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

Reserved on: 20th August, 2019

Date of decision: 10th October, 2019

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CS (OS) 1442/2015

NAND RAM

..... Plaintiff

Through: Mr. Sunil Mittal, Senior Advocate
with Mr. Maldeep Sidhu and Ms.
Aishwarya Anand, Advocates. (M:
8588990639)

versus

KANWAL SINGH & ANR.

..... Defendants

Through: Mr. Sanjeev Anand, Ms. Renu Kuhar,
Mr. Varun K. Bala and Mr. Suresh
Khadav, Advocates. (M:
9999941625)

CORAM:

JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

I.A 6462/2017

1. The Plaintiff - Sh. Nand Ram has filed the present suit for partition against his two brothers, Defendant Nos. 1 and 2 - Sh. Kanwal Singh and Sh. Suraj Bhan, respectively. All three parties are the sons of late Sh. Bharat Singh, who died in 1979.

Brief Facts

2. The case of the Plaintiff, in brief, is that his father - Sh. Bharat Singh was survived by his three sons, three daughters and his wife - Smt. Nahar Kaur. The three daughters of Sh. Bharat Singh had been married in the early 1970s. In 1971, Defendant No. 2 - Sh. Bharat Singh's oldest son, Sh. Suraj Bhan demanded separation in mess and estate and received Plot No. 151,

New Manglapuri, Mehrauli, M.G. Road, New Delhi – 110030, admeasuring 150 sq. yds. i.e., 1/3rd of the joint family's immovable property. In the year 1979, another property being Plot No. 88, New Manglapuri, Mehrauli, M.G. Road, New Delhi – 110030 (*hereinafter*, "Plot No. 88"), admeasuring 175 sq. yds. was, according to the Plaintiff, purchased from joint family funds in the name of his wife - Smt. Murti Devi.

3. Notional partition is then stated to have taken place in 1979, upon the death of Sh. Bharat Singh. The case of the Plaintiff is that 1/3rd share each of the joint family property devolved upon Sh. Bharat Singh's widow - Smt. Nahar Kaur, the Plaintiff – Sh. Nand Ram and Defendant No. 1 - Sh. Kanwal Singh. Defendant No.2 - Sh. Suraj Bhan did not have any share as he had already taken his share in the partition which took place in 1971. Disputes between the parties began at this stage.

4. Upon his father's demise, the Plaintiff claims that he started living separately in Plot No. 161, New Manglapuri, Mehrauli, M.G. Road, New Delhi (*hereinafter*, "Plot No. 161"), in an area measuring 120 sq. yds. The mother - Smt. Nahar Kaur began to live with Defendant No. 1 - Sh. Kanwal Singh at Plot No. 88. As regards Plot No.153, New Manglapuri, Mehrauli, M.G. Road, New Delhi - 110030 (*hereinafter*, "Plot No. 153"), the same had been rented out and was in the possession of Smt. Nahar Kaur during her lifetime but is now in Defendant No. 1's possession.

5. According to the Plaintiff, this situation continued on the understanding that though fair and equal partition had not taken place, the same would take place as and when required. On 2nd February, 1980, a partition took place, which, according to the Plaintiff was not complied with by Defendant No.1 – Sh. Kanwal Singh. The allegation against Defendant

No. 1 is that the Plaintiff transferred Plot No. 88 in the name of Defendant No.1's wife - Smt. Sheela Rani on the understanding that whenever Plot No. 153 would be constructed, Defendant No.1 would make up the difference in the joint property land left to be partitioned between him and the Plaintiff.

6. Thus, in 2001, the Plaintiff demanded partition, however, he was forced to agree that partition would take place only after the death of the mother, who passed away on 25th March, 2003. There was growing animosity amongst the brothers and their families, with police complaints being filed by both parties against each other. According to the Plaintiff, there was an access road which existed which had been covered in an unauthorized manner by the Defendants when the Plaintiff demanded partition and a right to have his complete share, as the same was deficient.

7. In 2015, construction activity started on Plot No. 153, including the 40 sq. yds. which were to be allegedly given by Defendant No.1 to the Plaintiff as his part of the share. This was objected to by the Plaintiff. Finally, since no settlement took place between the family members, the present suit for partition came to be filed.

8. In the suit, the Plaintiff seeks partition of the following properties (*hereinafter, "suit property"*):

- "i) Property/house Nos.88, New Mangla Puri, M.G. Road, New Delhi 110030; measuring approximately 175 square yards*
- ii) Property/house Nos.152, New Mangla Puri, M.G. Road, New Delhi 110030; measuring approximately 14 square yards*
- iii) Property/house Nos.153, New Mangla Puri, M.G. Road, New Delhi 110030; measuring approximately 125 square yards*
- iv) Property/house Nos.161, New Mangla Puri,*

*M.G. Road, New Delhi 110030.
Measuring approximately 120 square yards”*

9. Defendant No. 1 i.e., the contesting Defendant, filed his written statement and also filed an application under Order XXXIX Rules 1&2 CPC. On 2nd February, 2016 an interim order was passed which ruled on the application in the following terms:

“I.A. No. 10711/2015 (u/o 39 Rules 1 & 2 CPC)

Reply to the application be filed within four weeks. Rejoinder within four weeks thereafter. It is made clear that no interim injunction is granted by this Court in respect of property Nos. 152, 153 and 161, New Mangla Puri, M.G.Road, New Delhi -110 030. However, in respect of property/house No. 88, New Mangla Puri, M.G.Road, New Delhi - 110 030, the parties shall maintain status-quo with regard to title and possession.

It is also made clear that there is no interim injunction against raising of legal construction.”

10. Thereafter, an application under Order XII Rule 6 CPC has been filed. Submissions were heard on the said application. In brief, the case of Defendant No. 1, both in the written statement and in the application under Order XII Rule 6 CPC, is that in two earlier proceedings being Suit No. 104/1980 and Suit No. 735/2002 (New No. 58/2012), there were various admissions made on behalf of the Plaintiff and his family in respect of Plot No. 152, New Mangla Puri, M.G. Road, New Delhi 110030, Plot No.153 and Plot No. 161 (*hereinafter, collectively referred to as “Mangla Puri Plots”*). In Suit No. 104/1980, the Plaintiff had already taken the stand that a family partition had taken place and that the Plaintiff had received his share of 166 square yards in the Mangla Puri Plots. In Suit No. 58/2012, the

Plaintiff and his son - Sh. Surinder Kumar had further stated that each of the sons of Sh. Bharat Singh were given approximately 1/3rd share in the said property and that a family settlement had taken place in 1980.

11. Insofar as Plot No. 88 is concerned, in the plaint itself, it has been admitted by the Plaintiff that his own wife had transferred the said property in the name of the wife of Defendant No. 1. Thus, according to Defendant No.1, this property is not a joint property and the case is a fit case for dismissal in view of the admissions.

Submissions of the Counsels

12. In support of the application under Order XII Rule 6 CPC, Mr. Sanjeev Anand, Id. counsel appearing for Defendant No. 1, submits that the two earlier proceedings and the relevant documents therein had not been disclosed in the plaint and this by itself constitutes concealment and suppression of material facts. Further, the admissions made in the said two proceedings are binding on the Plaintiff and his family and thus the present suit is misconceived. He relies upon the pleadings in the two earlier suits, the evidence filed by Sh. Surinder Kumar as also his cross-examination.

13. Mr. Anand, Id. counsel, also relies upon the General Power of Attorney, the Agreement to sell, the Will and the Affidavit executed by the wife of the Plaintiff - Smt. Murti Devi in favour of Defendant No.1 and his wife - Smt. Sheela Rani, whereby Plot No. 88 was transferred in their favour. He submits that these documents have been filed by the Plaintiff himself and have been admitted by Defendant No.1. Thus, in respect of the suit properties, there are categorical admissions by the Plaintiff and the suit is liable to be dismissed.

14. On behalf of the Plaintiff, Mr. Sunil Mittal, Id. Senior counsel submits

that the Defendants have a larger share in the suit property and the partition has not been fair to the Plaintiff. Though Plot No. 88 has been transferred, it was under the promise that the Plaintiff would be given his fair share out of the total area of the suit property, after the demise of their mother. The Plaintiff deserves to get a larger share as his entitlement would be 203 square yards but he only has 166 square yards. Thus, he claims that there is a shortfall of at least 40 square yards towards his share in the suit property. Since the parties' mother passed away in 2003, the cause of action for claiming the fair share arose only thereafter. The Plaintiff is not seeking to dislodge any of the earlier family settlements that have taken place but is only claiming his fair share after the demise of the parties' mother.

Findings

15. The present case is a classic one which represents the continued and prolonged disputes that arise amongst members of the same family. Disputes in this case arose during the lifetime of the parents and have spanned over decades, at least since 1971, when the first partition is stated to have taken place. The plaint makes reference to Suit No. 735/2002 (New No. 58/2012), however, no reference is made to the pleadings and other documents therein. Suit No. 104/1980 is not mentioned at all.

16. The latter suit i.e., 104/1980 was a suit for permanent injunction filed by the Plaintiff against both his brothers. This suit was in respect of construction being raised in the five feet passage in front of the house of the Plaintiff. In the said suit, the Plaintiff has described himself as under:

“Shri Nand Ram son of Shri Bharat Singh resident of Village Mangla Puri (Nai Basti) P.O. Mehrauli, New Delhi.”

17. The Complaint then reads as under:

“1. That the plaintiff has been residing on the above mentioned address with his family since 1970 and is the owner of the said house measuring about 166 sq. yards and the said house is situated in village Mangla Puri, New Delhi in Nai Basti.

2. That the defendant has been residing on the above mentioned address and are the real brother of the plaintiff.

3. That the plaintiff got the said house in a family partition in equal share with the defendant named above and the defendant are in possession of their own share of the houses measuring about 166 sq. yards each.”

18. The relief claimed in the said suit was as under:

“It is therefore humbly prayed that a decree for permanent injunction in favour of the plaintiff against the defendant No.1 and 2 may kindly be passed directing the defendant No.1 and 2 not to raise the construction in the passage measuring 5’ feet in wide in front of the gate of the house of the plaintiff in village Mangla Puri Nai Basti P.O. Mehrauli, New Delhi as per site plan attached showing disputed Cell/passage in front of the house of the plaintiff. Any other relief which this Hon’ble Court may deem fit and necessary according to the facts and circumstances of the case may also be granted to the plaintiff.”

The filing of the suit and the contents thereof are admitted by the Plaintiff as being a matter of record.

19. In the second suit i.e., 735/2002 (New No. 58/2012), which was filed by the mother - Smt. Nahar Kaur and Defendant Nos.1 and 2 against the Plaintiff and his sons, the Plaintiff filed a written statement wherein he pleaded as under:

“2. It is not denied that there was a family settlement between the parties whereby each of the three sons of late Sh. Bharat Singh were given approximately one-third share of the property. The alleged family settlement, dated, 9.4.1992 is being deliberately withheld by the plaintiffs. The plaintiffs be directed to file the said family settlement, if any. Infact the family settlement took place in 1979 and the written deed of the same is in possession of the plaintiffs. The Photostat copy of the site plan annexed as Annexure B to the suit is factually incorrect as well as the dimensions shown in the same are wrong. The defendants are filing a site plan depicting the true picture.”

20. Thereafter, in the Affidavit by way of Evidence filed by the Plaintiff's son - Sh. Surinder Kumar, on behalf of himself and his father, it was stated as under:

“2. The deponent states that the father of the parties i.e. Late Sh. Bharat Singh was owner of ancestral land in village Manglapuri Delhi. On acquisition of this ancestral land the present land was bought in the name of the plaintiff No.1 where the parties have been residing since then.

3. The deponent states that there was a family settlement between the parties whereby each of the three sons of Late Sh. Bharat Singh were given approximately one third share of the property. The family settlement took place in 1980 and the written deed of the same is in possession of the plaintiffs. The Photostat copy of the site plan annexed as Annexure B to the suit is factually incorrect as well as the dimensions shown in the same are wrong. The defendants have filed a site plan depicting the true picture.”

21. In his cross-examination, the Plaintiff's son further admitted as under:

“I have two brothers namely Sh. Sunil Kumar and Sh. Sukhpal Singh along with my parents. My father Sh.

Nand Ram has retired on 30.11.2011 from DTC Department. My father is mentally sound but he is hard of hearing. Again said, he sometimes forget his memories because he suffered brain hemorrhage. My father is holding the property in his own name after partition. I am not owner of any ancestral property except that which has been partitioned by my father between us three brothers. It is correct that my grandmother Late Smt. Nahar Kaur has divided the ancestral property in three equal shares amongst her sons Suraj Bhan, Nand Ram and Kanwal Singh. My actual date of birth is 25.08.1973. I was hardly the age of seven years in 1980. In the year 1980, I had no knowledge regarding the family settlement and my father and his other two brothers were in the knowledge of this settlement. But later on my father has been telling us about the settlement that is how I am in the knowledge of it. It is correct that whatever knowledge I have gained regarding the family settlement is from the conversation of my father and his brothers.”

22. A perusal of all of the above pleadings and evidence in the judicial proceedings between the parties clearly establishes that the family settlements stand admitted by the Plaintiff, his ownership of 166 sq. yds. is admitted and it is also admitted that the share of the Plaintiff is an “equal share”.

23. Further, it is also categorically stated that there was a family settlement between the parties and the Plaintiff was given approximately 1/3rd share in the Mangla Puri Plots. In the cross-examination of the Plaintiff’s son, he has explicitly admitted that his grandmother had divided the ancestral property into three equal shares amongst her three sons i.e., Sh. Suraj Bhan, Sh. Nand Ram and Sh. Kanwal Singh.

24. Even in the replication, in response to the written statement which mentions these two suits and the averments/pleadings therein, the clear

response is as under:

“1.8 The Averments contained in this paragraph are wrong and denied, except that which is a matter of record. However, Defendant No.1 should file certified copies of the record sought to be relied upon”

25. Thus, there cannot be any doubt whatsoever that, partition amongst the family members, has taken place in 1971, 1980 and even thereafter. The Plaintiff and his family have been given approximately 1/3rd share in the Mangla Puri Plots. The present suit could not have been filed without disclosing these facts. The pleadings in the earlier suits and the evidence therein constitute clear admissions by the Plaintiff and his son that partition had already taken place amongst the members of the family and that they have been given their fair share in the Mangla Puri Plots. Moreover, the documents executed by the Plaintiff's wife in favour of Defendant No.1's wife in respect of Plot No. 88 also stand admitted. Even in his oral submissions, Id. counsel appearing for the Plaintiff has not denied any of the documents relied upon by Defendant No.1 in his pleadings.

26. In matters involving family settlements, the attempt of the Court ought to be to always bring a quietus to the disputes inasmuch as permitting long drawn litigation among family members defeats the very purpose of executing family settlements. The manner in which the litigation has been prolonged and the fact that despite these litigations, the parties are still at logger heads with each other, shows how the uncertainty created due to the pendency of litigation is detrimental to peace in the family.

27. Moreover, the Plaintiff and his family having repeatedly admitted that partition had taken place and they have received approximately 1/3rd share in the Mangla Puri Plots does not leave any scope for keeping the present suit

pending. The admissions are clear and unambiguous and are therefore binding on the Plaintiff and his family.

28. The provisions of Order XII Rule 6 CPC are very clear that the admissions need not only be in the pleadings but may also be in the documents or otherwise. The settled position in law is that admissions are the best proof of facts as held in ***Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and Others, (1974) 1 SCC 242***, wherein the Hon'ble Supreme Court has observed as under:

“27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction, though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

29. Even if this Court considers the submission on behalf of the Plaintiff that there has been some shortfall in the portion of the share which has fallen

to the Plaintiff, this Court is of the opinion that this issue cannot be reopened after such a long span of 40 years when the first partition took place in 1971. The status of each of the properties of which partition is sought is as under:

- i. **Plot No. 88** – Already transferred by the wife of the Plaintiff to the wife of Defendant No.1 in the year 1980 vide documents, including the General Power of Attorney, the Agreement to sell, the Will and the Affidavit executed by the wife of the Plaintiff in favour of Defendant No.1 and his wife, which stand admitted.
- ii. **Plot No. 152, 153 and 161 i.e., Mangla Puri Plots** – In respect of these properties, the admitted position is that the Plaintiff has received his 1/3rd share in the same, as admitted in the pleadings filed in earlier suits, as also the evidence given therein.

30. The Plaintiff may have had a grievance about a passage in front of his house, however, that by itself cannot lead to the reopening of established family settlements admitted between the parties. Thus, the application under Order XII Rule 6 CPC is allowed. The present suit does not deserve to be entertained in view of the admissions made by the Plaintiff and his family.

31. The suit is dismissed in view of the admissions made. All pending applications are accordingly disposed of. Parties shall be bound by the stand taken by them in the earlier proceedings to the effect that a fair partition has already been effected amongst them in respect of the properties mentioned herein.

PRATHIBA M. SINGH
JUDGE

OCTOBER 10, 2019/dj