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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on :28th February, 2018

Date of decision :4th July, 2018

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RFA 227/2017

HARJEET SINGH MAINI

..... Appellant

Through: Mr. Kamal Gupta, Ms. Kirti Kakkar,
Ms. Tripti Gupta, Ms. Ramya Kutty,
Ms. Chandni Ghai and Ms. Nalin
Tripathi, Advocates (M-9810988094).

versus

PARAMJIT SINGH MAINI

..... Respondent

Through: Mrs. Deepika V. Marwaha
(M:9810046917) and Mr. Alok Pandey,
Advocates (M:9971322260)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The main judgment has been passed in ***Ram Singh Maini Vs. Harjeet Singh Maini (RFA 228/2007)*** dated 4th July 2018.
2. The present appeal arises out of a suit for declaration/injunction/partition filed by Sh. Harjeet Singh Maini against his brother-Sh. Paramjit Singh Maini. The relief prayed for are as follows:

“(A) pass a decree declaring that the plaintiff is the absolute owner in possession of the First Floor being 1/3rd share of property no. A-266, New Friends Colony, New Delhi in terms of the oral partition/Family Settlement arrived amongst the family members in the year 1983, and no other person has any right/title and interest in the portion shown in RED in the site plan attached.

(B) pass a decree of permanent/prohibitory injunction restraining defendant from selling, transferring, alienating, encumbering, or creating any third party rights in respect of any portion of the property no. A-266, New Friends Colony, New Delhi.

(C) through the same decree the other assets [movable / immovable] belonging to Late Ram Singh Maini be partitioned in accordance with law.

(D) through the same decree costs of the suit be also awarded in favour of the plaintiff as against the defendant.

(E) pass such further order/ direction as this Hon'ble Court may deem fit and proper in the interest of justice."

3. The suit was originally filed in the High Court but due to the increase in the pecuniary jurisdiction it was transferred to the District Court and numbered as suit no.664/2005. The detailed discussion on the pleadings and the respective cases of the parties are contained in the judgment rendered in RFA 228/2007. The issues framed in this suit are as under:

"1.Whether the plaintiff is entitled to a decree of declaration of ownership in respect of first floor of the property bearing no.A-266, New Friends Colony, New Delhi? OPP

2. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for in prayer (b) of the prayer clause in the plaint? OPP

3. Whether the plaintiff is entitled to a decree for partition of the suit property? OPP

4. Whether the property bearing no.A-266, New Friends Colony, New Delhi was purchased benami by late Sh. Sardar Mehar Singh in the name of late Sh. Ram Singh Maini? OPP

5. Whether any oral partition took place in the year 1983 in respect of the property bearing no.A-266, New Friends Colony, New Delhi and if so, the effect

thereof? OPP

6. Whether the plaintiff contributed any sum towards the completion and improvement of the suit premises, and if so, the effect thereof? OPP

7. Whether Lt. Sh. Ram Singh Maini had left behind a will dated 07.09.2011 in favour of defendant? If so, to what effect? OPD.

8. Relief.”

4. This court has in RFA 228/2007 arrived at a finding that the Will dated 7th September, 2001 is genuine and has been proved in accordance with law. In view of the findings arrived at in 228/2007, the issues framed in the present suit are decided below:

Issue no. 1. *Whether the plaintiff is entitled to a decree of declaration of ownership in respect of first floor of the property bearing no.A-266, New Friends Colony, New Delhi? OPP*

Issue no.2. *Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for in prayer (b) of the prayer clause in the plaint? OPP*

Issue no.3. *Whether the plaintiff is entitled to a decree for partition of the suit property? OPP*

Issue no.7. *Whether Lt. Sh. Ram Singh Maini had left behind a will dated 07.09.2011 in favour of defendant? If so, to what effect? OPD*

As per the Will dated 7th September 2001, the property has been bequeathed to Sh. Paramjit Singh Maini to the exclusion of all legal heirs. The Will specifically states as under:

“...I had allowed my son Harjeet Maini to reside on the first floor of the aforesaid property bearing No. A-266, New Friends Colony, New Delhi-110065. He is

residing as my Licensee and has no right, title and interest in the said first floor.

So long as I am alive, I shall continue to be the owner of all my properties movable and immovable. I bequeath all my movable and immovable properties which I may be owning and possessing on my death to my younger son Paramjit Singh Maini to the exclusion of all other heirs.

After my death, my son Paramjit Singh Maini shall be the absolute and exclusive owner of my immovable property and movable assets. I have made this Will in sound disposing mind out of my free will without any pressure from any quarter.”

The Will was proved by adducing the evidence of the attesting witness Sh. M.S. Bisht and Sh. Kanwaljit Singh. The Will has been held to be a genuine and proved in accordance with law and thus Sh. Harjeet Singh Maini is not entitled to the declaration as prayed for. The reliefs of injunction and partition are also thus not liable to be granted.

Issue no.4. *Whether the property bearing no.A-266, New Friends Colony, New Delhi was purchased benami by late Sh. Sardar Mehar Singh in the name of late Sh. Ram Singh Maini? OPP*

Issue no.6. *Whether the plaintiff contributed any sum towards the completion and improvement of the suit premises, and if so, the effect thereof? OPP*

5. From the evidence which has been led in the two suits, it is clear that Late Sh. Ram Singh Maini had purchased the suit property from his own funds. He had also mortgaged the property with LIC, to raise funds for construction on the suit property, for which Sh. Harjeet Singh Maini stood as a guarantor. Sh. Harjeet Singh Maini has not been able to establish

through any documents or any other evidence that money was given by his grandfather to his father. In fact, he admits in his cross-examination that he does not have any document to show that his grandfather had received any money as compensation when he migrated from Pakistan. Thus, the plea of ancestral property has not been proved. The evidence also establishes that Late Sh. Ram Singh Maini had the funds to purchase the suit property having been a government employee. He was a member of New Friends House Building Co-operative Society Ltd. since 1960s. He had purchased the property from his own funds and had also constructed on the property from the funds taken as a loan from LIC. Sh. Harjeet Singh Maini has also not placed on record any documents to show that he had contributed for the construction, completion or improvement of the suit property. Both these issues are thus answered against the Plaintiff.

Issue no. 5. *Whether any oral partition took place in the year 1983 in respect of the property bearing no.A-266, New Friends Colony, New Delhi and if so, the effect thereof? OPP*

6. Except a mere statement made by Plaintiff-Sh. Harjeet Singh Maini, there is no independent corroborative evidence to establish that a partition had taken place. The father - Late Sh. Ram Singh Maini had in fact filed an affidavit in the Trial Court before his death to the following effect:

“2. That the defendant is my son and I had allowed him to occupy the first floor of the property as licensee.

3. That the conduct of the defendant became unworthy of a son. The defendant began to tease his mother and sometimes used force against her during her lifetime. Even after the death of my wife, the defendant was having a hostile attitude against me. I, therefore, served a notice dated 25.9.2001 revoking the licence of

the defendant and calling upon the defendant to restore the premises. A copy of the notice is Ex.P1. The said notice was sent to the defendant by registered A.D. post. The postal receipt is Ex.P2. The notice was duly served upon the defendant. A.D. receipt is Ex.P3.”

This affidavit has been exhibited as marked PW-1/DC. Though, he could not be produced for cross-examination, as he had passed away, the affidavit having been signed by him is of probative value. He had himself filed the suit during his life time seeking to evict his son from the suit property. No independent witness was produced by the Plaintiff to establish the existence on an oral partition. The Plaintiff has failed to discharge the onus on him. This issue is also decided against the Plaintiff.

7. The Trial Court has, come to the conclusion that the Will was properly proved and the Plaintiff was a licensee. He had occupied the suit property with the permission of the father. Thus, the Trial Court had dismissed the suit. This court confirms the judgment of the Trial Court. The present appeal is dismissed. No order as to costs.

PRATHIBA M. SINGH, J.
Judge

JULY 04, 2018
Rahul