

\$~8

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

+ RFA(OS) 12/2017

ASHWANI SHARMA

..... Appellant

Represented by: Mr.Sanjay Goswami, Advocate

versus

KANTA SHARMA & ORS

..... Respondents

Represented by: Mr.Sanjiv Bahl, Advocate with
Mr.Eklavya Bahl, Advocate for
R-1 to R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **09.03.2017**

1. Sh.Diwan Chand Sharma was blessed with two sons : Col.Ram Prakash Sharma and Keshwa Nand Sharma. Being entitled to a residential plot, Sh.Diwan Chand Sharma was allotted on perpetual lease-hold basis plot No.A-132, Defence Colony, New Delhi by the Land & Development Office.

2. Col.Ram Prakash Sharma instituted a suit registered as 298/1969 in the Court of Sub-Judge, First Class, Delhi seeking declaration that his father was a benamidar and that he was the true owner of the property allotted. Sh.Diwan Chand Sharma suffered a consent decree on August 21, 1969 which was accepted by the Land & Development Office. Name of Col.Ram Prakash Sharma was mutated in the record as the perpetual leasee.

3. On the demise of Col.Ram Prakash Sharma the property was mutated

in the name of his children in the year 2000.

4. The date of death of Sh.Diwan Chand Sharma is not known, but he died in January, 1977 as pleaded in paragraph 4 of the plaint. During his life time Sh.Diwan Chand Sharma never questioned the decree.

5. The appellant is the son of Keshwa Nand Sharma who died on March 24, 1997. Even during his life time Keshwa Nand Sharma did not challenge the decree. The appellant challenged the decree by filing a suit in the year 2016. He sought a declaration that the decree was null and void. He sought partition of the property.

6. We agree with the view taken by the learned Single Judge that the suit is barred by limitation. Concededly, appellant's father died on March 24, 1997. The appellant, claiming through his father, got the right to sue in said month.

7. We also agree with the view taken by the learned Single Judge that the appellant cannot question the consent decree for the reason neither his grandfather nor his father ever challenged the same.

8. The appeal is dismissed in limine.

9. No costs.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

MARCH 09, 2017

skb