

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 07<sup>th</sup> December, 2022  
Pronounced on: 24<sup>th</sup> February, 2023

+ RFA(OS) 18/2021 & CM APPL. 36404/2021

SANJAY BHATIA ..... Appellant  
Through: Mr. Vikram Seth, Mr. Yuvraj Seth  
& Ms. Vandana Seth, Advocates.

versus

RAJIVE BHATIA & ORS. .... Respondents  
Through: Mr. Samrat Nigam, Mr. Sudarshan  
Rajan & Mr. Hitain Bajaj,  
Advocates for R-1.  
Mr. S.K. Chaturvedi, Advocate for  
R-2.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J**

1. Mr. Rajive Bhatia/respondent No. 1, (*who is the plaintiff in the main Suit*), had filed suit bearing CS(OS) 600/2017 seeking Preliminary and Final Decree of Partition in respect of the Property bearing No. 92, measuring 200 sq. yards, Raja Garden, New Delhi-110027 (*hereinafter referred to as "suit property"*).

2. Shri Ved Prakash Bhatia, father of the parties to the Suit, was the owner of the suit property having purchased the same *vide* Sale Deed dated 21.07.1965. On his demise on 28.01.2007, the property devolved

upon his four legal heirs, namely, Mr. Sanjay Bhatia and Mr. Rajive Bhatia, (the two sons), Smt. Shanta Bhatia (wife) and Ms. Anita Bhatia (daughter) in equal share of 25% each, but the property was kept joint and not partitioned out of deep respect and regard for the mother. The mother/Smt. Shanta Bhatia, out of love and affection for Rajive Bhatia, relinquished her 1/4<sup>th</sup> share in the suit property in favour of Rajive Bhatia *vide* Relinquishment Deed dated 11.12.2013 which was witnessed by respondent No. 3/Anita Bhatia. Rajive Bhatia became the owner of 50% share in the suit property while appellant and the respondent No. 3 each became the owners of 25% share each in the suit property.

3. The respondent no. 1, Mr. Rajive Bhatia asserted that he and appellant were in occupation of different portions of the suit property and certain disputes arose between them. Mr. Sanjay Bhatia/appellant, (*who is defendant No. 1 in the main Suit*), filed a Suit bearing CS(OS) 2159/2015 seeking Mandatory and Permanent Injunction, wherein he admitted that the suit property was a self-acquired property of Shri Ved Prakash Bhatia and that the appellant and the respondents herein were the owner being the legal heirs of Shri Ved Prakash Bhatia. It was also admitted that the suit property had not been partitioned by metes and bounds between four legal heirs.

4. Since Smt. Shanta Devi had relinquished her 1/4<sup>th</sup> share in favour Mr. Rajive Bhatia, he became the owner of 50% share of the suit property, while Mr. Sanjay Bhatia and Ms. Anita Bhatia became the owners of 1/4<sup>th</sup> share in the suit property.

5. It was further asserted that Shri Ved Prakash Bhatia had left some moveable properties, included bank accounts LIC Policies, FDRs, Shares

and Debentures, Locker, Jewellery of which the appellant, respondent no. 2/mother and respondent no. 3/sister were in control and they were liable to render full account of the moveable assets from the date of demise of Shri Ved Prakash Bhatia, i.e., 28.01.2007.

6. Thus, the Suit for Partition bearing CS(OS) 600/2017 was filed by respondent No. 1 claiming Preliminary and Final Decree of Partition by metes and bounds of the suit property and other assets of the deceased father.

7. The **Appellant/Mr. Sanjay Bhatia in his Written Statement** claimed that Late Shri Ved Prakash Bhatia was in the real estate business and was having good income. He left the following immoveable properties:

- (i) Freehold Plot bearing No. 92, measuring 200 sq. Yards, Raja Garden New Delhi-110027, *(i.e. the suit property)*
- (ii) Ground Floor of FA-127, Mansarovar Garden, New Delhi-110015, *(in respect of which, the Relinquishment Deed dated 16.09.2009 was executed by all the legal heirs of Shri Ved Prakash Bhatia, in favour of Smt. Shanta Bhatia).*
- (iii) First and Second Floor of Property bearing No. D-36, Gali No. 1, Govind Puri, Opposite Kalkaji,
- (iv) Moveable properties, including money in bank, LIC Policies, FDRs, Shares, Debentures, Gold and Silver Ornaments, Cash, and
- (v) Assets in real estate business and the business run by him.

8. Also, Shri Ved Prakash Bhatia used to put his income in his account

as well as his wife's account, namely, Smt. Shanta Bhatia. Consequently, the money in the accounts of Smt. Shanta Bhatia belonged to all the legal heirs of Shri Ved Prakash Bhatia. The properties that were purchased in the name of Smt. Shanta Bhatia were also understood to be the properties of the deceased father. In addition, Shri Ved Prakash Bhatia had bank accounts as well as other moveable assets in the form of LIC Policies, Shares, FDRs and Debentures etc. at the time of his death.

9. It was further asserted that the parties arrived at a Mutual Agreement in CS(OS) 2159/2015 that was filed by him, pursuant to which all the legal heirs executed NOC in favour of the mother in regard to various bank accounts, LIC Policies, FDRs, Shares and Debentures, Locker, Jewellery and also relinquished their respective share in the property situated at Mansarovar Garden, New Delhi in favour of the mother who thereafter sold it. Moreover, as per the settlement, the sale proceeds of the sold property and other moveable assets were transferred in the accounts maintained by respondent Nos. 2 and 3. It was further decided that Smt. Shanta Bhatia and Ms. Anita Bhatia shall relinquish their respective share in the suit property in favour of Mr. Rajive Bhatia and Mr. Sanjay Bhatia thereby both shall acquire 50% share in the suit property and no formal partition shall be required. Both, Mr. Sanjay Bhatia and Mr. Rajive Bhatia have been in joint possession of the property though there has never been any formal partition. After filing of CS (OS) 2159/2015, parties mutually agreed that they would continue to be in possession of their respective 50% share portions as reflected in the site plan annexed with the suit and consequently the appellant withdrew the suit. The appellant herein acquired his rights in the property pursuant to

the oral settlement.

10. The appellant has also challenged the Relinquishment Deed executed By Smt. Shanta Devi in respect of her share in the property, in favour of Mr. Rajive Bhatia to the exclusion of Mr. Sanjay Bhatia, as not valid on the ground that any person who has a share in the joint property, can relinquish his or her share to all the legal heirs in equal proportion but not in favour of one legal heir to the exclusion of other legal heirs. The appellant has thus claimed that he is therefore, entitled to 50% share of the share in the suit property.

11. **The respondent No. 2/Smt. Shanta Bhatia** had filed **Written Statement** in the main suit and had **asserted that she had executed the Relinquishment Deed in respect of her 25% share** in the suit property in favour of Mr. Sanjay Bhatia voluntarily out of love, care and acknowledgement of the care which he had taken of her during her old age.

12. It was further explained that all the moveable assets, namely, money in bank, LIC Policies, FDRs, Shares, Debentures, Gold and Silver Ornaments, Cash etc., had to be liquidated for settling the criminal case bearing FIR No. 635/2008 registered at Police Station Rajouri Garden under Sections 420/468/471/406/120-B/34 of the Indian Penal Code, 1860 against Mr. Sanjay Bhatia herein who was arrested on 15.12.2008 and was confined to jail. Smt. Shanta Bhatia had further explained that because of Mr. Sanjay Bhatia being in custody, there was immense pressure on her and other legal heirs to raise funds for settlement of the claims of the Complainants in the FIR. Consequently, left with no option, she sold the Property bearing No. 56, Raja Garden, New Delhi-110015 and the entire

sale proceeds of Rs. 39,00,000/- were utilized to pay the Complainants. In addition, the parties to the suit i.e., Mr. Rajive Bhatia, Mr. Sanjay Bhatia, Smt. Shanta Bhatia and Ms. Anita Bhatia disposed of their shares in the Property bearing No. Ground Floor of FA-127, Mansarovar Garden, New Delhi-110015 for a total sale consideration of Rs. 12,75,000/- and the sale proceeds were also utilized for settling the claims of the Complainants in the FIR. Though the appellant had assured that he would repay the entire amount once he was released from the jail, but no amount has been refunded by him.

13. The learned Single Judge in the impugned Judgement dated 06.07.2021 noted the plea of the appellant that there are various other properties which belonged to Shri Ved Prakash Bhatia, but aside from bald assertions, no details were disclosed by the appellant in relation to any other property. The objection of the appellant in this regard was therefore, rejected.

14. Mr. Rajive Bhatia had taken a plea that in order to do complete justice to the rival claims of the parties, the Court should enquire into not only the suit property, but also the other immoveable properties which have been disposed of by the respondents. This contention was rejected by learned Single Judge by observing that the issue in the present Suit for Partition was not in regard to how the moveable assets had been utilized by the mother for settling the claims of the appellant in the criminal case, but was limited to determination of respective shares of the parties in the suit property.

15. The suit was thus, decreed by holding that admittedly, the suit property was the self-acquired property of Shri Ved Prakash Bhatia, who

was survived by four legal heirs i.e., the appellant and respondents herein, whereby each became owner of 1/4<sup>th</sup> share of the property. The mother relinquished her share in favour of Mr. Rajive Bhatia making him the owner of 50% share. Therefore, the Preliminary Decree was passed *vide* impugned Judgement dated 06.07.2021 declaring that Mr. Rajive Bhatia is entitled to 50% share while Mr. Sanjay Bhatia and sister, Ms. Anita Bhatia are entitled to 1/4<sup>th</sup> share in the suit property respectively.

16. Aggrieved by the said Judgement, **the present appeal** has been filed by Mr. Sanjay Bhatia. The **main grounds of challenge** are that the properties which belong to joint family cannot be partitioned, unless they are put in the joint hotchpotch. Also, there cannot be any partial partition of some of the properties. Further, Smt. Shanta Devi who had inherited the property along with other co-sharers, could not have relinquished her share in favour of one co-sharer to the exclusion of others.

17. The reliance has been placed on the decisions in Chella Subbanna vs. Chella Balasubbareddi AIR 1945 Mad 142, Anandrao Ganpatrao vs. Vasantrao Madhavrao (1970) 9 BOMLR 595, P.R. Munuswamy Naidu vs. V. Venkatesan and Ors. 1997 MLJ 18, Durai Alias Karunanidhi vs. Devarajalu Naidu and Ten Ors. (1980) 1 M.L.J. 507, Alluri Venkatapathi Raju vs. Dantuluri Venkatanarsimha Raju (1936) 38 BOMLR 1238, Dilla Ram vs. Sh. Milki Ram & Anr. RSA 279/2014 decided on 21.05.2018, R. Mahalakshmi vs. A.V. Anantharaman & Ors. (2009) 9 SCC 52, S. Satnam Singh & Ors. vs. Surinder Kaur & Anr. (2009) 2 SCC 562 and Rapolu Yadagiri vs. Rapolu Lakshamma and Ors. AIR 2003 AP 300.

18. It is further asserted that the case was at the stage of framing of issues, but the impugned preliminary Decree dated 06.07.2021 of partition

has been passed without recording of any evidence. There were no admissions on the part of the appellant and no Decree without recording of evidence could have been made.

19. It is submitted that the impugned Judgement dated 06.07.2021 is therefore, liable to be set aside.

20. The respondents on the other hand, have asserted that the material facts were not disputed and the appellant cannot question the Relinquishment Deed without first seeking a Declaration that it is void. The Relinquishment Deed has never been challenged and the appellant cannot question the rights that flow from the Relinquishment Deed. The judgement is well reasoned and based on admitted facts and the appeal is liable to be dismissed.

**21. Submissions heard and perused the Written Submissions submitted on behalf of the appellant and the respondent No. 1.**

22. It is a settled proposition of law that the pleadings have to be read comprehensively and no part of the pleadings can be construed independently out of context to support or controvert any fact. In the present case, it is an admitted fact that Shri Ved Prakash Bhatia was in the real estate business and had acquired the suit property *vide* Registered Sale Deed dated 21.07.1965. On his demise, the suit property devolved upon his four legal heirs i.e., the appellant and the respondents herein, namely, Mr. Rajive Bhatia, Smt. Shanta Bhatia and Ms. Anita Bhatia by way of succession and all became owners in equal share.

23. The first contention raised by the appellant is that it was a joint family property and unless all the properties belonging to the joint family were put in the hotchpotch, partial partition of one property could not

have been undertaken.

24. The Supreme Court in Shashidhar & Ors. vs. Ashwani Uma Mathad & Anr. (2015) 11 SCC 269, laid down the principles in regard to the partition and possession of the shares of coparcenary, co-owners, co-sharerers or joint owners. It was explained that while determining the shares, it is necessary for the Court to examine, in the **first instance**, the nature and character of the property in suit, such as who was the original owner of the suit property, how and by which source he/she acquired such property, whether it was his/her self-acquired property or ancestral property or joint property or coparcenary property in his/her hand, and if so, who are/were the coparceners of joint owners with him/her as the case may be; **secondly**, the devolution of his/her interest in the property took place consequent upon his/her death on surviving members of the family i.e., whether it was an intestate or testamentary succession and in what proportion; **thirdly**, whether the property in the suit are capable of being partitioned effectively, and if so, in what manner; **lastly**, whether all the properties were included in the suit and all co-shareres, coparceners, co-owners or joint owners are made parties to the suit.

25. The first factor to be ascertained is the nature and character of the property. The appellant has claimed that all the properties were acquired by their father and thus, were joint family properties. First and foremost, it is admitted by the appellant in his Written Statement that Property bearing number FA-127, Ground Floor, Mansarovar Garden, New Delhi-110015 was sold and its proceeds were put in the bank accounts which were managed by Smt. Shanta Bhatia and Ms. Anita Bhatia. The other Property bearing number 56, Raja Garden, New Delhi was in the name of Smt.

Shanta Bhatia which also got sold. It is further not denied that there were moveable assets in the form of in LIC Policies, Shares, FDRs and Debentures etc. which were all in the accounts of Smt. Shanta Bhatia.

26. It is not in dispute that all the assets that originally belonged to Sh. Ved Prakash Bhatia except the suit property, got distributed or had been put in the name of Smt. Shanta Bhatia who became the exclusive owner. In fact, the entire pleadings are conspicuously silent about there being any joint family property or HUF property. Merely because after the demise of Shri Ved Prakash Bhatia, his assets came to be shared in a certain manner by all his legal heirs, would not make the property either joint family or HUF property. Furthermore, the entire debate is put to rest from the admissions of appellant in his Civil Suit bearing No. CS(OS) 600/2017, where he admitted that the suit property was the individual property of his father.

27. To sum up, there is not a single averment in either the Complaint or the Written Statements that a coparcenary/HUF ever existed amongst the parties or that the suit property was a coparcenary property. It has been admitted unequivocally that it was the individual property of Shri Ved Prakash Bhatia. So being the case on his demise on 28.01.2007, the property devolved upon his all the legal heirs in equal share by way of succession in accordance with Section 8 of the Hindu Succession Act, 1956. The respective shares in the hands of all the legal heirs became their individual property conferring a right on each one of them to deal with their respective shares in the manner they desired. The judgements, therefore, relied upon by the appellant are misplaced for the reason that there is neither averment nor any evidence to show that there ever existed

coparcenary or that the suit property belonged to the coparcenary.

28. The next aspect for consideration is the manner of devolution of property amongst the legal heirs. The property which was in his name, had to necessarily devolve by way of intestate succession as per Section 8 of the Hindu Succession Act, 1956. The assets which were in the name of Smt. Shanta Bhatia were her exclusive property and cannot be stated to be the joint family property merely by asserting that all the money and assets which were in the name of Smt. Shanta Bhatia, had been invested by Late Shri Ved Prakash Bhatia. Even otherwise, **Benami Transaction Act, 1988 now amended in 2016** debars absolutely any benami transaction; the person in whose name the property stands, is deemed to be the exclusive owner.

29. The next aspect is whether all the properties were the subject matter of the Partition Suit. Merely claiming that all the legal heirs of Shri Ved Prakash Bhatia were entitled to the assets in the name of Smt. Shanta Bhatia without there being any other assertion, cannot create any right in favour of either the appellant, respondent No. 1 or respondent No. 3. Admittedly, the assets were all in the name of Smt. Shanta Bhatia and she, being the exclusive owner, was at liberty to utilize them in the manner that she desired.

30. It would not be out of place to mention herein that Smt. Shanta Bhatia in her Written Statement had explained that all her moveable assets and the proceeds from the sale of two immoveable properties had been utilized for settling the claims of the Complainant in FIR No. 635/2008 registered at Police Station Rajouri Garden under Sections 420/468/471/406/120-B/34 of the Indian Penal Code, 1860 against Mr.

Sanjay Bhatia. Moreover, in the Written Statement, Mr. Sanjay Bhatia had not denied the factum of registration of FIR or the same having been compromised on payment to the Complainant. Furthermore, Ld. Single Judge has rightly observed that the controversy was not how the assets of Late Sh. Ved Prakash were utilized, but was in regard to the partition of suit property in the name of Shri Ved Prakash Bhatia, in which all the parties to the suit had acquired an equal share by way of succession.

31. The appellant has claimed that the relinquishment by one coparcener of his interest in the family estate in favour of another coparcener does not amount to alienation but merely amounts to an extinction of his interest in favour of others. Consequently, it is now well settled that the undivided share cannot be gifted or alienated to any one person so long as the family remains undivided. A reference has also been made to the 15<sup>th</sup> Edition (1982) to Mulla's Hindu Law.

32. The appellant, to justify that their mother could not have relinquished her share in favour of respondent no. 1, has contended that if initial action is not in consonance with the law, subsequent proceedings would not sanctify the same. Learned counsel for the appellant has placed reliance on the decision in Chair-cum-M.D., Coal India Ltd. & Ors. vs. Ananta Saha 2011 III LLJ SC 165. In Badrinath vs. Govt. of Tamil Nadu & Ors. AIR 2000 SC 3243, it was observed that once the basis of a proceeding is gone, all consequential acts, actions, order would fall to the ground automatically. Similar observations were made in State of Kerala vs. Putten Kavu NSS Karoyogam & Anr. (2001) 10 SCC 191 and Kalabharti Advertising vs. Hemant Vimalnath Nari Chania & Others AIR 2010 SC 3745. In the case of Chair-cum-M.D., Coal India Ltd. (supra),

the Apex Court had referred to the legal maxim “*sublato fundamento cedit opus*” which means that in case a foundation is removed, the super structure falls.

33. It was thus, argued on behalf of the Appellant that the suit itself being fundamentally flawed and not maintainable, implies that any subsequent acts based upon it is also equally flawed.

34. In the present case, the basic premise of challenge was that the properties were HUF/coparcenary, but as already discussed above in detail, there was neither an iota of pleadings or documents or evidence to show that the property in question was an HUF/coparcenary property. When this imaginary foundation of alleged HUF never existed, the claim of the appellant that the super structure must necessarily collapse, is mis-founded and misplaced.

35. There is no denial whatsoever in regard to relinquishment of the 1/4<sup>th</sup> share of Smt. Shanta Bhatia in favour of Mr. Rajive Bhatia by virtue of Relinquishment Deed dated 11.12.2013 thereby making Mr. Rajive Bhatia owner of 50% share and that the appellant herein and respondent No. 3 got 25% share each in that suit.

36. The appellant has also asserted that respondent No. 1/ Mr. Rajive Bhatia has concealed and suppressed material facts which tantamount to fraud and withholding of vital material information and documents is again guilty to defraud on court and is liable to be thrown out at any stage as fraud vitiates all solemn transactions. The appellant has drawn support for his assertion from Ram Chandra Singh vs. Savitri Devi (2003) 8 SCC 319 and S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs & Others AIR 1994 SC 853.

37. While there cannot be any dispute about the proposition of law that the fraud vitiates the entire proceedings, but for appellant to succeed on this ground, he was required to demonstrate what material facts or evidence had been withheld by respondent No. 1. The appellant in his desperation has made various allegations in the air without supporting it with any concrete material. No basis of claiming fraud has been shown by the appellant and his plea of fraud has to be necessarily rejected.

38. Accordingly, the preliminary decree has been rightly made and there is no merit in the present appeal, which is hereby dismissed.

39. The pending application, if any, is also dismissed.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**(SURESH KUMAR KAIT)**  
**JUDGE**

**FEBRUARY 24, 2023**

*S.Sharma*