

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

+ **RFA No.287/2018**

% **Reserved on: 21st March, 2018**
Pronounced on: 23rd March, 2018

DINESH KUMAR SHARMA Appellant

Through: Appellant in person.

versus

SUDHIR KUMAR & ORS. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No.11195/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.287/2018

2. This Regular First Appeal is filed under Section 96 of Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit impugning the judgment of the trial court dated 15.4.2017 by which the trial court has dismissed the suit for partition and injunction filed by the appellant/plaintiff. The suit properties are the properties

situated on a plot of 3660 sq. yards in Khasra no. 146 of village Burari, Delhi and a plot of 220 sq. yards in the same village. Appellant/plaintiff claims to be the adopted son of Smt. Bohati Devi after the death of her husband Sh. Laxmi Narain. Smt. Bohati Devi was the wife of Sh. Laxmi Narain and Sh. Laxmi Narain was the son of Sh. Devki Nandan with Sh. Devki Nandan being the son of Sh. Brahma Nand, the original owner of the suit property.

3. The suit was contested by the respondents/defendants by taking up two defences. Firstly, it was pleaded that in terms of the oral partition of the year 1967 Smt. Bohati Devi had already received her share in the suit property and the second defence was that appellant/plaintiff was never adopted by Smt. Bohati Devi.

4. The relationship between the parties and the contentions of the parties are recorded in paras 1 and 2 of the impugned judgment and which paras read as under:-

“1. The present suit is for partition and permanent injunction filed by the plaintiff against the defendants. The brief facts of the case, as per the plaint, are that the plaintiff has alleged that late Sh. Brahma Nand was the predecessor- in-interest, of the parties to the suit. Sh. Brahma Nand was having three sons namely Devki Nandan, Inder Raj and Desh Raj and they had acquired 1/3rd share each in the properties left by Sh. Brahma Nand. Sh. Desh Raj was having one son namely Pt. Shree Ram, who had expired leaving behind one son namely Sushil Kumar, who also expired leaving

behind his widow Smt. Bimla Devi i.e. defendant No. 11. Sh. Inder Raj was also having one son namely Omkar Dutt, who had expired leaving behind his five sons i.e. defendants No. 7, 8, 9, 10 and one Sh. Girish. Sh. Girish also expired. Sh. Devki Nandan was having three sons namely, Sh. Nand Lal, Sh. Jugal Kishore and Sh. Laxmi Narain. After the death of late Sh. Devki Nandan, they had inherited 1/9th share each in the properties left by Sh. Brahma Nand. The defendants No. 3 to 6 are the legal heirs of Sh. Jugal Kishore. The defendants No. 1 and 2 are the legal heirs of Sh. Nand Lal. Sh. Laxmi Narain had expired leaving behind the plaintiff as his sole legal heir, who has inherited 1/9th share out of 1/3rd share of late Sh. Devki Nandan. The plaintiff was adopted by Smt. Bohati w/o Late Sh. Laxmi Narain and so after the death of Sh. Laxmi Narain and Smt. Bohati, the plaintiff became the co- owner in the suit properties. The plaintiff and the defendants are the co-owners/ co-sharers in the suit properties. The plaintiff has requested the defendants several times to partition the suit properties by metes and bounds. The defendants No. 1 and 2 in collusion with the other defendants want to transfer the suit property to any third person without the permission of the plaintiff. Thus, the plaintiff has filed the suit for partition of the suit properties and for permanent injunction.

2. In the separate written statement/(s), filed on behalf of defendants No. 1, 2 and defendants No. 4, 5, 6 and 11, (defendants No. 7 to 10 have adopted the WS filed by defendants No. 4, 5, 6, also 11 and though, order dt. 22.11.2006 wrongly mentioned it as 7 to 11), and also defendant Omwati and Naveen i.e. Defendant No. 12 and 13, (as per recent amended memo of parties), and the defence put forward by these defendants are similar in nature, which allege that plaintiff has no right, title or interest in the suit properties and he is not the legal heir of Sh. Laxmi Narain as Sh. Laxmi Narain had no son at the time of his death and plaintiff is the son of the daughter of Sh. Laxmi Narain, therefore, Smt. Bohati, w/o Late Sh. Laxmi Narain, could not adopt the plaintiff, being the son of her daughter, (Dhevti). Further, the defendants had denied the plea of the plaintiff that he is adopted by Smt. Bohati. It is also contended that an oral partition of properties had taken place in the year 1967 and the defendants are in peaceful possession of their respective shares since the year 1967 as owners and Smt. Bohati Devi has been paid, in lieu of her share and therefore, left with no right or title in the suit properties, and the suit of the plaintiff is without any cause of action and it be dismissed. Rest of the averments of the plaint have been stated to be wrong and denied except, which are matter of record.”

5. Trial court has dismissed the suit by holding that appellant/plaintiff is not the adopted son of Smt. Bohati Devi. Trial

court however held the issue that whether partition had or had not taken place in the year 1967 in favour of the appellant/plaintiff by holding that no partition of the suit property had taken place in the year 1967 as claimed by the respondents/defendants. The suit was however dismissed on account of the finding that appellant/plaintiff was not adopted by Smt. Bohati Devi.

6. Appellant/plaintiff appeared in person and argued his case.

7. Admittedly in the trial court record there is no documentation which would show adoption of the appellant/plaintiff by Smt. Bohati Devi. Neither the appellant/plaintiff has filed the registered adoption deed as claimed by him to have been executed for his adoption nor has the appellant/plaintiff filed any documentation of educational institutions in which the appellant/plaintiff studied and which would show that appellant/plaintiff is the son of Smt. Bohati Devi and Sh. Laxmi Narain. Appellant/plaintiff has not filed any copy of his ration card or passport or any other documentation which would have shown the appellant/plaintiff to be the adopted son of Smt. Bohati Devi and Sh. Laxmi Narain. Trial court has also held that

merely because mutation orders were issued by the revenue authorities in the name of the appellant/plaintiff would not mean that the said mutation orders will confer title of the suit property upon the appellant/plaintiff by holding that adoption did take place of the appellant/plaintiff by Smt. Bohati Devi, widow of late Sh. Laxmi Narain, as the trial court has held that object of mutation proceedings is not to confer any title as per the revenue laws.

8. Before this Court appellant/plaintiff on being put a query, it is not disputed that no documentation whatsoever has been filed by the appellant/plaintiff in the suit with respect to his adoption such as the alleged registered adoption deed, educational institutions' certificates, passport, ration card, etc and the appellant/plaintiff argued that appellant/plaintiff should be held to be the owner because the Financial Commissioner by his order dated 22.5.1995 allowed the appeal of the present appellant/plaintiff and set aside the orders of the SDM of Patel Nagar, Delhi dated 22.7.1991 and the appellate order passed by Sh. Ramesh Tiwari, Additional Collector on 12.9.1994 by allowing mutation of the name of the appellant/plaintiff in the suit properties as the adopted son of Smt. Bohati Devi.

9. I cannot agree with the argument urged on behalf of the appellant/plaintiff that the order passed by the Financial Commissioner dated 22.5.1995 will operate as *res judicata* between the parties because the concept of *res judicata* is that a civil court has to hear and finally decide an issue, and only on such decision being passed, Section 11 CPC would make such decision of the civil court as *res judicata*. No doubt, doctrine of *res judicata* is of general application and wider than Section 11 CPC, however, before even the general doctrine of *res judicata* applies, it is necessary that judgment which is passed must be passed by a civil court and not by revenue authorities. It is also noted that the judgment of Financial Commissioner dated 22.5.1995 is an *ex-parte* judgment in appeal as seen from para 2 of the order of the Financial Commissioner dated 22.5.1995. In my opinion, trial court has rightly held that decision passed by the revenue authorities in mutation proceedings is only for the purpose of mutation and mutation of a property in the name of a person does not confer title in favour of the person in whose name mutation is made because such a person in whose name mutation is made is an adopted son. As already stated above, right to claim

interest in the suit properties as an adopted son of Smt. Bohati Devi is an issue which for being *res judicata* will have to be by decision of a civil court in which the issue is heard and finally decided, and the order relied upon by the appellant/plaintiff of the Financial Commissioner is not an order of the civil court.

10. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

MARCH 23, 2018
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VALMIKI J. MEHTA, J

