

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

+ **RFA No. 604/2017**

% **11th July, 2017**

HARENDER SINGH & ORS. Appellants
Through: Mr. Pawan Upadhaya,
Advocate.

versus

BIJENDER SINGH & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial court dated 28.2.2017 by which the trial court has decreed the suit for partition and has passed a preliminary decree. The suit property is a house situated on a plot of 300 sq. yds in Khasra No. 141, situated in Old Laldora Abadi of Village Bijwasan, Delhi.

2. The appellants were defendant nos. 1 to 3, 5 and 7 in the trial court. The right of the appellants to file written statement was closed vide order dated 30.1.2013 and which order has become final. Appellants/defendants therefore have neither filed the written

statement nor led any evidence. The subject suit was therefore decreed in terms of the evidence led on behalf of the respondent no.1/plaintiff.

3. The facts of the case are that the suit property admittedly belonged to one Sh. Mam Chand. Sh. Mam Chand died issueless. His share therefore devolved upon his remaining five brothers namely Sh. Sardar Singh, Sh. Ajit Singh, Sh. Risal Singh, Sh. Chhotu and Sh. Jai Lal. Sh. Mam Chand as also the aforesaid five persons were sons of late Sh. Balak Ram. The subject suit was filed by the respondent no.1/plaintiff who was the son of Sh. Sardar Singh i.e the brother of Sh. Mam Chand.

4. There were a total of 19 defendants in the suit inasmuch as all the four remaining sons of Sh. Balak Ram (one deceased son Sh. Sardar Singh and whose son had filed the suit) had expired and their legal heirs were hence sued as defendants in the suit. The status with respect to the service of the defendants and their not filing their written statements or some of the defendants supporting the respondent no.1/plaintiff are stated in paras 4 to 10 of the impugned judgment and these paras read as under:-

- “4. All the defendants were duly served and as on today defendants no.1 to 3 & 7 are being regularly appearing. So far as remaining defendants are concerned, they were not regular in appearing in the present suit.
5. Written statement was filed on behalf of defendant no.8, 9, 10, 11, 12, 13, 17 & 19.

6. Liberty to file written statement on behalf of defendant no.1 to 3 & 7 was closed vide order dated 30.01.2013.
7. Liberty to file written statement on behalf of defendant no.4 & 5 was closed vide order dated 29.07.2013.
8. None had ever appeared on behalf of defendants no.6,14, 15 and 16 despite service.
9. Written statement was not filed by remaining defendants.
10. By way of written statement, defendant no. 8,9,10, 11,12,13, 17 & 19 have not denied the averments made by the plaintiff in the plaint and they have prayed for decree of partition as prayed in the plaint.”

5. The trial court framed the following issues on 2.12.2013:-

- “1. Whether the plaintiff is entitled for decree of partition as prayed for?... OPP
2. Whether the plaintiff is entitled for decree of permanent injunction... OPP.
3. Relief.”

6. The respondent no.1/plaintiff thereafter led evidence by himself deposing. Respondent no.1/plaintiff proved the site plan, pedigree table, as also the entitlement to the suit property in terms of mutation documents Ex.P1 to Ex.P6. Respondent no.1/plaintiff also proved a number of documents with respect to the suit property as per which the suit property fell to the five brothers of late Sh. Mam Chand who owned the suit property. The relevant paras of the judgment of the trial court decreeing the suit property of the respondent no.1/plaintiff are paras 15 to 17 and these paras read as under:-

“15. ISSUE NO. (1)

Whether the plaintiff is entitled for decree of partition as prayed for?OPP

The onus to prove this issue was on plaintiff. This is the suit filed by the plaintiff for the partition of property measuring 300 sq. yds. comprising in Khasra No. 141, situated in Old Ialdora Abadi of Village Bijwasan, Delhi

which was under the ownership of Sh. Mam Chand who was the successor of Shri Balak Ram. Since Shri Mam Chand was issueless, therefore, his share has been inherited by his five brothers in five equal shares. To prove its case and entitlement to the share in the property of deceased Mam Chand, plaintiff has relied upon several documents i.e. site plan Ex. PW-1/2. Plaintiff has also furnished Patwari report of mutation and proceedings recorded in the register regarding mutation. Relevant documents to this effect have been admitted by the opposite party and the same are Ex. P-1 to Ex. P-6 respectively. These proceedings are regarding division of share amongst the plaintiff and the defendant. In view of the material placed on record, plaintiff has successfully proved its case as per the Pedigree Table Ex. P-1 and Mutation Document Ex.P-5 & Ex.P-6.

16. Plaintiff and defendants are the successor of Late Balak Ram. Late Balak Ram had six sons namely Shri Sardar Singh, Shri Mam Chand, Shri Ajit Singh, Shri Risal Singh, Shri Chhotu and Sh. Jai Lal. Out of all, the second son of Balak Ram, i.e. Mam Chand died issueless. His wife has also died. All the sons of Balak Ram, as mentioned above are dead and their sons and grandsons have stepped into their shoes as per their share. The present suit has been filed by Bijender Singh (plaintiff) against defendant nos. 1 to 19. Late Mam Chand had 300 sq. mtrs. Pakka Abadi in his name as per his share. Once he and his wife died issueless then his 300 sq. mtr. pucca abadi devolved upon other remaining five brothers as per 1/5 share.

Defendant no. 1 to 6 are the sons of Late Ajit Singh and defendant no. 7 is the wife of Late Ajit Singh who are the share holder of 1/35 share of Late Mam Chand's property.

After the death of Risal Singh, his property was inherited by his three sons, Zile, Sant Ram, Prithi and all of them are also dead and their shares are inherited by defendant no. 8, 9, 10, 11 & 12 in which defendant no. 8 & 9 are the share holders of 1/30 share of Mam Chand's property. Defendant no. 10 Naveen, son of Sant Ram became the share holder of 1/15 of Mam Chand's property. Defendant no. 11 & 12, son of Prithi became share holder of 1/30 each of the Mam Chand's property.

Defendant no. 13 and 14 are the legal heirs of Shri Chotu and thus they are the co-owners of the 1/10 share each.

Defendant no. 15 & 16 are the legal heirs of Late Jai Lal who had 1/5 share in the suit property and thus they are the co-owners having 1/10 share each.

As per the pedigree table, plaintiff Bijender Singh and defendant no. 17, 18 & 19 are the share holders of 1/20 share of Late Mam Chand's property.

Pedigree Table relied upon by the plaintiff, regarding share of the parties is being reproduced herein as under :-

BALAK RAM					
<u>Sons of Balak Ram</u>					
(1) Sardar Singh, (2) Mam Chand, (3) Ajit Singh, (4) Risal Singh, (5) Chhotu and (6) Jail Lal					
(1)	(2)	(3)	(4)	(5)	(6)
Sardar Singh 1/5 share	Mam Chand	Ajit Singh 1/5 share	Risal Singh 1/5 share	Chhotu 1/5 share	Jai Lal 1/5 share
<u>SONS of Sardar Singh</u>	(Died issueless. His 300 sq. mtrs. devolved	<u>SONS of Ajit Singh</u>	<u>SONS of Risal Singh</u>	<u>SONS of Chhotu</u>	<u>SONS of Jai Lal</u>
1) Bijender (Plaintiff)		1) Harender (Def.no.1)	1) Zile Singh	1) Dhamender (Def. no. 13)	1) Meer Singh (Def. no. 15)

(1/20 share)	upon his five brothers in the share of 1/5 each)	(1/35 share)	2) Sant Ram	(1/10 share)	(1/10 share)
2) Azad Singh (Def.no.17) (1/20 share)		2) Devender (Def.no. 2) (1/35 share)	3) Prithi	2) Jitender (Def. No. 14) (1/10 share)	2) Narain Singh (Def. no. 16) 1/10 share)
3) Inder Singh (Def.no. 18) (1/20 share)		3) Mahender (Def. No. 3) (1/35 share)	<u>SONS of Zile Singh</u>		
4) Suresh (Def.no. 19) (1/20 share)		4) Rajender (died) his son Vikas (Def. no. 6) (1/35 share)	1) Dewan (Def. no. 8) (1/30 share)		
		5) Sanjay (Def. no. 4) (1/35 share)	2) Krishan (Def.no. 9) (1/30 share)		
		6) Anil (Def. no. 5) (1/35 share)	<u>SON of Sant Ram</u>		
		7)Savitri Devi (W/o Late Ajit Singh) (Def. No. 7) (1/35 share)	1) Naveen (Def. no. 10) (1/15 share)		
			<u>SONS of Prithi</u>		
			1) Atul (Def. No. 11) (1/30 share)		
			2) Bhupinder (Def. No. 12) (1/30 share)		

17. In view of the above discussion, plaintiff is entitled to the partition of property by metes and bounds being the successor of Late Mam Chand in the manner as stated above. This issue is decided against the defendant and in favour of the plaintiff accordingly.”

7. In the opinion of this Court, once the appellants/defendants were proceeded *ex-parte*, they filed no written statement or led no evidence and the respondent no.1/plaintiff proved his case of the suit property being of Sh. Mam Chand who died issueless, the suit property hence had to be partitioned as per evidence led by respondent no.1/plaintiff (and as stated above) inasmuch as the

suit property stood devolved upon all the legal heirs of the remaining five sons of Sh. Balak Ram and who were the five brothers of late Sh. Mam Chand.

8. There is therefore no merit in the appeal. Dismissed.

JULY 11, 2017/ib

VALMIKI J. MEHTA, J

