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

RFA(OS) 136/2015 & CM Nos.32419-20/2015, 32422/2015

Date of decision :18th July, 2017

URMILA DEVI & ORS ..... Appellants
Through Mr.V.K.Garg, Sr. Adv. with Ms.Noopur Dubey, Mr.Lalit Gupta & Mr.Siddharth Roy, Advs.

versus

DROPADI DEVI & ORS ..... Respondents
Through Mr.Sumeet Verma, Adv. for all respondent except respondent Nos. 6 and 9.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

1. The impugned order dated 14.10.2015 holds that the belated challenge to the settlement Award dated 07.02.1981 in the Civil Suit filed on 29.07.2009, should not be entertained. The Award dated 07.02.1981 had settled and decided the disputes between Banwari Lal (now represented by the legal representatives, who are the plaintiff) and Dropadi Devi and Shanti Devi, the legal representatives of Ram Gopal. We may note that Shanti Devi has expired and is represented by her legal representative i.e. Respondent Nos.2 to 4.

2. Learned Senior counsel appearing on behalf of the appellants, who are plaintiffs, accepts and affirms the arbitration proceeding and that settlement agreement dated 07.02.1981 was recorded between late Banwari Lal, Chander Bhan, Dropadi Devi and late Shanti Devi.

3. It is, however, submitted that this Award or settlement agreement was not registered and therefore would not confer rights as the division of area pertains to Shop No.266-A, New Subzi Mandi, Azadpur, Delhi. Secondly, it is submitted that settlement agreement/ Award was only with respect to possession and use, and partition was never envisaged and made.

4. Shop No.266-A, New Subzi Mandi, Azadpur, Delhi ('property' for short), it is accepted belongs to and is owned by the Delhi Administration. M/s Banwari Lal Ram Gopal, a partnership firm, was granted leasehold rights in the shop. The said firm initially had two partners, namely Ram Gopal and Banwari Lal. Thereafter, Chander Bhan and Ram Nath were inducted as partners on 02.01.1966. Ram Gopal expired on 04.07.1971. After his death, a new Partnership Deed dated 14.07.1971 was executed amongst Bhanwai Lal, Chander Bhan and Shanti Devi and Dropadi Devi who were inducted being legal representatives of Ram Gopal. The partnership deed had stipulated that Bhanwari Lal, Shanti Devi, Dropadi Devi, and Chander Bhan had 36%, 18%, 18%, and 28% share, respectively, in the profit and losses. However, Clause 9 relating to the shop had stipulated that Bhanwari Lal, Chander Bhan, Shanti Devi and Daropdi Devi had equal share therein i.e. $1/4^{th}$ share each. Thereafter, perpetual Lease Deed dated 28.09.1972 was executed by Delhi Administration in favour of M/s

Ram Gopal Bhanwari Lal. This Deed records that Late Bhanwari Lal, Late Shanti Devi, Dropadi Devi and Chander Bhan were the partners.

5. As per plaint filed by the appellant, the firm M/s Ram Gopal Bhanwari Lal had closed and stopped the business activities in 1980. Paragraph 'ix' of the plaint states that Chander Bhan had separated his business and had shifted to adjoining premises. The plaint further states that the firm M/s Ram Gopal Banwari Lal was deemed to be dissolved in 1980.

6. As per the plaint, Dropadi Devi and late Shanti Devi, on 27.11.1980 had filed a claim petition before Arbitral Tribunal appointed by the Market Association in respect of their 50% share in the possessory rights of the shop. During the course of the said proceedings, the parties namely Chander Bhan, Late Banwari Lal, Late Shanti Devi and Dropadi Devi had arrived at a settlement to divide half portion of the shop which was to be "owned" by late Shanti Devi and Dropadi Devi. The settlement deed/Award records that arbitrators could divide and give possession of the said portion in the shop to late Shanti Devi and Dropadi Devi. Late Banwari Lal and Chander Bhan had agreed to hand over the vacant possession of half portion. On the basis of aforesaid settlement, the Arbitrators i.e. Panches, with the consent of all the parties, had ordered that small room in the said shop and half portion of the platform towards main road and half godown be given to late Shanti Devi and Dropadi Devi. The remaining half portion would be decided after rendition of accounts of the parties as prayed for by the parties themselves.

7. Late Shanti Devi (now represented by the legal representatives) and Dropadi Devi have continued in possession of the specifically demarcated half portion, in terms of said settlement award. They have used and occupied the said portion as demarcated and allotted from 1981 till 2009.

8. The appellant after 28 years filed the aforesaid suit on 25.07.2009 seeking the following reliefs:

> *"a) Decree of Declaration declaring the transaction as executed by defendant no.1 to 5 various documents as described in para XV in the plaint as null and void as in breach of right of pre-emption of the plaintiff being the co-owners to the extent the same described a divided shares in the hands of defendants no.1 to 4 as mentioned in the said documents being excessive in portion in possession even as their own case of the defendant and also due to being in violation of Perpetual Lease Deed dated 28.9.1972.*
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> *b) In consequences of the aforesaid declaration, it is therefore, most humbly prayed that the Hon'ble Court may kindly be pleased to direct the registrar of documents to cancel the documents registered with the registrar of the documents, Pritampura, New Delhi referred in para no.XV of the plaint.*
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> *c) Pass Preliminary decree of partition in favour of the plaintiff no.1 to 3 for half undivided shares and the defendant no.1 to 4 have jointly the remaining half undivided share;*
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> *d) Pass final decree of partition thereby dividing the suit property No.A-266, New Sabzi Mandi, Azadpur, Delhi with a equal right having an equal market value.*
>
> *e) Pass a decree of permanent injunction restraining defendant no.6 from granting any license in favour of the*

defendant no.5 carrying out the trade activity from the suit thereof until acquire a valid title with divided or specific portion of the suit property.

f) Cost of the suit may also be passed in favour of the plaintiffs and against the defendants and

g) Pass such other/further order as this Hon'ble Court may deem fit and proper in the interest of justice."

9. We affirm and agree with the Single Judge that the appellants should not be allowed and permitted to question and challenge the issue settled way back in 1981 vide settlement agreement noted, recorded, and decided by the Arbitrators i.e. Panchas. The division allocated has lasted, adhered to, and followed for the last 28 years. During this period, the appellants did not claim any right on the portion in occupation of Dropadi Devi and late Shanti Devi (now represented by their legal representatives). It would be unjust and unfair to reopen and unsettle the settlement after a long period of 28 years, treating it as null and void. The documents executed in 1981 cannot be challenged and questioned after 28 years.

10. The appellants have submitted that the impugned order holds that the counter-claim filed by Chander Bhan against the appellants would continue. The appellants have not challenged the said portion of the order. The direction and finding that the counter-claim would continue does not in any way affect or even reflect on the merits of the impugned order in respect of the division/partition of the suit shop and prayers made by the appellants in the plaint. The counter-claim pertains to the inters-se claim between late Banwari Lal, (now represented by legal representatives) and Chander Bhan. Dropadi Devi

and Shanti Devi (now represented by legal heirs), are not parties to the said counter-claim. Chander Bhan has not claimed any relief against Dropadi Devi and Shanti Devi (now represented by legal representatives).

11. We also do not see any reason to accept the contention of the appellants that the settlement agreement which was recorded by the Arbitrators required registration and therefore is a nullity. There was an internal division and partition between the parties and specific portions were demarcated and allocated to Dropadi Devi and Shanti Devi (now represented by the legal representatives). The said internal division did not require registration. The parties were put and have enjoyed exclusive possession for nearly three decades. This division was binding between the parties and has been acted upon. It would be unfair and unjust to allow the appellants to question the said division on the aforesaid pretext.

12. The lease deed dated 28.09.1972 placed on record stipulates that the Lessee shall not deviate in any manner from the layout plan nor alter the size by sub-division, amalgamation, or otherwise, unless specifically permitted to do so by the Lessor. The aforesaid clause has been subject matter of interpretation in several cases of this Court. In the year 1997, in ***Mohinder Singh Vs. Kartar Lal*** (1997) 41 DRJ 264, it has been held as under:

> "**7.** The first contention raised by the counsel for the plaintiffs that the property is not divisible by metes and bounds cannot be accepted in view of the specific observations of the Supreme Court in the case of *Sardar Singh* v. *Smt. Krishna Devi & Anr.* reported JT 1994(3)

SC 465. The Supreme Court in the aforesaid case has specifically held that the present suit property is divisible and could be divided. In that view of the matter, the first objection of the plaintiffs stands rejected.

8. The next submission of the learned counsel for the plaintiffs is that the terms of the lease specifically prohibits division of property and as such the property could not be divided by metes and bounds. In this connection, the counsel drew my attention to the provisions of Clause 4(d) of the Lease Deed wherein, it has been stipulated that there could be no sub-division of the land. However, it is to be noted that the suit property consists of not only land but also the superstructure standing thereon. Accordingly, even if it is held that the land beneath the superstructure may not be divisible, there is no bar under any law to make any division with regard to the superstructure standing on the land. In this connection, reference may also be made to the decision of this Court in *Chiranjilal & Anr.* v. *Bhagwan Dass & Ors.* reported in 1991(3), Delhi Lawyers 350, wherein it has been held that superstructure standing on a land could be divided. Therefore, this objection also has not merit and is accordingly rejected. The further objection of the learned counsel for the plaintiffs is that the property as suggested by the Local Commissioner cannot be divided since the same would lead to violation of the statutory rules of the Municipal Corporation of Delhi. The division of the property, if done, as suggested by the Local Commissioner, it is argued, would reduce the area of the rooms below the minimum provided for under the Municipal Bye-laws.

9. I have been taken through the provisions of the Municipal Bye-laws and on perusal thereof, I find that there is no merit in the objection raised by the plaintiffs on this count also. In my considered opinion which is agreed to by the counsel for the plaintiffs during the course of arguments, if the property is divided vertically and a partition wall erected, the same also would not, in

> any case, reduce the area below the standard provided under the building bye-laws of the Municipal Corporation of Delhi. Accordingly, this objection is also over-ruled."

In view of the aforesaid, we do not find any merit in the present appeal. The appeal as well as pending applications are dismissed with no order as to cost.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 18, 2017/vp