

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

% Judgment Reserved on: 17th December, 2016
Judgment Delivered on: 10th May, 2016

+ FAO(OS) 402/2015

KULBIR SINGH CHANDHOK & ANR Appellants

versus

AMARDEEP SINGH CHANDHOK & ORS Respondents

Advocates who appeared in this case:

For the Appellant No.1 : Mr Jagjit Singh and Mr Bhagat Singh

For the Appellant No.2 : Mr Rajiv Bahl

For the Respondents 3, 6 & 9 : Mr K.Datta and Mr Vivek Malik

For the Respondents 5 & 8 : Mr Sumehar Bajaj

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

FAO(OS) 402/2015 & CM Nos. 23228/2015(correction in the statement of counsel for the appellants), 31160/2015(directions)

1. This is a classic case of greed over-shadowing relationship. One brother (the appellant No. 1) is trying to take the advantage of his situation and deprive the other brothers and their family of their rights to the property left behind by their father. Attempts are being made to

prolong litigation by one means or the other. Not only is the brother attempting to prolong litigation himself but is also using his son to do so. Attempts have been made not only by way of vague and false averments made in applications but also by resiling from statements recorded before this Court.

2. The appeal impugns order dated 15.07.2015, which order was passed in furtherance to order dated 29.05.2015, whereby it was directed that the appellants and their family members shall not obstruct the children of the family/extended family residing in different portions of the suit premises from visiting/playing in the garden in the front portion of the suit premises and it was further directed that the locks pose an obstruction to free access to children to the garden at any time that they may desire to play and directs removal of locks on the gate to the garden and in the case of requirement of putting the lock on the gate, keys to be shared with the other parties.

3. The suit property is property No.B-39, Greater Kailash, Part-I, New Delhi. The property was originally owned by late Shri Man Singh Chandhok. Man Singh Chandhok had four sons, namely, Swinder Singh Chandhok, Gurucharan Singh Chandhok, Daljit Singh and Kulbir Singh Chandhok. One son Daljit Singh pre-deceased Man Singh Chandhok. The dispute is between three sons and/or their

families.

4. The present dispute relates to Kulbir Singh Chandhok and his sons, on one hand, and Gurucharan Singh Chandhok and his sons and the legal heirs of Daljit Singh, on the other. Kulbir Singh Chandhok has three sons, Amardeep, Karandeep and Armaan. Armaan was a minor when the suit was filed and is stated to have attained majority on 03.09.2015 during the pendency of the present appeal. The two sons of Kulbir Singh Chandhok, namely, Amardeep and Karandeep filed the subject suit for partition, declaration, rendition of account and permanent injunction against their father, minor brother and other family members, not only in respect of the subject property but also in respect of other properties left behind by Man Singh Chandhok. Kulbir Singh Chandhok (father of the Plaintiffs) and the minor brother Armaan have been arrayed as defendants 1 & 9 respectively in the Suit. The present appeal has been filed by said defendants 1 & 9.

5. The title to the subject property is claimed by the plaintiffs, i.e., the two major sons of Kulbir Singh Chandhok through a gift deed dated 27.10.2008. It is contended that as per the gift deed, the plaintiffs and defendants 1 & 9 are holding $1/12^{\text{th}}$ share each, i.e., $1/4^{\text{th}}$ of the $1/3^{\text{rd}}$ out of the undivided plot. It is contended that as per the gift deed, Man Singh Chandhok gifted the subject property in favour of the three sons and their families, each having one-third undivided

share and the plaintiffs, being two out of the four members comprising the family of Kulbir Singh Chandhok, are entitled to 50% share of the one-third.

6. Pending the suit, Kulbir Singh Chandhok and Armaan Chandhok allege to have purchased the share of the two plaintiffs.

7. Pending the suit, it transpires that there was a dispute with regard to the use of the front lawn on the ground floor of the subject property. Kulbir Singh Chandhok, the appellant, claimed exclusive ownership rights of the ground floor. It is contended that he alone has become the owner of the ground floor portion including the lawn and had exclusive ownership and usage rights to the same. It is this stand which appears to have led to the dispute and deprivation of the children of the other brothers to play in the front lawn. It is, in these circumstances, that the orders impugned herein have been passed.

8. The appellants (Defendants 1 & 9 in the suit) have filed the present appeal contending that Man Singh Chandhok, in the year 1998, himself, partitioned his entire property by metes and bounds *inter se* between his three sons and family members. Each son and family members of his pre-deceased son was put into possession of their respective portions owners thereof. It is further averred in the appeal that Man Singh Chandhok gifted the already partitioned

portions to his three sons/family members of his three sons under a registered gift deed. Gift of partitioned portions took place with the consent and approval of all the parties. Ground floor portion including front lawn was gifted to the appellant No.1 and his sons to the exclusion of all others. It is contended that the intent for execution of the gift deed and specifying the portions of donees named therein is to confirm the partition done by him and to protect his sons and the family members of his pre-deceased son from apprehensive claims of Devender Kaur Sabharwal (daughter of Man Singh Chandhok).

9. In the grounds, it is contended that the appellants are the exclusive owners of the ground portion of the property under gift deed by late Shri Man Singh Chandhok. It is in view of the stand taken by the appellants of exclusive ownership of the ground floor portion including the lawn that the disputes have arisen.

10. During the hearing of the present appeal, it was admitted by all the parties that they claim their respective title to the property through the gift deed dated 27.10.2008, to which there is no dispute. The issue revolves around the interpretation of the various terms of the gift deed. Clause (1) of the gift deed reads as under:-

“1. I own plot No.B-39, Greater Kailash, Part-I, New Delhi, admeasuring 836.12 sq. meters and the three storied building constructed thereon having covered area of approx. 957.54 sq. meters, which

is my self-acquired and exclusive property by virtue of sale deed dated 29.03.1968, registered as document No.2117 in Addl. Book No.1, Volume No.1945 at pages 187 to 192 on 30.03.1968 with the Sub-Registrar, New Delhi, executed by Smt. Raj Kumari Bhatia and Smt. Pushpa in my favour. The said plot of land was purchased by them from Shri Vinod Vrajlal Parekh vide sale deed registered in the office of the Sub-Registrar, New Delhi, as document No.3614 in Addl. Book No.1, Volume No.1327 on pages 177 to 183 on 31st May, 1965 who purchased it from M/s. D.L.F. Housing and Construction Pvt. Ltd., New Delhi, vide sale deed registered in the office of the Sub-Registrar, New Delhi, as document No. 3222 in Addl. Book No.1, Volume No.804 on pages 13 to 14 on 27.04.1962. The property was acquired by me from my self- acquired funds. The property belongs to me in my individual capacity and I have been holding the same accordingly. I am desirous of making a gift of the said building and the plot underneath. The Donor out of natural love and affection hereby transfers and conveys by way of gift the property No.B-39, Greater Kaliash, Part-I, New Delhi, absolutely to the said donees to have and hold the same as beneficial owners thereof in the manner and to the extent and subject to the conditions stated hereunder:

- (a) *My son Shri Gurcharan Singh Chandhok and his two sons (my grandsons) namely Shri Jasmit Singh Chandhok and Shri Ravinder Singh Chandhok, so that the share of each of the forenamed shall be 1/9th (one-*

ninth) of the undivided plot and building and the aggregate of the 3 (three) forenamed shares shall be $1/3^{\text{rd}}$ (one-third) of the undivided plot and building.

- (b) *My three grandsons (sons of my Late S.Daljit Singh Chandhok) Shri Gundeep Singh Chandhok, Shri Paramdeep Singh Chandhok, Shri Tanveerdeep Singh Chandhok and my daughter-in-law (wife of my son late S.Daljit Singh Chandhok) Smt Vipula Chandhok so that the share of each of the forenamed shall be $1/12^{\text{th}}$ (one twelveth) of the undivided plot and building and the aggregate of the 4 (four) forenamed shares shall be $1/3^{\text{rd}}$ (one-third) out of the undivided plot and building.*
- (c) *My son Shri Kulbir Singh Chandhok and his three sons (my grandsons) namely Shri Amardeep Singh Chandhok, Shri Karandeep Singh Chandhok and Shri Armaan Chandhok so that the share of each of the aforenamed shall be $1/12^{\text{th}}$ (one twelveth) of the undivided plot and building and the aggregate of the 4 (four) forenamed shares shall be $1/3^{\text{rd}}$ (one-third) out of the undivided plot and building."*

(Underlining supplied)

11. A reading of clause (1) demonstrates that there is no reference to any partition having taken place prior to the execution of the gift deed. Since the gift deed is not denied by the appellants, the alleged

plea of a partition having taken place in 1998 is clearly belied. There is no description of any partition deed even in the pleadings. There is no alleged date, description, terms and conditions of the so-called partition provided by the appellants. The other aspect, i.e., highlighted by clause (1) is that reference is made to the share of each of the brothers and their families as 1/3rd of the “undivided plot and building”. This fortifies the fact that there is no partition/division by metes and bounds of the said property. This further belies the stand of the appellants that there was ever a division by metes and bounds of the property or that the appellants are the sole absolute owners of the ground floor portion including the lawn.

12. Clause (2) of the said gift deed reads as under:-

2. *The gift is subject to the following conditions :*
 - (i) *The sale of any portion of property No.B-39, Greater Kailash, Part-I, New Delhi, shall take place only and only if my two sons namely Shri Gurcharan Singh Chandhok and Shri Kulbir Singh Chandhok and son of my late Daljit Singh Chandhok namely Shri Gundeep Singh Chandhok mutually agree to sell and dispose off the same; also that if any of the two above-named sons or son of my late son are not interested in selling any portion of the above-said property, the same shall not be sold.*
 - (ii) *In case of sale of property No.B-39, Greater Kailash, Part-I, New Delhi, the sale proceeds shall be divided as follows:-*

13. A reading of clause (2) again shows that the share of Shri Kulbir Singh Chandhok and his three sons has been specifically mentioned as $1/12^{\text{th}}$ of the sale proceeds each and the aggregate of the four shares as equal to " $1/3^{\text{rd}}$ out of the total amount of sale proceeds". No distinction is made in respect of any specific portion or any specific sale proceeds *inter se* the three brothers and their families. A reading of the gift deed clearly demonstrates that what was gifted to the three brothers and/or their respective families was $1/3^{\text{rd}}$ undivided share in the land and building, rights to the sale proceeds have also been equated to one-third. Only for the purpose of convenience and enjoyment, distinct occupied portions were mentioned in the gift deed. No special equities or rights were created by the gift deed in favour of either of the brothers by mere occupation/usage of any of the portions of the property.

14. During the hearing of the appeal, the appellants initially attempted to claim extra benefit out of mere usage and occupation of the ground floor. When the terms of the gift deed were read out, it became apparent to the appellants that they were entitled to only $1/3^{\text{rd}}$ of the "undivided plot and building" and/or to $1/3^{\text{rd}}$ of the "total amount of sale proceeds".

15. Another relevant factor that is forthcoming and shows that the appellants are trying to take undue advantage and oust the right of the

other brothers and their family members, is the stand taken by the appellant No.1 in the suit filed by the sister against the brothers and the father. The sister - Devender Kaur Sabharwal had filed a suit for partition, declaration, rendition of account and permanent injunction, being CS(OS) No.2484/2007 titled Devender Kaur Sabharwal versus Man Singh Chandhok & others, against her father Man Singh Chandhok and her four brothers. The subject property was described *inter-alia* in part-1(a) of Schedule-A to the plaint as an immovable property of the defendant No.1 (Man Singh Chandhok).

16. A consolidated written statement was filed by three brothers and the legal heirs of the fourth brother Sardar Daljit Singh Chandhok. The written statement was filed on 14.03.2008 and is also supported by the affidavit of the appellant No.1. The written statement categorically states that the properties mentioned in part-I(a) of Schedule-A are the exclusive properties of the defendant No.1 and neither the plaintiffs nor any of the defendants have any share, right, title or interest in the said properties. No reference is made to any alleged partition having taken place in the year 1998. The appellant No.1, on the other hand, has confirmed that the property is owned exclusively by Shri Man Singh Chandhok and the appellant has no right, title or interest in the same.

17. The written statement filed by the Appellant No. 1 in the said

Suit in the year 2008 clearly belies the stand of the appellants that a partition had taken place in the year 1998 and the property stood partitioned by metes and bounds and the appellant No.1 had become the owner of the ground floor portion including the lawn.

18. Faced with the above facts, at the time of the hearing of the appeal, appellants conceded that they were owners of 1/3rd undivided share in the land and building comprised therein. An admission was made that the appellants together were owners of 1/3rd undivided share in the land and building in property No. B-39, Greater Kailash, Part-I, New Delhi. Proposals were exchanged for *inter se* sale of the respective shares. The following statement was recorded and order was passed on 25.08.2015:-

“The learned counsel for the appellants states that as of now the appellants together are owners of 1/3rd undivided share in the land and building comprised in property No. B-39, Greater Kailash, Part - I, New Delhi. Similarly Sh. Gundeep Singh Chandhok, Sh. Paramdeep Singh Chandhok, Sh. Tanveerdeep Singh Chandhok and Smt. Vipula Chandhok together are owners of 1/3rd undivided share in the said land and building. Furthermore, Sh. Gurcharan Singh Chandhok and his two sons Sh. Jasmeet Singh Chandhok and Sh. Ravinder Singh Chandhok are together owners of 1/3rd undivided share in the land and building of the said property.

Insofar as Sh. Kulbir Singh Chandhok and his minor son (Arman Chandhok) [the appellants herein] are concerned, they have the exclusive right of occupation

and use of the ground floor of the main building, front lawn, rear terrace over the basement, 1/3rd of the basement area and two servant quarters on the first floor of the garage block as marked in red in the plan attached to the Gift Deed dated 27.10.20085, a copy of which is annexed as Annexure A-1. The use and occupation rights of the other 2/3rd share owners are also as per the said Gift Deed.

We may also point out that all the parties in the present proceeding are agreed that they are bound by the Gift Deed dated 27.10.2008. We may point out that Sh. Kulbir Singh Chandhok has purchased the shares of Sh. Amandeep Singh Chandhok and Sh. Karandeep Singh Chandhok who are his sons and thereby the said sons have no right, title or interest left in the said property. It is also clearly understood that whatever the sale deeds with regard to the purchase of the shares of Sh. Amandeep Singh Chandhok and Sh. Karandeep Singh Chandhok may state, the position as it obtains today is that Sh. Kulbir Singh Chandhok and Sh. Arman Chandhok (the minor son of Sh. Kulbir Singh Chandhok) together hold an undivided 1/3rd share in the land and building of the said property.

The learned counsel appearing for the other 2/3rd shareholders in the said property submit that they are agreeable to sell their shares to the appellants subject to them getting a reasonable offer from the appellants. The learned counsel for the appellants seeks some time to consider this proposal. All the above statements have been made and recorded in the presence of the parties.

Renotify on 13.10.2015. On that date also all the concerned parties shall be present in court.”

19. If the appellants had abided by the statement made on 25.08.2015, the entire controversy between the parties would have ended in an amicable resolution but that was not to be. On the following date, instead of making an offer to purchase shares of others as had been stated on 25.08.2015, the appellants filed an application under Section 152 CPC, being CM No.23228/2015, resiling from the admission made and seeking modification of the order dated 25.08.2015.

20. A reading of the application clearly shows that the intentions of the appellants had become dishonest and greed had overcome relationships. The appellants started contending that since the appellants were in occupation of the ground floor of the subject property including the lawn, the appellants were entitled to a higher share in the property. The appellants were seeking to value the ground floor independent of the other property and claiming not only 1/3rd share in the sale proceeds but a larger share of the property.

21. In the said application (i.e. CM No.23228/2015), it is contended that statement of counsel for appellants is not correctly recorded. Errors in recording the statement of the counsel is apparent on the face of the record. It is submitted that orders dated 25.08.2015 are to be corrected by recording correct statements made by the appellants' counsel (whether a statement is good or bad) is to be recorded as

made in Court.

22. We are pained by the application. The averments made in the application are completely false. The order dated 25.08.2015 correctly records the statement and the stand of the appellants. Not only does it record correctly the stand of the appellants, it also notes that the statements have been made and recorded in the presence of the parties. The appellant No.1 along with his wife were personally present in Court along with the counsel. The admissions, as made, were recorded in the order.

23. Further, we may note that a strange affidavit has been filed by the appellant No.1 in support of the said application. The same reads as under:-

- “1. That I am Appellant No.1 in the above case. I am fully conversant with facts of this case. I am not good in English. I do sign in English but text /pleadings caused by my Counsel are explained to me in Punjabi language for proper understanding before signing.*
- 2. Accompanying application under Section 151 CPC, 152 CPC seeking correction of orders-counsel's statement recorded on 25.8.2015 has been drafted by my counsel. He has explained the meaning of the application besides the facts narrated therein. I have understood and am swearing this affidavit in support of application.*

3. *I was present on 25.8.2015 at the hearing of appeal.”*

24. In the affidavit the appellant No. 1 has stated that he is not good in English. He does sign in English but text /pleadings caused by his Counsel are explained to him in Punjabi language for proper understanding before signing. The Counsel has explained the meaning of the application besides the facts narrated therein. Very conveniently the appellant No. 1 is seeking to resile from the statement recorded in court. He does not state that application has been drafted under his instructions or the facts stated therein are true to his knowledge. Another strange thing to be noted is that such a language has not been used in any of the other affidavits filed in support of the pleadings in the suit or in the appeal or applications. Use of such language clearly shows that the appellants are trying to plead ignorance and shift the entire burden and resile from the admission made.

25. We are pained to note that not only is the appellant No. 1 taking such a stand, his counsel is also facilitating him to resile from such an admission and fomenting litigation. The counsel has filed his personal affidavit in support of the application, which application, as we have already noted above, makes false averments.

26. The story does not end even here. Another application (CM

No.31160/2015) has been filed on 11.12.2015 by appellant No.2 who is the son of Appellant No. 1 It is contended that the applicant attained majority on 03.09.2015 and no guardian *ad litem* was ever appointed, no consent of anybody was taken and no notice for appointment of guardian *ad litem* was issued. It is contended that there was no representation on his behalf and on 25.08.2015, a statement was made before this Court, which is prejudicial and in derogation of vested/proprietary right, title and interest of the applicant in the subject property. It is contended that neither the appellant No.1 nor his counsel had any jurisdiction or competence or locus or authority to make any statement which was prejudicial to the vested/proprietary right, title or interest. Declaration is sought that the statement recorded in order dated 25.08.2015 is not binding.

27. The said application filed by appellant No.2 is clearly at the behest of appellant No.1. Appellant No.1 is the father and natural guardian of appellant No.2 and appellant No. 2 was throughout represented by the appellant No. 1. Even the present appeal has been filed by appellant No.1 for himself as well as father and natural guardian of appellant No.2. Even the application being CM No.23228/2015 has been filed by appellant No.1 with the nomenclature application on behalf of the appellants. Be that as it may, nothing has been shown to substantiate that appellant No.1 has

any interest adverse to appellant No.2. The sale deed executed by the other sons of the appellant No.1 in favour of appellant No.2 has been signed by appellant No.1 as guardian of appellant No.2. All this goes to show that appellant No.1, by one means or the other, is trying to resile from the admission made to this Court. It is clearly an attempt being made by appellant No.1 to take a larger share of the property. Greed on behalf of the appellants is writ large.

28. On the one hand, the appellants claim title on the basis of the gift deed which merely gives them 1/3rd undivided right in the land and building. On the other hand, they are claiming extra share by the mere fact that they have been permitted to occupy the ground floor under the gift deed. The gift deed categorically records that the appellants shall have consolidated 1/3rd share in the sale proceeds of the said property and nothing more.

29. Further, the reliance placed by the appellant No. 2 on the various Wills executed by Man Singh Chandhok is of no consequence. Several Wills were allegedly executed by Man Singh Chandhok prior to the execution of the gift deed on 27.10.2008, i.e. Will dated 14.01.2003, 24.05.2004, 25.11.2005, 25.01.2008. The said Wills are at variance to the gift deed. The said Wills bequeath the ground floor to Shri Kulir Singh Chandhok alone and not to him and his sons together. The gift deed, on the contrary, gives 1/3rd undivided

share in the land and building to Kulbir Singh Chandhok and his sons with right of occupation and use the ground floor. Post execution of the gift deed on 27.10.2008, Man Singh Chandhok executed Will dated 16.11.2008 referring to the fact that the subject property had already been gifted. The Will of 16.11.2008 specifically revoked earlier Wills and the subject property was excluded from the ambit of the said Will. Post the execution of the gift deed, applications for mutation were filed with the Municipal Corporation signed *inter alia*, by the appellant No.1 seeking mutation of the subject property in the names of all the parties jointly.

30. All these facts prima facie show that what the appellants get under the gift deed is 1/3rd undivided share in the land and building and/or the sale proceeds. No doubt, the appellants are entitled to occupy and use the ground floor but, the appellants cannot claim any extra benefit on account of the same.

31. The reliance placed by the appellants on the sale deed executed by the other two sons of appellant No.1 in their favour, wherein it is mentioned that the appellants are the exclusive owners of the ground floor is misplaced. The sale deeds are self-serving documents got executed by the appellant No.1 from his own sons in his favour. The said sale deeds are not binding on the other brothers and their family members who are neither signatories to the sale deeds nor confirming

parties thereto. By mere execution of the sale deed, *inter se*, the sons of appellant No.1 and the appellants cannot, in any manner, impinge or affects the rights of the other joint owners of the property.

32. The reliance placed by the appellants on the clause of the gift deed, which specifies that the property cannot be sold till all the parties consent, to contend that the appellants are not consenting to the sale of the property and as such, there cannot be any sale thereof is also an attempt to hoodwink the other joint owners. Merely because the gift deed records a clause that the property cannot be sold till all parties consent cannot be used as a means to deprive the other brothers of their legitimate rights to the property. The appellants cannot play spoil sports and contend on the one hand that they will not sell their share and will not consent to the others to sell their respective share. This would amount to impinging on the absolute ownership rights of the other brothers and their families. It is an admitted position that the families have grown and each of the brothers have several children and there is scarcity and paucity of space in the said property.

33. From the above, it is clear that even if the admission of the appellants were to be ignored, the position is very clear. The appellants cannot claim more than 1/3rd undivided share in the land and building. The appellants cannot thus oust the other joint owners

from using and occupying the property. In these circumstances, the order impugned herein does not warrant any interference. There is no prima facie case in favour of the appellants. The direction given by the learned single judge directing the appellants to remove the locks on the gate to the lawn and not to obstruct free access of the children to the garden at any time that they may desire to play in the said garden to play does not call for any interference.

34. Clearly the applications have been filed to overreach the court and to resile from the admissions made before this court which cannot be countenanced.

35. In view of the above and more so, in view of the conduct of the appellants, the appeal and the applications are dismissed with costs quantified at Rs. 50,000/-.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

MAY 10, 2016
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