

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

+ **RFA No.813/2018**

% **26th September, 2018**

MAHESH CHANDER SHARMA

..... Appellant

Through: Mr. Sanjiv Bahl, Advocate with
Mr. Eklavya Bahl, Advocate,
Ms. Apporva Bahl, Advocate
and Mr. Pawas Aggarwal,
Advocate (M. No.9811154651).

Versus

CHAMELI DEVI & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.889/2018

1. No one appears for the caveators. Caveat stands discharged.

C.M. Nos.39438-39/2018(exemption)

2. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

+RFA No.813/2018 and C.M. No.39437/2018(stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.1 in the suit impugning the Judgment of the Trial Court dated 17.04.2018 by which trial court has decreed the suit for partition filed by the respondent no.1/plaintiff/mother with respect to two properties; first being house no. 1942, Street No. 41, Hari Singh, Nai Wala Street, Karol Bagh, New Delhi-110005 and second being plot no. 338, Deepali, Pitampura, Delhi-110034 admeasuring 238.34 sq yds. By the impugned judgment and decree, the appellant/defendant no.1 has been granted 1/7th share of the two suit properties. The appellant/defendant no.1 is challenging the impugned judgment and decree because the case of the appellant/defendant no.1 is that so far as the Pitampura property is concerned, he is the sole and exclusive owner of the said property on the ground that the stood same vested with the appellant/defendant no.1 because of a Family Settlement arrived at on 24.04.1988.

4. The facts of the case are that the respondent no.1/plaintiff/mother filed the subject suit for partition of the aforesaid two properties pleading that her husband, Sh. Sadanand Shastri, died leaving behind her as the widow, appellant/defendant no.1 as one son, respondent nos. 2 to 4/defendant nos. 2 to 4 as the other three sons, Smt. Kamla Sharma as one daughter/respondent no.5/defendant no.5 and one another daughter Smt. Sudesh Sharma who has since expired and was represented in the suit by her legal heirs through respondent nos. 6 to 8/defendant nos. 6 to 8. The respondent no.1/plaintiff/mother pleaded that with respect to the Pitampura property the five other legal heirs, except the appellant/defendant no.1, had executed registered Relinquishment Deeds in favour of the respondent no.1/plaintiff/mother. Respondent/Defendant nos. 2-4 and 6-8 had executed Relinquishment Deed dated 28.06.2010 which was registered on 06.07.2010 while respondent/defendant no. 5 had executed Relinquishment Deed dated 26.07.2010 , registered on 31.07.2010, whereby the 5/6th share of the five legal heirs stood relinquished in favour of the respondent no.1/plaintiff/mother. Accordingly, the respondent no.1/plaintiff/mother became the owner of 6/7th share of

the Pitampura property and the appellant/defendant no.1 remained 1/7th owner of the Pitampura property.

5. So far as the second property at Karol Bagh is concerned, there is no dispute between the parties that the said property has to be divided in the ratio of 1/7th each to the seven legal heirs of late Sh. Sadanand Shastri.

6. As already stated above, the only dispute was with respect to claim of the appellant/defendant no.1 that he was the sole and absolute owner of the Pitampura property on account of a Family Settlement arrived at on 24.04.1988.

7. After the pleadings were complete, the trial court framed the following issues:-

“(1) Whether the plaintiff is entitled to 6/7th share in Pitampura property? OPP

(2) Whether the plaintiff is entitled to 1/7th share in Karol Bagh property? OPP

(3) Whether there was an oral family settlement on 24.04.1988 as stated by the defendant no.1 in his written statement? OPD-1

(4) Whether the defendant no.1 is the sole owner of the Pitampura property? OPD-1

(5) Whether the suit is barred by limitation? OPD-1

(6) In case on oral settlement is not proved, whether all the properties so purchased by Mr. S.N. Shastri either in his own name

or in the name of his children are liable to be partitioned and divided between the parties equally? OPD1

(7) Relief.”

8. As regards the main issue of the Pitampura property, the relevant issues were issue nos.1, 3 and 4, and these issues have been decided by the trial court in favour of the respondent no.1/plaintiff/mother by holding that the appellant/defendant no.1 has completely failed to prove the existence of a Family Settlement, arrived at on 24.04.1988. The trial court has held that mere self serving *ipse dixit* of the appellant/defendant no.1 cannot prove the family settlement. Trial court has held that family settlement is not proved because if the family settlement was actually arrived at, then, the appellant/defendant no.1 would have informed this fact to all public authorities including the property tax department, income tax authority etc., however, none of these things were done by the appellant/defendant no.1 and this showed that there was no family settlement. The trial court has also held that the appellant/defendant no.1 has failed to prove that he spent any funds for the purchase or construction of the Pitampura property because the appellant/defendant no.1 neither filed any details of bills/payments

made towards construction nor the title documents of the property were in possession of the appellant/defendant no. 1 and nor was ownership of the Pitampura property ever recorded including spending of moneys in the income tax record.

9. The relevant paras of the trial court in this regard are paras 29 to 32 and these paras read as under:-

“29. There is no dispute about the legal position. However in case of an oral family arrangement the onus is upon the person who alleges the same to prove by cogent, viable and independent evidence that such a family settlement in fact took place between all the legal heirs. The conduct of the parties afterwards and the fact as to whether such a family settlement was acted upon would be very important indicators. Thus the onus to prove any such oral family settlement where under the Deepali, Pitampura property was given to the defendant no. 1 lies upon the defendant no. 1 and the onus is extremely heavy since the plaintiff is alleging an oral family settlement.

30. DW1 stated in his cross examination that since 1988 till date he has not informed any authority like MCD, DDA or the society that this property has been given to him by his father. He further stated that the site plan of the Deepali, Pitampura property was sanctioned by the DDA in the name of his father in the year 1988. He further stated that C-Form was issued by DDA in the name of his father on 23.08.1989 and D-Form was also issued by the DDA in the name of his father on 26.12.1989. He further stated that he has not obtained any completion certificate in 1996 or thereafter. He further admitted that he is not in possession of the title documents of the said property. He further stated that the electricity connection was installed in the suit property in the year 1989 in the name of his father. He further stated that he has not written to the society that Deepali, Pitampura property be transferred in his name. DW1 has further stated that he had not applied for mutation in DDA or MCD. He further stated that house tax has been revised in the name of his mother. He further admitted that his mother had paid Rs. 69,884/- on 08.02.2000 by cheque to MCD towards house tax

of Deepali, Pitampura property. But he stated that he used to give money to his mother, however, he could not produce any evidence to this effect.

31. Thus apart from the mere self serving ipse dixit there is no independent, cogent and viable evidence to prove the existence of such an oral family settlement. There is no evidence to show that such a family settlement was acted upon. The conduct of the defendant no.1 himself negates the possibility of any such oral family settlement. Moreover as per the said judgment Kale v. Dy. Director of Consolidation, (1976) 3 SCC 119 such a family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family. However the alleged family settlement cannot be said to be fair or bonafide and it does not contemplate fair and equitable division of the property between various members. The result is that the defendant no. 1 has failed to prove any such oral family settlement.

32. Further the defendant no. 1 has failed to produce any evidence to prove that he had constructed the Pitampura property out of his own funds. No document or other independent, cogent and viable evidence has been proved by the defendant no. 1 in this respect. There is no evidence to show that any funds were spent by him on the construction. Even the existence of requisite funds has not been proved. The defendant no. 1 has admitted that he has never been an Income Tax payee. Admittedly the C form and D form in respect of the Pitampura property were issued in the name of his father Sh. Sadanand Shastri. Thus the defendant has also failed to establish that the superstructure over the Pitampura plot was constructed by him out of his own funds.

(Underlining Added)

10. I do not find any illegality or fault whatsoever in the aforesaid reasoning and conclusion of the trial court because the appellant/defendant no.1 cannot claim to have become the exclusive owner merely on the basis of self-serving *ipse dixit*. If self-serving statements are believed, then in the facts of the case such as the

present, the same will result in divesting the valuable rights in an immovable property which is owned by others.

11(i). Counsel for the appellant/defendant no.1 argued that if the partition suit had to be decreed, then the partition suit also had to be decreed with respect to two other immovable properties and also the movable assets of the father, with the two immovable properties being a janta flat single storey at Kalkaji in the name of the defendant no.2/Sh. Anand Swaroop and the DDA Flat No.H-166, Vikaspuri, New Delhi in the name of defendant no.3/Sh. Ramesh Chander Sharma and the same has not been done. It is argued that it was the father who spent moneys for these two properties at Kalkaji and Vikaspuri and the defendant nos. 2 and 3 were not the owners of these properties because the respondent no.1/plaintiff/mother conceded in her cross-examination on 09.01.2014 that the defendant no.3/Sh. Ramesh Chander Sharma was only around 20 years of age when the property at Vikaspuri was purchased and the defendant no.2/Sh. Anand Swaroop was about 18 years of age when the house at Kalkaji was purchased.

(ii) In my opinion and assuming for the sake of arguments that the father had spent the funds for purchase of the properties at Kalkaji and Vikaspuri, however, that in itself will not make the father Sh. Sadanand Shastri the owner of these properties. Obviously, if funds were given by the father the same would also be as gifts of moneys by the father to his children, and that once the father in his lifetime never questioned the ownership of Kalkaji and Vikaspuri properties in the name of his sons being respondent nos. 2 and 3/ defendant nos. 2 and 3, then I fail to understand as to how the appellant/defendant no.1 can plead that defendant nos. 2 and 3 were not the exclusive owners of the Kalkaji and Vikaspuri properties. I therefore reject the argument urged on behalf of the appellant/defendant no.1 that if a partition had to be granted, partition was also to be ordered with respect to Kalkaji and Vikaspuri properties.

12. Counsel for the appellant/defendant no.1 finally argued that as per the written statement the appellant/defendant no.1 had pleaded that there were movable properties of the father Sh. Sadanand Shastri and the same were to be partitioned. Further, it is argued that

that the mother in her cross-examination dated 09.01.2014 admitted that the father Sh. Sadanand Shastri at the time of his death, left behind moneys in the bank accounts, however, this argument is without merit as it is noted that besides taking a plea in the last para of the written statement filed by the appellant/defendant no.1 for seeking partition of movable properties, no such issue was got framed by the appellant/defendant no.1 with respect to seeking a counter claim and partition of the movable properties of the father late Sh. Sadanand Shastri. This argument of the appellant/defendant no.1 is also therefore rejected.

13. Obviously and as is usually found these days in hundreds of cases, the children want to only appropriate to themselves the properties of their parents. The facts of the case show that the mother, widow of late Sh. Sadanand Shastri, was forced to file a suit against her own son, being the appellant/defendant no.1, because the appellant/defendant no.1 was falsely claiming exclusive ownership rights in the Pitampura property. Even in equity therefore I fail to understand as to how a son can deny rights in the properties to the

respondent no. 1/plaintiff/mother/widow of the father Sh. Sadanand Shastri.

14. There is no merit in the appeal. Dismissed.

SEPTEMBER 26, 2018/Ne

VALMIKI J. MEHTA, J

