. Thus whichever way we look at, no error is found in the order of rejection of plaint leading to dismissal of the suit. The appeal is as misconceived as the suit and is dismissed with costs of Rs.10,000/- to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

Decree sheet be drawn up.

18. If the appellant / plaintiff does not pay the Court fees as undertaken by him, action in accordance with law for recovery of Court fees from him be taken.

RAJIV SAHAI ENDLAW, J

FEBRUARY 24, 2016

‘gsr’

