

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

+ **RFA No. 147/2019**

% **19th February, 2019**

SIKANDAR LAL BHATIA & ORS.

..... Appellants

Through: Mr. Naveen Kumar, Advocate
with Mr. Prabhat Kumar Rai,
Advocate (M. No.9724243214).

Versus

SHEILA S. KAPOOR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos. 7728/2019 & 7730/2019 (exemption)

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

RFA No. 147/2019 and C.M. No.7729/2019 (stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the Judgment of the trial court dated 26.11.2018 by which the trial court has decreed the suit for partition filed by the respondent/plaintiff with respect to property bearing No. C-1/22, Lajpat Nagar, Part-I, Delhi (*hereinafter* 'C-1/22') and thereby passing a preliminary decree of 1/3rd share of the suit property in favour of the respondent/plaintiff.

3. The facts of the case are that the respondent/plaintiff filed the subject suit for partition of the suit property pleading that she was the daughter of Late Sh. Ram Chand Chandna and Late Smt. Soni Bai Chandna. Late Sh. Ram Chand Chandna and Late Smt. Soni Bai Chandna left behind only two legal heirs being the two daughters. The respondent/plaintiff was one daughter and the appellants/defendants were the legal heirs of the other daughter, Late Smt. Saroj Bhatia. It was pleaded that a registered Gift Deed with respect to 1/3rd share belonging to the mother was executed in favour of Late Smt. Saroj Bhatia, and therefore, Late Smt. Saroj Bhatia (consequently the appellants/defendants) were 2/3rd owners of the suit

property and the respondent/plaintiff had 1/3rd share. Accordingly, the suit for partition was prayed to be decreed for 1/3rd share of the suit property.

4. The appellants/defendants filed their written statement as per which there was a family settlement under which the adjoining property bearing No. C-1/2, Lajpat Nagar, Part-I, Delhi was given to the share of the respondent/plaintiff whereas the suit property C-1/22 fell to the share of Late Smt. Saroj Bhatia, the predecessor-in-interest of the appellants/defendants. It was pleaded that this Family Settlement was of the year 1972 and pursuant to this family settlement, the respondent/plaintiff had executed a Power of Attorney dated 31.08.1972 in favour of her mother to give effect to the relinquishment of the share of the respondent/plaintiff in the suit property. Accordingly, it was prayed that the suit property fell to the ownership of Late Smt. Saroj Bhatia and hence the suit was liable to be dismissed.

5. The following issues were framed in the suit:-

“(i) Whether the plaintiff is the co-owner/co-lessee having 1/3rd share in the suit property? OPP

(ii) Whether there was any Family Settlement as alleged by the defendant in the written statement? OPP

- (iii) Whether plaintiff is entitled for decree of partition? OPP.
- (iv) Whether the plaintiff is entitled for decree of Rendition of Accounts? OPP.
- (v) Whether the suit of plaintiff is barred by Limitation as alleged? OPD.
- (vi) Whether the suit of the plaintiff is not properly valued for the Court Fee? OPD.
- (vii) Relief.”

6. The evidence led by the parties is recorded in paras 6.1 to 6.3 of the impugned judgment, and these paras read as under:

“6.1 In plaintiff evidence, **Sh. Jagan Nath Ahuja has been examined as PW-1** by way of affidavit Ex.PW1/A who relied upon documents Ex.PW1/1 to Ex.PW1/17 as follows:

S. No.	Ex./Mark	Description of document
1.	Ex.PW1/1	General Power of Attorney dated 30.11.2009
2.	Ex.PW1/2	Mutation Letter dated 31.03.1988 issued by the Office of L&DO
3.	Ex.PW1/3	Letter dated 27.04.2009 to the office of L&DO
4.	Ex.PW1/4	Copy of Legal Notice dated 02.09.2009
5.	Ex.PW1/5 to Ex.PW1/7	Postal receipts
6.	Ex.PW1/8 to Ex.PW1/10	AD cards
7.	Ex.PW1/11	Sale Deed dated 23.10.1964
8.	Ex.PW1/12	Copy of the Admission card of

		Shri Pawan Keller
9.	Ex.PW1/13	Copy of Nomination form
10.	Ex.PW1/14	Copy of gratuity form
11.	Ex.PW1/15 & Ex.PW1/16	Fixed Deposit receipts in the name of the Trust
12.	Ex.PW1/17	Statement of Accounts of the Trust

6.2 In defendant evidence, **Sh. Sikander Lal Bhatia** has been examined as D1W1 by way of affidavit Ex.D1W1/A who relied upon documents Ex.D1W1/1 to Ex.D1W1/5.

S. No.	Ex./Mark	Description of document
1.	Ex.D1W1/1	Original Sale Deed dated 23.10.64
2.	Ex.D1W1/2	Original Irrevocable Special Power of Attorney executed on 31.08.1972
3.	Ex.D1W1/3	Letters of Administration dated 28.02.1991 in PC-269/1987 in respect of properties of Sh. Topan Dass Chandna
4.	Ex.D1W1/4	Original General Power of Attorney executed on 16.12.1986 by Smt. Soni Bai in favour of Late Mrs. Saroj Bhatia
5.	Ex.D1W1/5	Original Agreement to sell dated 6.10.1994 executed by plaintiff and Mrs. Saroj Bhatia in favour of Mrs. Kalpana Jaiswal

6.3 Both witnesses were cross-examined extensively by the opposite side.”

7. The trial court has held that the appellants/defendants have failed to prove any Family Settlement of the year 1972. It has been held that if the Family Settlement of the year 1972 took place and the respondent/plaintiff was hence not the owner of the suit property, then, there was no reason why much later in the year 1994, the suit property would have been sold not only by Late Smt. Saroj Bhatia but jointly by the respondent/plaintiff and Late Smt. Saroj Bhatia. In fact, the trial court has also held that the original Family Settlement of the year 1972 of relinquishment of the share of the respondent/plaintiff in the suit property in terms of Power of Attorney dated 31.08.1972/Ex.D1W1/2 (also Ex. D-1) was not correct because the suit property was mutated much later in the year 1981 in the records of the Land & Development Office in the name of the respondent/plaintiff/Late Smt. Saroj Bhatia and the mother Late Smt. Soni Bai Chandna under the terms of the Substitution Letter dated 06.08.1981/Ex. PW1/2. Accordingly, the trial court has rejected the defence of the appellants/defendants of the Family Settlement of the year 1972.

8. In my opinion, the trial court is completely justified in rejecting the defence of the appellants/defendants because if the relinquishment by the respondent/plaintiff in favour of her mother in terms of the Power of Attorney dated 31.08.1972/Ex.D1W1/2 would have been done, then there was no reason why much later in the year 1981, the suit property was mutated in the records of three parties being the respondent/plaintiff, her sister Late Smt. Saroj Bhatia and the mother Late Smt. Soni Bai Chandna. It is pertinent to note that if the respondent/plaintiff was not the owner, then, how does the question of the respondent/plaintiff being one of the sellers of the C-1/21 property alongwith Late Smt. Saroj Bhatia arise. The Agreement to Sell dated 06.10.1994 in this regard has been proved as Ex.D1W1/5.

9. In fact, this Court would like to add that the total sale consideration for the sale of the Property No. C-1/21 was Rs. 25,50,000, and the respondent/plaintiff has successfully proved that she received only half of the sale consideration because the respondent/plaintiff has filed and proved on record the two Fixed Deposit Receipts Ex.PW1/15 and Ex.PW1/16 which showed that

amounts of Rs. 10,46,131/- and Rs. 2,48,671/- were deposited in the Oriental Bank of Commerce by the respondent/plaintiff. If the respondent/plaintiff was the owner of the property no. C-1/21, and the same was sold pursuant to the Agreement to Sell dated 06.10.1994/ Ex.D1W1/5 for an amount of Rs. 25,50,000, then this whole amount would have been received by the respondent/plaintiff and not one-half of the amount only which was put in fixed deposit as proved through FDRs Ex.PW1/15 and Ex.PW1/16. In my opinion, the appellants/defendants could have only succeeded if they were able to prove that their predecessor-in-interest, Late Smt. Saroj Bhatia, never received any consideration on the sale of the property No. C-1/21 or if Late Smt. Saroj Bhatia though had received the consideration but she thereafter passed on her share of the consideration for sale of property No. C-1/21 to the respondent/plaintiff, but on both these aspects the appellants/defendants have miserably failed as there is no evidence whatsoever that Late Smt. Saroj Bhatia did not receive any amounts from the sale of the Property No. C-1/21 nor is there any evidence to establish the fact that Late Smt. Saroj Bhatia gave her share of the consideration of sale of property No. C-1/21 (50% of the sale

consideration) to the respondent/plaintiff. Therefore, the case set up by the appellants/defendants was completely false that the property No. C-1/21 fell solely to the share of the respondent/plaintiff and the suit property No. C-1/22 had fallen to the exclusive ownership of the predecessor-in-interest of the appellants/defendants, namely Late Smt. Saroj Bhatia.

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

FEBRUARY 19, 2019
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VALMIKI J. MEHTA, J