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

Reserved on : 18th May, 2018

Date of decision : 11th July, 2018

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RFA 802/2016

INDRAJ @ INDER SAIN

..... Appellant

Through:

Mr. Naushad Alam, Advocate
(M9899743251) along with
Appellant in person.

versus

MURTI DEVI & ORS.

..... Respondents

Through:

Appearance not given.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Late Shri Maru Mal had two sons; Shri Indraj @ Inder Sain (*Plaintiff*) and Shri Om Prakash - who is since deceased. The Plaintiff filed a suit for partition, rendition of accounts and prohibitory injunction against the wife and four sons (*Defendants*) of his brother - Sh. Om Prakash. The Plaintiff prayed for partition of property bearing Municipal No.3452, out of Khasra No. 2973/2315, Gali No.3, R-block, Reharpura, admeasuring 100 square yards (*suit property*). The Plaintiff claimed that he is the owner of half share of the property and prayed for partition and division by metes and bounds. He also prayed for rendition of accounts and a prohibitory injunction.

2. The suit was dismissed by the Trial Court vide judgment dated 13th July, 2015. The present appeal has been preferred impugning the said judgment.

3. The case of the Plaintiff is that his father, Shri Maru Mal had purchased the suit property and got the same initially constructed. Later on, he and his brother, Shri Om Prakash, had further raised construction and at present the property is a three-storey building. According to the Plaintiff Shri Maru Mal died intestate leaving behind his two sons, i.e., the Plaintiff and late Shri Om Prakash, as his only legal heirs. He, therefore, claimed that he had half share of the property.

4. According to the Plaintiff, the three-storey property consists of six shops on the ground floor which have been rented to various tenants. There are four rooms on the first floor where the Defendant i.e. the family of Shri Om Prakash is residing. The first floor of the property is partly built up and is partly open space and consists of four rooms out of which two rooms are in possession of the Defendants and two rooms are in possession of Plaintiff. According to the Plaintiff, he resided on the first floor till 1980 after which he shifted to Narela. The Second floor consists of three rooms which are rented out to different tenants and all the rents have been enjoyed by the Defendants. The third floor consists of one room and open terrace which have also been rented out. According to the plaint, the Plaintiff brought up the Defendants Nos.2 to 5 like his own children. Shri Om Prakash passed away on 4th June, 1999 and post his death, the relationship between the family members was strained. The Plaintiff claims that the Defendants stopped the Plaintiff from even visiting the suit property. On 1st January, 2007 he demanded his share of the property at which stage, the Defendants refused to give any share. They also refused to give any accounts. The Plaintiff claimed that he had three sisters and that he spent a huge sum of money in their marriage. Thereafter, he preferred the present suit seeking the

following relief.

“a) A Decree of Partition for partitioning the joint family property bearing Municipal No.3452 out of Khasra No. 2973/2315, situated in Regar Pura, Gali No. 3, R-Block, Karol Bagh, New Delhi, separating the plaintiff's one-half share from the share of the defendants by metes and bounds;

b) A Decree for Rendition of Accounts against the defendants regarding the rents realized by them from the suit property;

c) A Decree of Prohibitory Injunction be passed against the defendants, their representatives, assigns, employees, relations etc. restraining them from dispossessing the plaintiff from the suit property by use of force and illegal means and also not to interfere in the possession in respect of portion shown in green in the site plan on the first floor of the suit property and the defendants be further restrained from creating any third-party interest in respect of the suit property.”

5. A common written statement was filed on behalf of the Defendants and the primary defence was that a partition had been effected between the Plaintiff and his brother, Shri Om Prakash through partition deed dated 14th October, 1982. It was claimed that Shri Maru Mal, the father of the Plaintiff was the owner of two properties bearing Nos.3463 and 66 to 67/3464, Gali No.3 and 4, Reharpura, Karol Bagh, New Delhi, which were two plots admeasuring 100 and 23 square yards (*together referred to as 'Property no.1' for convenience*). The second property was Municipal No.3452, out of Khasra No. 2973/2315, Gali No.3, R-block, Reharpura, admeasuring 100 square yards i.e., the Suit property. The lease was executed by the Delhi Improvement Trust in favour of Shri Maru Mal who died in 1954. He left behind the Plaintiff, Shri Om Prakash, his wife, Smt. Gauran Devi and two

daughters. The two brothers became the joint owners of the said two properties. The suit property was mutated in favour of Shri Om Prakash and his mother, Smt. Gauran Devi and on behalf of the Plaintiff who was a minor. The Plaintiff and his brother were managing the property till 20th August, 1976 when, as per a family arrangement, it was agreed that out of the two plots, the suit property would fall into the share of Shri Om Prakash and property no.1 would fall into the share of the Plaintiff. This was reduced in writing vide deed of partition dated 14th October, 1982. Thus, according to the Defendants, upon the death of Shri Om Prakash, the suit property fell into their share. In his replication, the Plaintiff stated that his brother had obtained signatures on a number of blank papers and the deed of partition is a forged and fabricated document.

6. Interim injunction was prayed for but the same was rejected vide order dated 22nd October, 2007.

7. On 16th January, 2008, the following issues were framed in the suit: -

- “1. Whether the suit property already stand partitioned between the plaintiff and father of defendants No.2 to 5 and husband of defendant No.1 vide deed dated 14.10.1982, if so its effects? OPD*
- 2. Whether the plaintiff is in possession of the suit, if not its effect? OPP*
- 3. Whether the suit has not been properly valued for the purposes of Court Fees and jurisdiction, if so its effect? OPD*
- 4. Whether the plaintiff is entitled to partition of property bearing No.3452 out of Kh. No.2973/2315, R block, Gali No.3, Regharpura, Karol Bagh, New Delhi? OPP*
- 5. Relief.”*

8. The Plaintiff himself appeared as PW-1. He exhibited the site plan of the property as PW-1/1. In his cross-examination, he denied the partition deed. He claimed that Property no.1 was jointly purchased by him and his brother and that it was jointly sold. He denied the suggestion that the property was sold by him alone. He denied the suggestion that no goods of his are lying in the suit property.

9. Defendant No.1, the wife of Shri Om Prakash exhibited the partition deed as DW-1/1. The same has been filed in original in the Trial Court record. It is a registered document. The same has been signed by both the brothers i.e. the Plaintiff and Shri Om Prakash. Shri Bhagwan Dass and Shri Jagdish are the witnesses in the said document. She stated in her cross-examination that the Plaintiff was not in possession of any portion of the suit property. She categorically asserted that after the death of her father-in-law a written deed was executed, by which one property was given to the Plaintiff and the other was given to her husband. She stated that the Plaintiff has never demanded any share in the rent.

10. Shri Bhagwan Dass, one of the witnesses to the deed of partition appeared as DW-2. His examination-in-chief and cross-examination is set out hereinbelow: -

“on S.A.

Om Parkash and Inder Raj have entered into a settlement and has effected partition among themselves as per the settlement. Both of them even came in respective possession of the portions which fell to their share in terms of the settlement. I have signed the said deed of partition. The witness has stated that his signatures appear at point A of settlement Ex.DW1/1. Inder Raj and

Om Parkash had also signed DW1/1 in my presence. No other person had signed the same.

xxxxxx by plaintiff (Plaintiff has volunteered to cross-examine the witness)

It is incorrect to suggest that no such settlement was arrived at between the parties.”

11. Another neighbour Smt. Anita Browne appeared as DW-3 and she stated that the Plaintiff visits the suit property in a drunken condition. In her cross-examination, she stated that her house is situated 10 to 12 houses away from the suit property. She described the property and the family of the Defendants. She stated that no report has been lodged by the Defendant No.1 in respect of any quarrel.

12. Defendant No.3, Shri Mohinder Pal one of the sons of Shri Om Prakash appeared as DW-4. He stated that the deed of partition was not executed in his presence and he had not signed it. He was not aware if the partition deed was registered. He described the suit property. He also stated that the second floor was sold by the Plaintiff. He also denied that any belongings of the Plaintiff are lying in the suit property.

13. Shri Sanjay @ Sandeep one of the other sons of Shri Om Prakash deposed as DW-5. He also reiterated the case in general. He stated that till partition took place, the Plaintiff and his brother used to live together.

14. Apart from the above witnesses, the Trial Court, after repeated attempts was able to summon the record of the Sub-Registrar's office. CW-1 (Court Witness), Sh. Vinod Kumar, Record Keeper, office of Sub Registrar III, Asaf Ali Road, Delhi produced the index register in which the entries regarding deeds executed in the said office are entered. CW-1 is a copy of the index which shows that an entry in respect of the partition deed was

registered with the Sub-Registrar's office on 15th October, 1982. The original partition deed was given to the parties after the execution. CW-1 claims that though the index is available, the actual partition deed itself was destroyed due to some seepage in the Sub-Registrar's office. His statement is relevant and is set out below: -

“Suit No.

14.01.2011

CW Statement of Sh. Vinod Kumar, Record Keeper, O/o Sub Registrar III, Asaf Ali Road, Delhi.

On SA

I have brought the index register/Peshi Register in which all the entries regarding the deeds executed in the office of Sub Registrar are entered. Entry dt. 15.10.1982 volume no.4546, pages no. 65 to 100 pertains to the execution of partition deed between Inder Raj, s/o Maru Mal and Sh. Om Prakash, s/o Maru Mal. The original partition deed was given to the parties after execution. The partition deed from our record is missing and in this regard I have also brought the certificate u/s 5 of the Delhi Registration Rules 1976 dt. 27.1.05 issued by Sh. Desh Raj the then Sub Registrar III. I cannot say if any inquiry has been initiated in this regard. The copy of index register is CW-1 (original seen & returned).”

15. On 14th October, 2011, the following order was passed by the Trial Court: -

“Sh. Satyapal Record Keeper from the department of Archives and Sh. Dilip Kumar, Sub Registrar III are present. A perusal of record reveals that on 14.1.2011

statement of Sh. Vinod Kumar, Record Keeper from the office of Sub Registrar III was recorded who informed that the original record was missing since 1982. Sh. Dilip Kumaj SR submits that no inquiry has been initiated in this regard. In the facts SDM, Head Quarter (Vigilance), 5 Shamnath Margh, Delhi be issued directions to initiate inquiry regarding the missing record and file the report of the same on 3.1.2012.”

16. The Trial Court, therefore, directed initial inquiry in respect of missing record and on 9th February, 2012, the following order was passed: -

“SDM, Head Office (Vigilance) has already sent an inquiry report. As per inquiry report, it has been ascertained that due to leakage and over flowing of sewers in Sub-Registrar office building, some records were damaged due to severe moisture. It is stated that on tracing the documents summoned by the court, the office of Sub-Registrar-III had found a letter dated 27.01.05 written by Sh. Desh Raj, Sub-Registrar-III, at that time to Deputy Commissioner (Central) that during examination/searching of the volumes and documents of Additional Book no.1, several other volumes were also found to be missing from the Sub-Registrar, Asaf Ali Road. As such, the present Sub-Registrar was not responsible for the loss of the volumes.

In view of the report of the SDM, it appears that the document is irretrievable.

Put up for final arguments on 23.03.2012.”

17. From the evidence described by the Trial Court, it is clear that there was a deed of partition which was registered with the Sub-Registrar's office and the index shows the registration of such a document, though the actual document itself is not available. The index which is placed on record along

with the inquiry report shows that there was a document registered both in the name of the Plaintiff and Shri Om Prakash on 15th October, 1982. The report of the Sub-Registrar dated 23rd November, 2010 reads as under: -

“That the Summon in the case stated above is received in this Office on dated 18.10.2010.

That the record pertaining to the date 15.10.1982 are lying with Department of Archives, 18-A, Satsang Vihar Marg, Mehrauli, New Delhi. However, Index register is available in this Office and as per index register, a document titled as Partition Deed was registered in this Office on 15.10.1982 and registration particulars are given :

Volume-4746, Addl.Book No.-I on pages 95-100 executed between Inder Raj S/o. Shri Maru Mai and Om Prakash S/o Sh. Maru Mai.”

18. Thus, it is clear that there existed a registered partition deed between the parties. DW-1/1 shows the original signatures of the Plaintiff and Shri Om Prakash which ought to be treated as having been proved in accordance with law. No other contrary version of this document has been put forward by the Plaintiff. The Plaintiff, in fact, admits in the replication that some blank papers were signed. Thus, even the signatures are admitted.

19. The Plaintiff has clearly not come to the Court with clean hands, inasmuch as in the plaint, there is not a whisper of a deed of partition or any document having been executed on plain paper. Moreover, if the Plaintiff was aware that some signatures were fraudulently obtained by his brother then the Plaintiff should have categorically averred the same and sought cancellation of the said deed of partition. It is not for the Plaintiff to come in the replication with a plea that signatures were obtained on blank papers. This shows the lack of bona fides on behalf of the Plaintiff.

20. The execution of a deed of partition is established from the index of the Sub-Registrar's office Exhibit CW-1. Once a deed of partition is proved to have been executed and the original is produced by the Defendant on record, there is no reason to disbelieve the same. The relevant clauses of the deed of partition dated 14th October, 1982 are set out herein below: -

“NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:-

1) In consideration of the above premises, as per agreement and family arrangement between the parties, property bearing No. 3449 to 3452 Gali No. 3 and 4, Regharpura, Karol Bagh, New Delhi has fallen to the share of the first party exclusively, together with all lease-hold rights in the land, complete ownership in the superstructure and all such rights, privileges, licenses, liberties and interests therein which belong to or are reputed to belong to the said property.

2. Similarly, property bearing No. 3463, 3464 and 3466, 3467, Gali No. 3, Regharpura, Karol Bagh, New Delhi, has fallen to the share of the second party exclusively, together with all lease hold rights in the land, complete ownership in the superstructure and all such rights, privileges, licences, liberties and interests therein which belong to or are reputed to belong to the said property.

3. Thus on this formalization of partition by metes and bounds and the parties having become exclusive and absolute owners of their respective properties, all claims, disputes and demands arising out of the erstwhile coparcenary or the properties or in any way relating to their inheritance or succession have come to an end and have been fully and finally settled.

4) The parties assure each-other that they have not incurred any liability of any sort or have created any charge against the said properties or their rights and title therein as above mentioned either before 20.8.1976 or afterwards or any pretext whatsoever or

that the mortgage in favour of Lachhman Dass prior to 20.8.1976 is in existence and that the said mortgage stands duly redeemed by court decree and all matters concerning the same have been settled by the parties and that both the properties are absolutely clear of any encumbrance, charge or equity. In case the assurance proves false in any respect then the affected party shall have right to claim compensation, damages, expenses and costs of any action which may arise as a result against the defaulting party, in such manner as may be permissible in law. In addition, the affected party may also claim fresh partition.

5) The municipal charges and dues of any authority or rent in respect of the leases shall be borne separately by the two parties, in respect of their said two properties.

6) The parties will apply for necessary mutations in the records of the Delhi Development Authority, the Municipal Corporation of Delhi or any other governmental record showing their exclusive ownership of the two properties and to complete the separation of their shares and the partition.

7) Both the parties will do or cause to be done, execute or cause to be executed at the instance of one and another all such acts, deeds and things as may be necessary to give complete effect to this deed according to the true intent and spirit hereof.

8) The stamp duty payable on this deed has been borne by the parties in equal shares. The two properties have been valued at Rs. 1,60,000/- and inasmuch as they have equal shares, stamps duty has been paid on one share.

IN WITNESS WHEREOF the parties have signed hereto at Delhi on the day, month and year first above written."

21. In the Deed of Partition, the First Party is Om Prakash and the Second party is the Plaintiff - Indraj. A perusal of the above clauses of the deed of

partition clearly shows that the suit property falls in the share of the first party and the second property falls in the share of the Plaintiff.

22. Moreover, the Plaintiff has not been able to establish, by any evidence whatsoever, that the second property was sold by him and Shri Om Prakash jointly. The independent witness to the deed of partition namely; Shri Bhagwan Dass having appeared and confirmed the execution of the deed, the parties are bound by the settlement arrived at as per the Deed of partition. The registered deed of partition also records that the valuation report for the property by the valuer Shri Jai Kishan Girdhar dated 23rd August, 1982 was also filed. The thumb impressions of the parties also have been obtained.

23. Under these circumstances, no fault can be found with the judgment of the Trial Court. The Plaintiff is not entitled to partition of the suit property. There is no doubt in respect of the proposition that mere registration of a document does not establish its validity and that it has to be proved in accordance with law. However, in the facts and circumstances of the present case, the existence of the deed of partition having been proved and no dispute having been raised in respect of the same, except a bare allegation that it is fabricated, DW-1/1 is held to have been proved in accordance with law.

24. The appeal is accordingly dismissed with no order as to costs.

PRATHIBA M. SINGH, J.
Judge

JULY 11, 2018/Rekha