

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

+ **RFA No. 84/2019**

% ***1st February, 2019***

BALJEET SINGH Appellant

Through: Mr. Munish Chhoker, Advocate
(Mobile No. 9873340929).

versus

SUKHVINDER SINGH @ KAKKU & ORS. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 4615/2019 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 4614/2019 (for delay in re-filing)

2. For the reasons stated in the application the delay of 25 days in re-filing the appeal stands condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 84/2019 & CM No. 4613/2019 (for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 24.07.2018 by which the trial court has dismissed the suit for partition filed by the appellant/plaintiff with respect to two properties. The first property is referred in the impugned judgment as property No.1 bearing No. T-99, Vishnu Garden, New Delhi. The second property referred to as property No. 2 is bearing No. 1523-24, T.C. Camp Raghuvir Nagar, New Delhi.

4. The case of the appellant/plaintiff was that these two suit properties were purchased by the father, Late Sh. Dalip Singh, after selling the ancestral property bearing No. 332, Gali No. 2, Anand Parbat, Karol Bagh, New Delhi, and the plaintiff therefore has a 1/5th right in the two suit properties. Since it will be relevant, at this stage itself it is to noted that in the suit plaint that the properties are mentioned as one property bearing property No. T-99, Vishnu Garden, New Delhi and the second property is also mentioned as one property

bearing property No. 1523-24, T.C. Camp Raghuvir Nagar, New Delhi. The appellant/plaintiff in essence had additionally pleaded an alternative case that in any case since the father Late Sh. Dalip Singh was the owner of the two properties, and had died intestate, therefore the appellant/plaintiff became 1/5th owner along with the four other legal heirs being three daughters and one other deceased son, Sh. Mohinder Singh. In the original suit plaint, the appellant/plaintiff was Sh. Baljeet Singh. Originally, in the suit, there were four defendants. Defendant no. 2 Sh. Mohinder Singh was the other son. The two daughters, Smt. Parmjeet Kaur and Ms. Amarjeet Kaur, were impleaded as defendant nos. 3 and 4. Defendant no. 1 in the suit was the son of the third daughter, Late Smt. Satnam Kaur. The suit plaint was thereafter amended because as per the written statement filed by the original defendant nos. 3 and 4, it was stated that they had sold two floors in the Vishnu Garden property to Sh. Krishan Kumar and Smt. Navdeep Kaur in terms of registered Sale Deeds dated 23.04.2008 and December 2008 and therefore the purchasers, Sh. Krishan Kumar and Ms. Navdeep Kaur, were added as the defendants in the suit and were arrayed as defendant nos. 9 and 10. The two daughters, Smt.

Paramjeet Kaur and Smt. Amarjeet Kaur, who were defendant nos. 3 and 4 became defendant nos. 7 and 8. Sh. Mohinder Singh, the defendant no. 2, became defendant no. 6. Defendant nos. 2 to 5 were impleaded as legal heirs of the daughter, Late Smt. Satnam Kaur as they were not originally impleaded as parties to the suit and only one son of Late Smt. Satnam Kaur was impleaded as defendant no. 1. Therefore, defendant nos. 1 to 5 in the suit are the legal representatives of the daughter Late Smt. Satnam Kaur. Defendant no. 6 was the original defendant no. 2 namely Sh. Mohinder Singh, son of Late Sh. Dalip Singh. Defendant nos. 7 and 8 are the two daughters of Late Sh. Dalip Singh and who were originally defendant nos. 3 and 4. The purchasers of the two floors of the properties, Sh. Krishan Kumar and Ms. Navdeep Kaur, became the defendant nos. 9 and 10.

5. The main contest to the suit was by defendant nos. 3 and 4, being the two daughters of Late Sh. Dalip Singh. They propounded a registered Will dated 11.10.1995 (registered on 10.11.1995) whereby the two properties were bequeathed by the father, Late Sh. Dalip Singh to his three daughters, namely, Late Smt. Satnam Kaur, Smt. Parmjeet Kaur and Ms. Amarjeet Kaur. It was pleaded by

defendant nos. 3 & 4 that the plaintiff had immediately after his marriage had in 1984 left the residence of the father and lived separately. It was pleaded that Late Sh. Dalip Singh has in fact disowned the appellant/plaintiff from inheriting his properties by virtue of the publication in the newspaper 'Punjab Kesri' dated 21.10.1992. It was pleaded that the case of the appellant/plaintiff that the properties were acquired from the ancestral funds of the ancestral property bearing No. 332, Gali No. 2, Anand Parbat, Karol Bagh, New Delhi was false and the Late Sh. Dalip Singh had acquired the two suit properties as his self-acquired properties. The suit was accordingly prayed to be dismissed.

6. The trial court framed the following issues:

- “1. Whether the plaintiff is entitled to decree of partition of the suit property, as prayed vide prayer clause (a)? OPP
2. Whether the plaintiff is entitled to decree of permanent injunction, as prayed vide prayer clause (b)? OPP
3. Whether the plaintiff has properly valued the suit for the purpose of court fee and jurisdiction? OPP
4. Whether late Shri Dalip Singh has executed Will in favour of the defendant nos. 7, 8 and late Smt. Satnam Kaur, if so, its effect? OPD
5. Relief.”

7. The trial court has dismissed the suit filed by the appellant/plaintiff by holding that the contesting defendants nos. 7 and 8/respondent nos. 7 and 8 have proved the Registered Will dated 11.10.1995 as Ex. D8W1/2 through one attesting witness D8W4, namely Sh. T.V.S.R. Krishna Sastry, Advocate, and who was the second attesting witness in the Will. The trial court has referred to the fact that the attesting witness, Sh. T.V.S.R. Krishna Sastry, has duly deposed with respect to the execution and attestation of the Will by deposing that Late Sh. Dalip Singh signed the Will in his presence and he signed the Will in the presence of Late Sh. Dalip Singh and also that the first attesting witness has signed the Will in the presence of Late Sh. Dalip Singh and in the presence of D8W4 Sh. T.V.S.R. Krishna Sastry, Advocate. The trial court has also referred to the fact that the attesting witness Sh. T.V.S.R. Krishna Sastry has stood the test of cross-examination and nothing has been stated by him in his cross-examination whereby the Will can be discarded. Further, the trial court has noted that the attesting witness Sh. T.V.S.R. Krishna Sastry has deposed that he was present before the Sub-Registrar at the time of the registering of the Will. Sh. T.V.S.R. Krishna Sastry has

deposed that though he did not explain the contents of the Will to Late Sh. Dalip Singh, but the contents of the Will were explained to Late Sh. Dalip Singh by the Sub-Registrar. Sh. T.V.S.R. Krishna Sastry has denied that he did not see Late Sh. Dalip Singh executing the Will and he did not attest the Will as attesting witness. The trial court has held that it was immaterial that Late Sh. Dalip Singh was not earlier known to the attesting witness Sh. T.V.S.R. Krishna Sastry, Advocate. Sh. T.V.S.R. Krishna Sastry, Advocate had deposed that he was a practicing Advocate since 1985 and remained member of several Bar Associations and that at the time of his deposition he was a member of the Supreme Court Bar Association and the Dwarka Courts Bar Association. Sh. T.V.S.R. Krishna Sastry, Advocate also deposed that though his residential address was not mentioned in the Will, his enrolment number was duly mentioned on the Will. Also, the trial court has specifically referred to the fact that Sh. T.V.S.R. Krishna Sastry has signed the Will in the Sub-Registrar's office on 10.11.1995 and it was denied by Sh. T.V.S.R. Krishna Sastry that the testator Late Sh. Dalip Singh had not signed the Will. Though the appellant/plaintiff sought to make a mountain out of a mole hill by

stating that the date of the execution of the Will was 10.11.1995 as stated by Sh. T.V.S.R. Krishna Sastry whereas Will has been executed on 11.10.1995, and this has rightly been discarded by the trial court that this minor contradiction will not change the factual aspects that the Will itself states that it was executed on 11.10.1995 and is registered subsequently on 10.11.1995. In fact the factum of due registration of the Will has been duly proved through the witness of the Sub-Registrar's Office who deposed as D8W2 namely Sh. Vivek Yadav. The trial court has also held that the father Late Sh. Dalip Singh had disinherited the appellant/plaintiff in terms of insertion in the newspaper 'Punjab Kesri' which was proved and exhibited as Ex.D8W3/1, and this was done by summoning the witness from the Punjab Kesri newspaper namely Sh. H.C. Mehta who deposed as D8W3. The trial court has also said that there is no reason to disbelieve the Will inasmuch as it has been established on record that the appellant/plaintiff never resided with his father Late Sh. Dalip Singh, never took care of him and never gave him any monies including for his treatment. These aspects are specifically noted by

the trial court in paras 38 and 39 of the impugned judgment, and these paras read as under:-

“38. In this regard, one may also refer to the testimony of PW-1, Sh. Baljeet Singh who deposed during his cross-examination dated 04.12.2017 that he and his wife or children never resided in the suit property no.1. He denied knowledge about disease / illness from which his father was suffering. He also denied knowledge about the period of admission of his father in different hospitals. He denied knowledge about the exact date of death of his father. He deposed that his father had expired in February, 2000 and mother expired in the year, 1994. He also deposed that he does not have any document for passbook transaction to show that he had given any money to his father and mother for their use. He deposed that he also does not have any documentary proof / medical document of his parents to show that he had ever taken any of them to any doctor or hospital for any medical care. He denied knowledge about issuance of public notice dated 21.10.1992 in 'Punjab Kesri' disowning him and severing all relations with him. He denied knowledge of execution of registered Will dated 11.10.1995. PW-1 deposed that he got married in the year 1984 and after one and half month of his marriage, he shifted to Kalkaji, New Delhi. He further deposed that he neither lived at the suit property no.1 nor at the suit property no.2. He volunteered that he used to visit the suit property no.1 where they used to live. He again said that he used to visit the suit property no. 2 as well.

39. Perusal of testimony of the plaintiff shows that the plaintiff neither resided with his parents after marriage nor taken care of them. In such circumstances, there is no doubt emerging from the record on the authenticity of execution of Will dated 10.11.1995, Ex.D8W1/2 in favour of daughters.”

(Underlining Added)

8. In my opinion, in view of the aforesaid aspects, the trial court therefore has committed no illegality in upholding the Will dated 11.10.1995 (registered on 10.11.1995) executed by the father, Late Sh. Dalip Singh and proved through the attesting witness Sh. T.V.S.R. Krishna Sastry. The Will has been exhibited as Ex.D8W1/2.

9. Once the Will is proved, it stands proved that the two properties have been bequeathed by the father, Late Sh. Dalip Singh in favour of his three daughters and also that the appellant/plaintiff was disinherited by the father with respect to the two suit properties.

10(i). The ld. counsel for the appellant/plaintiff in an act of desperation sought to argue that there were not two properties but three properties inasmuch as the second property which is given No. 1523-24, T.C. Camp Raghuvir Nagar, New Delhi, are two properties and not one property, and that in the Will of the father dated 11.10.1995 only one property is bequeathed to the three daughters namely property No. 1523, T.C. Camp Raghuvir Nagar, New Delhi and not property No. 1524, T.C. Camp Raghuvir Nagar, New Delhi, and therefore, the trial court should have at least decreed the suit for partition with respect to property No. 1524. This argument, therefore,

is predicated on the ground that the property nos. 1523-24 at T.C. Camp Raghuvir Nagar, New Delhi is not one property but are two properties.

10(ii). This Court, however, cannot agree with this argument urged on behalf of the appellant/plaintiff because though no doubt the Will uses the property No. 1523 only, however, a reading of the entire plaint shows that the appellant/plaintiff himself has referred to the same as one single property (the property No. 1523-24, T.C. Camp Raghuvir Nagar, New Delhi) and not as two separate properties. Not only this, once the contesting defendants relied on the Will of the father dated 11.10.1995 that the father bequeathed the two properties in favour of his three daughters, it was not the case of the appellant/plaintiff in the replication that there existed three properties with the third property No. 1524 being a third property which was not the subject matter of the Will, and therefore, *qua* the property No. 1524 the appellant/plaintiff is entitled to partition of the same. I would also like to note that even in the affidavit by way of evidence filed on behalf of the appellant/plaintiff there is no case which is put forth that there are not two properties but there are three properties

with property No. 1524 being not the subject matter of the Will dated 11.10.1995 of the father Late Sh. Dalip Singh. It is also seen that even in the issues framed there is no issue which was got framed by the appellant/plaintiff that the property No. 1524 is a separate property, and therefore, since there is no will with respect to alleged separate property No. 1524, the appellant/plaintiff is entitled to partition of this property.

10(iii). Therefore, there were only two properties with the second property being No. 1523-24, T.C. Camp Raghuvir Nagar, New Delhi and the Will only by a typographical mistake calls this as property No. 1523. If really therefore there was a third property, it is not conceivable that the appellant/plaintiff would have remained silent in this regard in his plaint, then, in his replication, and finally even in his affidavit by way of evidence.

10(iv). This Court also observes that if really there were three properties and not two properties, the appellant/plaintiff would have himself filed or got summoned through the contesting defendants the title documents of the property bearing No. 1523-24, T.C. Camp

Raghuvir Nagar, New Delhi to show that this property was not one property but two properties.

10(v). However, in this regard to protect the right of the appellant/plaintiff it is observed by this Court that so far as this alleged claim of an alleged third property No. 1524 is concerned, in case there is any substance to this argument, the remedy of the appellant/plaintiff really will be to file a review petition, and this review petition if filed will be heard and disposed of by the trial court in accordance with law.

11. Finally, I would like to note that though the appellant/plaintiff set up a case of an HUF as per the plaint, however, by the time when the evidence was led on behalf of the appellant/plaintiff, this plea/case of the existence of an HUF was given up because in the affidavit by way of evidence filed by the appellant/plaintiff, it is not stated that suit properties are in fact HUF properties. As already stated above, the entire suit has been contested on the ground that father was the owner of the two properties, and the issue was whether the father died intestate or whether the father died leaving behind his Registered Will dated 11.10.1995.

14. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed. All pending applications are also disposed of.

FEBRUARY 01, 2019

VALMIKI J. MEHTA, J

