

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

+ **RSA No. 59/2017**
%

17th April, 2017

BALJIT KAUR (DECEASED) THR. LRS & ORS. Appellants

Through: Mr. Om Prakash, Advocate.

versus

BALDEV SINGH & ORS. Respondents

Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below; of the Trial Court dated 30.11.2015 and the First Appellate Court dated 17.8.2016; by which the suit filed by the appellants/plaintiffs for declaration, partition and permanent injunction has been dismissed.

2. The relief clauses of the plaint read as under:-

“PRAYER

It is, therefore, prayed that in the interest of justice the following judgment/order, decree be passed in favour of the plaintiffs and against the defendants in respect of the property no.118, Ram Nagar, Near Krishna Nagar, Delhi-110051, which is more specifically shown in red colour in the site plan:-

a. A decree for partition among the legal heirs of Late Sh. Nazar Singh i.e. the plaintiff and the defendants in respect of the property bearing no.118,

Ram Nagar, Near Krishna Nagar, Delhi-110051 be passed for the partition of the share of the plaintiffs.

b. A decree be also passed to declare the alleged relinquishment deed dated 13-08-1999 & the relinquishment deed executed by the defendant no.2 in favour of the defendant no.1 dated 16.05.2002 as alleged be declared as null and void.

c. A decree for permanent injunction be passed in favour of the plaintiffs and against the defendants thereby restraining the defendants, their agents, successors, assignees, etc. from making any alternation, addition, from sale or reconstruct, from creating any third party interest over the suit property bearing no.118, Ram Nagar, Near Krishna Nagar, Delhi-110051.

d. Any other relief which this Hon'ble Court deems fit and proper may kindly be passed in favour of the plaintiffs and against the defendants."

3. The courts below have found as a finding of fact that all the appellants/plaintiffs/sisters had executed the registered relinquishment deed dated 13.8.1999, Ex. PW1/D1, relinquishing their share in the suit property no.118, Ram Nagar, near Krishna Nagar, Delhi-51, measuring 98 sq. yds in favour of the brother/defendant no.1/Sh. Baldev Singh. Accordingly, the courts below have held that the appellants/plaintiffs therefore cannot seek partition of the suit property on the ground that the property belonged to the father of the parties namely Sh. Nazar Singh.

4. The relinquishment deed Ex. PW1/D1 in this case is of 13.8.1999. Since appellants/plaintiffs are admittedly signatories to this relinquishment deed, any challenge to such a relinquishment deed as per Article 59 of the Limitation Act, 1963 had to be within 3 years when the facts entitling the plaintiffs to have the instrument cancelled or set aside first became known to the plaintiffs. Being very much the

executants of the relinquishment deed, appellants/plaintiffs are from the date of execution deemed to have known the contents of the relinquishment deed, and therefore, the subject suit had to be filed within 3 years from 13.8.1999. It was not open to an executant of a document to contend that the executant did not know the contents of the document. The suit was originally filed in the year 2010 i.e after around 11 years and was therefore rightly held by the courts below to be barred by limitation. In fact, the courts below have held that the case of the appellants/plaintiffs was that on 15.12.2004 they came to know about the execution of the relinquishment deed dated 13.8.1999, and therefore, even taking this date 15.12.2004 as the date for commencement of limitation, the subject suit for declaration as illegal/void/bad of the relinquishment deed had to be filed by 15.12.2007 but was filed in the year 2010, and clearly therefore the suit was rightly held to be barred by limitation.

5. I may note that the first appellate court by the impugned judgment has held that PW-1 Smt. Ravindra Kaur, plaintiff no. 6, who deposed on behalf of the appellants/plaintiffs left her parental home after marriage on 13.4.1993, and therefore, there was no reason to believe the story concocted by the appellants/plaintiffs that the respondent no.1/defendant no.1/brother in the year 1999, and 8 years

after awarding of the MACT claim, allegedly got the appellants/plaintiffs who signed the relinquishment deed as if the document was required for pursuing of an MACT claim. I completely agree with the conclusions of the first appellate court because there was no reason why 8 years after awarding of claim of MACT that defendant no.1 in the year 1999 would ask PW-1/plaintiff no.6 and other plaintiffs to put their signatures on stamp papers, the so called papers being actually the relinquishment deed Ex.PW1/D1.

6. Reliance placed by the counsel for the appellants/plaintiffs upon a judgment of a learned Single Judge of the Madras High Court in the case of *Dr. T.Vijayendradas & Anr. Vs. M.Subramanian & Ors. AIR 2006 MADRAS 288* to argue that the period of limitation for a partition suit is 12 years, cannot help the appellants/plaintiffs because normally a suit for partition will be governed by Article 65 of the Limitation Act and therefore can be filed 12 years from the commencement of limitation when the defendant in the suit for partition claims adverse possession, however, in the present case, the issue is not of an adverse possession but of declaration claimed by the appellants/plaintiffs of illegality of the relinquishment deed dated 13.8.1999, and therefore, unless the relinquishment deed was set aside, there does not arise a further question of grant of partition. In the

judgment in the case of ***Dr. T.Vijayendradas (supra)*** the declaration was found not to be necessary and hence the limitation period was taken as 12 years. In the present case, declaration with respect to invalidity of the relinquishment deed Ex.PW1/D1 is a *sine qua non* and mandatory before the appellants/plaintiffs succeed in the suit for partition, and therefore, no benefit can be taken by the appellants/plaintiffs of the judgment in ***Dr. T.Vijayendradas's*** case (*supra*).

7. Learned counsel for the appellants/plaintiffs then sought to place reliance upon the judgment in the case of ***Kuppuswami Chettiar Vs. S.P.A. Arumugam Chettiar and Another AIR 1967 SC 1395*** to argue that the relinquishment deed in this case was a transfer deed, and therefore, ought to have been signed by the two attesting witnesses, however, admittedly this defence/stand was never taken up by the appellants/plaintiffs before the courts below, and therefore, for the first time in the second appeal, such an argument cannot be held to be addressed by the appellants/plaintiffs. In fact, the Supreme Court in para 5 of ***Kuppuswami Chettiar's*** case (*supra*) refused to allow a plea which was not raised in the courts below with respect to attestation of a document for being decided because this plea was not raised in the

courts below, and therefore, the judgment of *Kuppuswami Chettiar's* case (*supra*) in fact goes against the appellants/plaintiffs.

8. Even on merits, there is no requirement that a relinquishment deed has to be attested by two witnesses because there is no section of any Statute which has been shown to this Court which requires the relinquishment deed to be attested by two attesting witnesses. It is only where a document is required by law to be attested, only then it cannot be used as evidence unless one attesting witness has been called as per Section 68 of the Indian Evidence Act, 1872. In fact the proviso to this Section states that there is no need to call an attesting witness if the document is registered and the person who has signed the document has not specifically denied the signatures as regards the execution of the document, and in the facts of this case the appellants/plaintiffs do not dispute their signatures on the relinquishment deed.

9. In view of the above discussion, no substantial question of law arises for this Regular Second Appeal to be entertained under Section 100 CPC. Dismissed.

APRIL 17, 2017/ib

VALMIKI J. MEHTA, J