

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : August 25th, 2017

+ RFA 38/2009

RAJ KUMARI MALHOTRA & ANR. Appellant
Through: Mr.Satya Prakash Gupta, Advocate.

versus

KAMLESH KUMARI Respondent
Through: Mr.O.P. Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant under Section 96 CPC against the judgment and decree dated 21.10.2008 passed by the learned Additional District Judge, Delhi whereby a decree of partition of property No.10813, Gali No.17, Partap Nagar, Delhi-110007 has been passed in Suit No.121/2007 titled Smt.Kamlesh Kumari v. Smt.Raj Kumari and Another.

2. The facts enumerating from the record are that a suit of partition, possession and mesne profits @ Rs.3,000/- per month was filed by the plaintiff (hereinafter referred to as plaintiff/respondent) against the defendants/appellants. It was contended in the plaint that property No.10813, Pratap Nagar, Gali No.17, Delhi was owned and possessed by Late Sh.Ram Kishan which was allotted to him by DDA vide document dated 30.11.1981. Sh.Ram Kishan expired on

15.02.1982 leaving behind his wife Smt.Shiv Devi Taneja and two daughters, namely, Smt.Raj Kumari Malhotra and Smt.Kamlesh Kumari. After the death of Sh.Ram Kishan, his daughters executed a relinquishment deed on 17.07.1985 in favour of their mother Smt.Shiv Devi Taneja. Smt.Shiv Devi Taneja died on 14.07.1998 and after her death, defendant no.1-Smt.Raj Kumari Malhotra and defendant no.2 Sh.Pramod Kumar entered into a settlement with the plaintiff to pay Rs.3,000/- per month to her as use and occupation charge of one half undivided share in the suit property. Both the defendants had paid Rs.3,000/- to the plaintiff jointly upto 31.07.2006. Thereafter, they had stopped making the said payment. There was no written agreement between the parties to this effect. The license of the defendant no.1 was terminated vide notice dated 16.04.2007. The said notice was cancelled and a fresh notice dated 16.04.2007 was sent. It was claimed that the plaintiff and defendant no.1 have equal share in the suit property, whereas defendant no.2 had no right, title or interest in the same. The plaintiff had also claimed the arrest of licence fee @ Rs.3,000/- per month till recovery of possession.

3. In the written statement filed on behalf of the defendants, it was claimed that the suit was not maintainable for recovery of mesne profits @ Rs.3,000/- per month. It was contended that the plaintiff was owner of $\frac{1}{3}^{\text{rd}}$ share in the suit property but the plaintiff was required to pay Rs.50,000/- to the defendants on account of her share as the defendants had incurred the said amount for improvement of the suit property. It was further contended that the plaintiff was not

entitled to any share without payment of Rs.50,000/- to the defendant no.2. It was contended that the defendant no.2-Pramod Kumar was the adopted son of late Sh.Ram Kishan and he had been in actual physical possession of the property. He had carried out various additions, alterations and improvements in the suit property out of his own funds. He had also performed the last rites of late Sh.Ram Kishan and was considered by all as the adopted son of late Sh.Ram Kishan since the date of adoption being 16.04.1972. It was claimed that the name of defendant no.2 appeared in the ration card, voter list and electoral identity card as son of Sh.Ram Kishan Taneja.

4. On the basis of pleadings of the parties, following issues were framed :

(i)Whether defendant no.2 has any right of ownership to occupy the premises being the adopted son of late Shri Ram Kishan Taneja? OPD

(ii)Whether plaintiff is entitled to the decree of partition as claimed? OPP

(iii)Whether plaintiff is entitled for the decree of possession as claimed? OPP

(iv)Whether plaintiff is entitled to mesne profits with interest? OPP

(v)Whether the suit of plaintiff is properly valued for the purposes of court fees and jurisdiction, if so, its effect? OPP

(vi)Relief.

5. To establish his case, the plaintiff-Smt.Kamlesh Kumari had examined herself. On the other hand, the defendants had examined DW1 Sh.Pramod Kumar, DW2 Smt.Raj Kumari Malhotra, DW3 Sh.Om Prakash Kumar, DW4 Sh.Dev Raj Malhotra and DW5 Sh.I.C. Malhotra. The Court below after going through the evidence adduced by the parties and the documents available on record, decreed the suit holding the plaintiff entitled for one half share of the suit property by way of partition. The defendants have been directed to hand over the half portion of the suit property to the plaintiff after partition. The suit was further decreed for mesne profits @ Rs.3,000/- per month from the date of suit till recovery of possession. Issue no.1 was decided against the defendants and in favour of the plaintiff, whereas issue nos.2 to 4 were decided in favour of the plaintiff and against the defendants. Issue no.5 was with regard to valuation of the suit in which the trial court was not agreeable with the plaintiff and had taken the valuation of the suit property as Rs.12,00,000/- and asked the plaintiff to deposit the deficient court fee which was deposited by the plaintiff,

6. The basic grouse of the appellants is with respect to the decision on issue no.1 for which the present appeal has been preferred.

7. Argument advanced by the counsel for the appellants/defendants is that the trial court committed error while deciding issue no.1 against the appellants/defendants to the effect that the appellant no.2 is the adopted son of Sh.Ram Kishan Taneja. He submits that the adoption had taken place on 16.04.1972 and the ceremonies of

adoption were performed at the residence of Sh.Ram Kishan Taneja and as a result of the same, the appellant no.2 started residing in the suit property whereas his natural parents were residents of Rohtak. Appellant no.2 was 10 years old at that time. His name was recorded at Haridwar as a son of Sh.Ram Kishan Taneja and he had been acting upon being his adopted son. He further submits that the Court below has erred while rejecting ration card, voter list and voter identity card wherein the appellant no.2 is shown to be the son of Sh.Ram Kishan Taneja.

Argument advanced by the counsel for the plaintiff/respondent is that there had been no convincing evidence to the effect that appellant no.2 was adopted son of Sh.Ram Kishan Taneja. He has referred to admission record and service record of appellant no.2 wherein he has been shown as son of Sh.I.C. Malhotra.

8. I have heard the learned counsel for the parties and have gone through the material available on record.

9. The main controversy to be decided in the present case, by way of instant appeal, is whether the appellant no.2-Pramod Kumar is the adopted son of late Sh.Ram Kishan Taneja and if so, what is his right over the suit property.

10. The onus to prove issue no.1 was on the defendants/appellants to the effect that whether defendant no.2/appellant no.2 had any right of ownership to occupy the premises being the adopted son of late Sh.Ram Kishan Taneja. Appellant no.2-Pramod Kumar had examined

himself as DW1 to prove this issue. He had deposed that on 16.04.1972, his adoption ceremony had taken place and since then he became the adopted son of late Sh.Ram Kishan Taneja and he ceased to have connection of being the son of his biological parents. Rest of the defendant witnesses had deposed as such during their deposition in the Court.

11. During cross-examination, DW1-Pramod Kumar had admitted that he had no adoption deed to show that he was adopted by Sh.Ram Kishan Taneja. He admitted that Smt.Raj Kumari Malhotra is his natural mother. He also admitted that in his educational record and his service record, name of his father is recorded as Ishwar Chand. He showed his ignorance as to whether he signed as witness on the relinquishment deed dated 17.10.1985 in favour of Smt.Shiv Devi Taneja. DW2-Smt.Raj Kumari Malhotra admitted that Pramod Kumar was her son. She admitted that she along with plaintiff executed a relinquishment deed with respect to the suit property in favour of their mother. She admitted that after execution of relinquishment deed dated 17.07.1985, Smt.Shiv Devi Taneja became the absolute owner of the suit property.

12. From the testimony of DW2 who is the biological mother of appellant no.2-Pramod Kumar, it was established beyond doubt that after the death of late Sh.Ram Kishan Taneja, a relinquishment deed dated 17.10.1985 Ex.DW2/PX was executed by the plaintiff and defendant no.1 in favour of their mother Smt.Shiv Devi Taneja whereby she became the absolute owner of the suit property. A

perusal of this deed Ex.DW2/PX shows that there is signature of appellant no.2-Pramod Kumar as a witness to the said deed. At the portion of signature of the attesting witness to the relinquishment deed, he had put his signatures as P.K. Malhotra son of Sh. I.C. Malhotra. Both the appellants during their testimony before the lower court had shown their ignorance to the effect whether appellant no.2 signed the said relinquishment deed as a witness, but the said fact has been falsified from a perusal of deed itself wherein appellant no.2 signed showing himself as son of Shri I.C. Malhotra.

13. Another important aspect to be looked into in the present case is that the appellant no.2 in his educational documents and in his service record mentioned his father as Shri I.C. Malhotra and not Sh.Ram Kishan Taneja. The ground taken by the counsel for the appellants in doing so is that the school record is being maintained since class 5th and the same had not been changed. This is not a convincing ground. If for the sake of arguments it is presumed to be correct, there is no explanation as to why the appellant no.2 mentioned the name of his father as Sh.I.C. Malhotra in his service record. By doing so, it is clear that he was never adopted by late Shri Ram Kishan Taneja.

14. The other important fact is that the copies of ration cards and the copy of election identity card placed on record by the appellant no.2 on the record clearly shows that the same were prepared after the death of late Sh.Ram Kishan Taneja and not before his death. The appellant no.2 had not placed on record any documentary evidence by way of photographs etc to show that his adoption ceremony had taken

place. It is also a matter of record that no adoption deed was ever prepared what to say placing it on record.

15. The only document exhibited is relinquishment deed Ex.DW2/PX in which the appellant no.2 has signed as witness and the claim of the plaintiff/respondent is based upon this relinquishment deed. The right of the plaintiff/respondent flows from the relinquishment deed dated 17.10.1985, Ex.DW2/PX and there is nothing contrary to the same. The stand taken by the appellant no.2 is at variance. The admitted fact is that the appellant no.2 happened to be the real son of appellant no.1, namely, Raj Kumari Malhotra, whereas Sh.Ram Kishan Taneja was the father of appellant no.1 and plaintiff/respondent. The documentation claimed by the appellant no.2 is at variance. In some documents, he claims himself to be the son of Sh.Ram Kishan Taneja. The fact remains that in his entire educational record as well as service record he is shown to be the son of Sh.I.C. Malhotra who happens to be the son-in-law of deceased Ram Kishan Taneja.

16. The Court below has rightly dealt with issue no.1. The onus to prove that the appellant no.2 is the adopted son of Sh.Ram Kishan Taneja is on the appellant no.2/defendant no.2 and he failed to discharge the same, particularly when his entire educational and service record shows him to be the son of the other person i.e. Sh.I.C. Malhotra, his biological father. Admittedly, after 1956 no oral adoption could be relied upon and the same must be by virtue of an adoption deed. In the absence of any document, the case of the

plaintiff/respondent is covered by the judgment in the case of ***Chandan Bilasini v. Afta Buddin Khan AIR 1996 SC 591***

17. The other issue argued by the counsel for the appellant is with regard to valuation of the suit. In the present case, the plaintiff claimed the valuation of the suit as Rs.5,00,000/- whereas the Court below reached the conclusion that the valuation could have been of Rs.12,00,000/-. The court fee has been enhanced. No contrary valuation has been claimed by the appellants/defendants and on the claim and as per the direction of the Court, the court fee has already been deposited by the plaintiff/respondent. So, no controversy is left with regard to valuation of the suit.

18. In view of the evidence and material placed on record and the discussion made above, this Court is of the considered opinion that appellants have failed to establish that appellant no.2 had any right of ownership to occupy the premises being the adopted son of late Shri Ram Kisnan Taneja. Thus, there is no fault in the decision arrived at by the lower court with respect to the issue being decided against the appellants/ defendants and in favour of the respondent/plaintiff.

19. In view of the above discussion, this Court does not find any merit in the present appeal. The appeal is accordingly dismissed. No order as to costs.

(P.S.TEJI)
JUDGE

AUGUST 25, 2017
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