

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

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Date of decision: 31st January, 2018

CS(OS) 372/2012, IA No.12070/2017 (u/O VII R-11 (CPC), IA No.2899/2012 (u/O XXXIX R-1&2 CPC) and IA No.2900/2012 (u/O II R-2&3 CPC)

RAHUL OBEROI

..... Plaintiff

Through: Mr. Sacchin Puri, Sr. Adv. with Mr. Pulkit Malhotra and Mr. Kamil Khan, Advs.

Versus

SHEELA OBEROI & ORS

..... Defendants

Through: Mr. Manav Gupta, Ms. Prabhsahay Kaur and Ms. Esha Dutta, Advs. for D-1,4&5.
Mr. N.K. Kantawala and Ms. Akansha Jain, Advs. for D-2&3.
Mr. Nitish Chaudhary for Mr. Viraj Datar Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit, (as per amended plaint dated 21st February, 2012 in Part-II file) for the reliefs of (i) declaration that the plaintiff along with the defendants no.2 to 5 is the co-owner of property no.B-30, Defence Colony, New Delhi, with each having 20% undivided share therein; (ii) for cancellation of Arbitral Award dated 23rd March, 1968 and for declaration of the said Award as null and void, being a sham transaction and inadmissible for want of registration; (iii) for partition of property no.B-30, Defence Colony, New Delhi; (iv) for permanent injunction

restraining the defendants from dealing with the said property; and, (v) for declaration as null and void of the Conveyance Deed dated 4th November, 1999 of freehold rights in the land underneath the property in favour of the defendant no.1, pleading:-

- (a) that late Shri O.P. Oberoi, paternal grandfather of the plaintiff, along with his wife defendant no.1 Sheela Oberoi and his sons Satpal Oberoi and defendant no.3 Rajinder Pal Oberoi was the resident of Nowshera now in Pakistan;
- (b) that the Oberoi clan, from the time of Salamat Rai Oberoi, the great great grandfather of O.P. Oberoi aforesaid, were involved in family business;
- (c) that the family had various ancestral properties in Pakistan and moved to India during partition;
- (d) O.P. Oberoi aforesaid along with his father Fakir Chand Oberoi and other members of the family as aforesaid at the time of partition moved to India;
- (e) that at the time of partition, certain compensation money was received by the father of O.P. Oberoi from the Re-settlement Commissioner and the said money was put to various usages;
- (f) that O.P. Oberoi also carried certain amounts of cash with him to India;
- (g) O.P. Oberoi, with the ancestral nucleus and ancestral funds, purchased various properties, some in his own name and others in the names of his wife defendant no.1 and his sons defendant

no.4 Yashpal Oberoi and defendant no.5 Harish Kumar Oberoi, born after partition;

- (h) one such property was property no.B-30, Defence Colony, New Delhi;
- (i) that property no.B-30, Defence Colony, New Delhi was bought in the year 1960 in the name of O.P. Oberoi, from the ancestral funds and from family nucleus;
- (j) O.P. Oberoi also used ancestral nucleus money to construct the said property;
- (k) O.P. Oberoi was carrying on business in the name and style of Uberoi Erection & Constructions Pvt. Limited;
- (l) O.P. Oberoi died in the year 1986;
- (m) the plaintiff is the son of Satpal Oberoi aforesaid; the said Satpal Oberoi, father of the plaintiff, died on 28th January, 2011; the defendant no.2 Kunal Oberoi is another son of Satpal Oberoi and brother of the plaintiff;
- (n) that Satpal Oberoi, defendant no.3 Rajinder Pal Oberoi, defendant no.4 Yashpal Oberoi and defendant no.5 Harish Kumar Oberoi, all sons of O.P. Oberoi, although major, were in their early 20's and were not in a position to arrange funds;
- (o) that Satpal Oberoi, father of the plaintiff and the defendant no.2, though initially joined his brother defendant no.3 Rajinder Pal Oberoi in business of Shagoon Emporium of which defendant no.3 Rajinder Pal Oberoi was the proprietor but subsequently

took up a job in M/s. Tiger Locks; however Satpal Oberoi along with his family including the plaintiff, continued to stay in property no.B-30, Defence Colony, New Delhi;

- (p) that the plaintiff, on attaining adulthood also, stayed in property no.B-30, Defence Colony, New Delhi and always treated it as his ancestral home;
- (q) that the plaintiff, in one of the recent trips prior to the institution of this suit, was asked by the defendants no.4&5 to sign an affidavit to the effect that the property no.B-30, Defence Colony, New Delhi belonged to defendant no.1 and stating that a registered Will had been executed by the defendant no.1 with respect to the said property; similarly, the brother of the plaintiff i.e. the defendant no.2, was also asked to sign some documents;
- (r) on asking of the plaintiff, some documents were shown to him and from which it transpired that an Arbitral Award was obtained and on the basis of which a decree dated 23rd March, 1968 was obtained whereby the defendant no.1 was declared as the owner of property no.B-30, Defence Colony, New Delhi and Conveyance Deed dated 4th November, 1999 for freehold rights in the land underneath the property executed in favour of the defendant no.1;
- (s) that the Arbitral Award was a sham and to save the property owing to the financial constraints then being faced by the family;

- (t) that the defendant no.1, being the paternal grandmother of the plaintiff, is not an educated person and was a house wife;
- (u) that the Arbitral Award was obtained fraudulently, to save the property from the hands of the creditors, with no real intention of the property no.B-30, Defence Colony, New Delhi vesting in the defendant no.1;
- (v) that the said Arbitral Award, even if valid, has no effect in law since it relates to immovable property and required registration and has not been registered; and,
- (w) even if the property were to be held to belong to O.P. Oberoi, paternal grandfather of the plaintiff, the plaintiff has a share therein.

2. The suit was entertained and vide *ex parte* order dated 14th March, 2012, *status quo* directed to be maintained with respect to the property. On enquiry, it is informed that the said order continues.

3. The defendants no.1,4&5 have contested the suit by filing a written statement. None appears today for the defendant no.2. However the senior counsel for the plaintiff, counsel for the defendants no.1,4&5 and the counsel for the defendant no.3 all state that the defendants no.2&3 are supporting the plaintiff.

4. On the pleadings of the parties, the following issues were framed on 23rd September, 2013:-

“1. Whether the decree dated 23.03.1968 is a nullity? OPP

2. *Whether the conveyance deed dated 04.11.1999 is null and void as it is based on an unregistered award and decree? OPP*
3. *Whether the instant suit has been filed within limitation? OPP*
4. *Whether the suit of the plaintiff is barred by principle of estoppels? OPD-1,4&5*
5. *Whether the suit of the plaintiff is not properly valued for the purpose of court fees and jurisdiction and requisite court fees has not been affixed? OP D1,4&5*
6. *Relief.”*

and on statement of the senior counsel for the plaintiff that issues no.1&2 aforesaid did not require any evidence and be treated as preliminary issues, the same were ordered to be treated as preliminary issues and vide subsequent order dated 17th August, 2016 the following additional issues were framed in the suit:-

- “i) Whether late Sh. O.P. Oberoi had any ancestral funds/nucleus in his hands? OPP.*
- ii) Whether the suit property has been acquired and constructed with ancestral funds/nucleus? OPP.*
- iii) Whether the suit property can be termed as HUF property as alleged by the plaintiff? OPP.”*

5. The suit has been pending for hearing on the preliminary issues. The application of the defendants no.,1,4&5 being IA No.12070/2017 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) is also for hearing.

6. The senior counsel for the plaintiff and the counsel for the defendants no.1,4&5 both state that the scope of hearing of the preliminary issues as well as the application under Order VII Rule 11 of the CPC is the same.

7. The counsel for the defendants no.1,4&5 and the counsel for the plaintiff have been heard. The counsel for the defendant no.3, though appearing, has not made any arguments and has merely stated that he is supporting the arguments of the senior counsel for the plaintiff.

8. Though the counsel for the defendants no.1,4&5 has contended that the plaintiff is claiming rights/share in the property only on the basis of the same being of the Hindu Undivided Family (HUF) but the senior counsel for the plaintiff, by drawing attention to para 36 of the plaint has contended that the claim of the plaintiff in the suit is on the basis of the property no.B-30, Defence Colony, New Delhi being an HUF property and the plaintiff as a member of the HUF having a share therein as well as on the basis that the property, even if of O.P. Oberoi paternal grandfather of the plaintiff, owing to the father of the plaintiff having died, the plaintiff has a share therein.

9. The following facts are not in dispute:

a) The leasehold rights in the plot of land underneath the suit property were granted by the President of India in favour of one Lt. Commander A.S. Sahi. The said Lt. Commander A.S. Sahi vide Sale Deed dated 9th February, 1960 sold the said leasehold rights in the land underneath the property in favour of O.P. Oberoi aforesaid and which expression in the Sale Deed was provided to include his heirs, executors, successors, legal representatives and assigns. The sale was for the price of Rs.13,000/-;

- b) The defendant no.1, on 4th August, 1967, instituted a suit against O.P. Oberoi aforesaid, for declaration that the plot of land underneath the property aforesaid along with entire superstructure thereon was the exclusive *stridhan* of the defendant no.1;
- c) On 12th September, 1967, the defendant no.1 and O.P. Oberoi who were the only parties to the suit made a joint application to the Court before which the said suit was pending, for referring the dispute between them to Dr. Vishwanath, Interads Group, Interads House, 4/24-A, Asaf Ali Road, New Delhi – 110 002 as sole Arbitrator and also made statements in the Court to the said effect;
- d) In accordance with the said statements, the dispute subject matter of that suit, being Suit No.341/1967 of the Court of Shri R.L. Gupta, Sub Judge, 1st Class, Delhi, was referred to Arbitration;
- e) The Arbitrator filed an Award dated 15th October, 1967, in the Court and the counsel for the defendant no.1 herein who was the plaintiff in that suit and the counsel for O.P. Oberoi who was the defendant therein, both stated that the Arbitral Award be made a *Rule* of the Court and that neither of them wanted to prefer any objections thereto;
- f) Vide judgment dated 23rd March, 1968 in the suit, the Arbitral Award dated 15th October, 1967 was made *Rule* of the Court and a decree of declaration passed to the effect that the entire plot of land measuring 325 sq. yds. bearing no.B-30, Defence Colony, New Delhi and the entire superstructure thereon is the exclusive property of the defendant no.1 and was purchased and constructed by the defendant

no.1 herein from her *stridhan* money. It was further declared that O.P. Oberoi has no right, title or interest in the said property.

10. The counsel for the defendants no.1,4&5 states and the senior counsel for the plaintiff does not controvert that in accordance with the aforesaid judgment and decree, the leasehold rights in the land underneath the property were on 26th July, 1974 mutated from the name of O.P. Oberoi to the name of the defendant no.1 and continued to stand in the name of the defendant no.1 till freehold conversion thereof in accordance with the policy brought by the Government of India and in pursuance to which a Conveyance Deed of freehold rights in the land underneath the property was executed in favour of the defendant no.1 as aforesaid on 4th November, 1999.

11. It is also the contention of the counsel for the defendants no.1,4&5 and not rebutted by the senior counsel for the plaintiff, that the property, in the Income Tax Returns and Wealth Tax Assessment has been declared as the property of the defendant no.1.

12. It is not the case of the senior counsel for the plaintiff, that the said property, at any time after the judgment and decree aforesaid, was reflected as the property of O.P. Oberoi in the Income Tax and Wealth Tax Returns of O.P. Oberoi or in the Income Tax and Wealth Tax Returns of any other person. It is also not the case of the senior counsel for the plaintiff that there is any document showing the existence of any HUF or any assessment of HUF. There is also no document to show any business being carried on by any such HUF or the shares of any company pleaded in the plaint as recorded in the name of HUF. Rather, as aforesaid, it is pleaded that

O.P. Oberoi was carrying on business through vehicle of a private limited company and the defendant no.3 carrying on business as sole proprietor of Shagoon Emporium.

13. The property having stood in the name of the defendant no.1, at least for 37 years prior to the institution of this suit and in pursuance to a judgment and decree of the Court and the challenge thereto having not been made by O.P. Oberoi who is stated to have died on 15th September, 1986 or by S.P. Oberoi father of the plaintiff who died on 28th January, 2011 and the plaintiff by this suit for the first time having challenged the title of defendant no.1 to the property, the grounds therefor have been asked. It has further been put to the senior counsel for the plaintiff that if such were to be the situation, and title in property were permitted to be challenged at any time, after howsoever many years, no title to any property can be said to be settled beyond challenge.

14. The senior counsel for the plaintiff has contended that it is settled law that the Arbitral Award and the decree in terms thereof, in pursuance to which the property was mutated and held by the defendant no.1, were compulsorily required to be registered. It is argued that since neither the Arbitral Award nor the decree are registered, the same are of no avail and the title of the property continued to vest in O.P. Oberoi.

15. On being asked to show the 'settled law', the senior counsel for the plaintiff has referred to ***Ramesh Kumar Vs. Furu Ram*** (2011) 8 SCC 613.

16. However the same is found to be dealing with a situation where the subject matter of Arbitration was disputes arising from a loan agreement and in default of payment of which loan immovable property was agreed to be transferred; the Arbitral Award declared that since the loan had not been

repaid, the creditor had become the owner of the property which was agreed to be transferred on default in repayment.

17. I have enquired from the senior counsel for the plaintiff, whether not the facts in **Ramesh Kumar** supra are distinct and whether not there is a difference between an Arbitral Award or a decree of the Court directing transfer of the property and an Arbitral Award or a decree making a declaration of title. Judgments cannot be matched and treated as precedents the 'Google search engine way' and it has been held repeatedly including in **Punjab National Bank Vs. R.L. Vaid** (2004) 7 SCC 698, **Sudhir Malhotra Vs. NCT of Delhi** MANU/DE/0808/2008 (DB) [SLP(Crl.) No.6983/2008 was dismissed on 3rd October, 2008] and **In Re: Special Reference No. 1 of 2012** (2012) 10 SCC 1 that the Court should be careful in applying the precedents and inasmuch as the judgments only declare the law in the facts of the case.

18. A declaratory relief is provided for in Section 34 of the Specific Relief Act, 1963, which entitles such a relief to be claimed to remove any cloud over the title claimed to the property. An Arbitral Award of declaration or a decree of declaration thus only declares a pre-existing title or a right and does not create a title as distinct from a decree for specific performance which directs the title to be transferred. It is for this reason only that a document of transfer in consequence/execution of a decree for specific performance requires registration. If what is propounded by the senior counsel for the plaintiff were to be accepted to be correct, then there would be no requirement for registration of the document of transfer pursuant to Arbitral Award or a decree for specific performance.

19. The senior counsel for the plaintiff, on being asked to show any judgment where Arbitral Award or a decree, of declaration of a pre-existing right or title, has been held to be compulsorily registrable seeks adjournment.

20. The suit already having remained pending for the last nearly six years and the arguments having been heard, it is not deemed appropriate to adjourn.

21. The senior counsel for the plaintiff has also referred to Section 17 of the Registration Act, 1908 to contend that a decree for declaration under Section 34 of the Specific Relief Act requires registration.

22. Section 17 comprises of several sub-sections and clauses and no particular sub-section or clause is referred to. Clause (e) of Section 17(1) provides for compulsory registration of non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent. I have already observed above, the Arbitral Award in the present case only declares the defendant no.1 to be having a title to the suit property and does not create title in the defendant no.1 for it to be requiring compulsory registration.

23. The senior counsel for the plaintiff now draws attention to clause (b) of Section 17(1) but which is to the same effect. There could be no extinguishment of title of O.P. Oberoi, which title according to the Arbitral Award and decree never existed.

24. The counsel for the defendants no.1,4&5 has referred to (i) **ING Vyasya Bank Ltd. Vs. Vikram Hingorani** 2014 SCC OnLine Del 478 (ii)

Som Dev Vs. Rati Ram (2006) 10 SCC 788; (iii) *P.K. Nangia Vs. Land & Development Officer* 1988 (14) DRJ 112; (iv) *Hari Shankar Bhargava Vs. Mohan Devi* (1975) ILR 1 Delhi 82; (v) *Sardar Singh Vs. Krishna Devi* (1994) 4 SCC 18; (vi) *Nathu Lal Vaishi Vs. G.S. Kamal Advocate* 166 (2010) DLT 751; and, (vii) *N. Khosla Vs. Rajlakshmi* (2006) 3 SCC 605 in this regard.

25. There is thus no merit in the plea of the plaintiff, of the decree declaring the defendant no.1 to be the sole owner of the property being of no avail for non-registration thereof.

26. The senior counsel for the plaintiff has then contended that the decree dated 23rd March, 1968 is bad for the reason of making *Rule* of the Court the Arbitral Award which was a result of a compromise.

27. A compromise is an accepted mode of adjudication as held in *Prem Prakash Chaudhary Vs. Rajinder Mohan Rana* ILR (2011) 5 Del 22 and *Rajender Mohan Rana Vs. Prem Prakash Chaudhary* (2011) 184 DLT 454 (DB) and it is not open to the plaintiff in today's date, when by recent amendment of CPC it has been given legislative sanction by Section 89 of the CPC, to contend that all adjudications in terms of compromise are bad. The argument of the senior counsel for the plaintiff, if were to be correct, would lead to shutting down of the High Court's Mediation Cell.

28. The senior counsel for the plaintiff has then drawn attention to the document filed by the defendant no.3 before this Court, being a letter dated 13th January, 2012 of Dr. Vishwanath, Chairman of Interads Group who was the Arbitrator and addressed to the defendant no.3, informing that O.P. Oberoi was having some financial troubles and due to which creditors were

chasing him and he needed to protect the Defence Colony house, where he was staying and was advised by his lawyers to transfer the property in the name of his wife defendant no.1 and for which some documents were prepared and got signed from him and that no hearing or arbitration was held by him and that he had done what was required.

29. To say the least, such a letter, if written by Dr. Vishwanath, Chairman of Interads Group, 4/24-A, Asaf Ali Road, New Delhi – 110 002, does not befit a person of his stature. An Arbitrator becomes *functus officio* after publishing the Award (see **K.C. Bhatia & Associate Vs. Urban Improvement Co. (P) Ltd.** 1989 (39) DLT 1 and **Satwant Singh Sodhi Vs. State of Punjab** (1999) 3 SCC 487) and I have asked the senior counsel for the plaintiff, whether Arbitrators can be permitted to make such statements and any credence given thereto and whether such statements can be admitted into evidence and disputes decided on the basis thereof and if the same were to be permitted, would it not spell the death knell of Arbitration in this Country.

30. No answer is forthcoming.

31. The only other argument of the senior counsel for the plaintiff is that the property being of an HUF, the decree against O.P. Oberoi did not divest the HUF of its right and title in the property.

32. I have already noticed hereinabove that there is not a scrap of paper placed by the plaintiff before this Court to show the existence of any HUF; rather it is admitted in the plaint itself that Fakir Chand Oberoi, father of O.P. Oberoi, died in the year 1968 i.e. after coming into force of the Hindu Succession Act, 1956. I have asked the senior counsel for the plaintiff,

whether O.P. Oberoi was the only son of Fakir Chand Oberoi or Fakir Chand Oberoi had any other children.

33. Neither the senior counsel for the plaintiff nor his briefing counsel are able to state.

34. The same itself belies the case set up of HUF. If there were to be any HUF as is pleaded, not only the other children of Fakir Chand Oberoi but even the children of his predecessor who are listed in the family tree in the plaint would be parties to such HUF and would have been necessary parties to the suit. The very fact that the plaintiff has not even bothered to address the said aspect falsifies the story set up of HUF.

35. Attention of the senior counsel for the plaintiff is also drawn to ***Surender Kumar Vs. Dhani Ram*** AIR 2016 Del 120, ***Sunny (Minor) Vs. Raj Singh*** 225 (2015) DLT 211 and ***Dayanand Rajan Vs. Ram Lal Khattar*** 2018 SCC OnLine Del 6402 in which this Court has exhaustively dealt with as to what ingredients are required to be pleaded to make a plea of existence of an HUF and HUF property. The plaint in the present case does not contain these necessary ingredients. Since the law in this respect, besides in the judgments aforesaid, has also been exhaustively dealt in ***Jai Narain Mathur Vs. Jai Prakash Mathur*** 228 (2016) DLT 515, there is no need for me to elaborate any further.

36. It is quite obvious that the suit has been filed fully knowing that the claim therein is false and only out of family rivalry. Though in the plaint it is pleaded that a number of other properties were acquired and the family is a business family but the plaintiff has chosen to remain quiet with respect thereto as well. The plaintiff, on enquiry is stated to be conveniently sitting

far away in foreign lands and has used the process of the Court to drag his family members into litigation and is liable, if not for being prosecuted under Section 340 of the Code of Criminal Procedure, 1973 at least to compensate the defendants no.1,4&5 with costs of the suit.

37. The preliminary issues aforesaid are accordingly decided against the plaintiff and in favour of the defendants no.1,4&5. In view of the same the need to pronounce separately under Order VII Rule 11 of the CPC is not felt.

38. The suit is dismissed with costs of Rs.5,00,000/-. The costs, if not paid, to be recoverable from the plaintiff.

RAJIV SAHAI ENDLAW, J.

JANUARY 31, 2018

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(corrected & released on 8th March, 2018)

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