



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.09.2023

+ **RFA(OS) 18/2022 and CM Nos. 14049/2023 & 14050/2023**

TARUN K. VOHRA

.....Appellant

versus

PRAVIR K. VOHRA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Ravi Gupta, Senior Advocate with Mr Kapil Sankhla, Mr Akhilesh Aggarwal, Mr Robin Baisoya, Ms Fagun Sharma, Ms Muskaan Mehra, Ms Niharika Behl and Mr Himansh Yadav, Advocates.

For the Respondents : Mr Amit Bhagat with MsArzoo Raj, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present intra court appeal impugning an order dated 04.04.2022 (hereafter '**the impugned order**') passed by the learned Single Judge in *CS (OS) 508/2021* captioned *Pravir K.*



Vohra and Ors. v. Tarun K. Vohra. In terms of the impugned order, the court had issued a preliminary decree declaring the appellant (arrayed as defendant in the suit) and the respondents (the plaintiffs in the suit) as owners of 1/4th share each in respect of the property bearing Municipal No.D-7/7, Vasant Vihar, New Delhi comprising of part of the basement and the ground floor (left hand side) built on land admeasuring 780 square yards and the undivided interest in the land underneath (hereafter '**the Suit Property**').

2. The respondents (plaintiffs) had instituted the afore-mentioned suit, CS(OS) 508/2021, seeking a decree of declaration, that each of the parties own 1/4th undivided share in the Suit Property and that its partition be done by metes and bounds. They also sought a decree for *mesne profit/ damages* at the rate of ₹1,75,000/- per month from October 2020 till the physical partition of the Suit Property along with interest at the rate of 12% per annum, against the appellant (defendant).

3. Admittedly, the Suit Property belonged to the father of the appellant and the respondents herein, Late Sh. B.B. Vohra, who was a member of the Government Servant Co-operative House Building Society Ltd. (hereafter '**the CBHS Ltd.**'). He along with one Sh.R.S. Gupta, Sh. K.L. Arora and Sh. R.N. Bansal was allotted 1/4th undivided share in the plot bearing No.D-7/7 in Government Servant CBHS Ltd., Vasant Vihar, New Delhi admeasuring 780 square yards. Undisputedly, the 1/4th undivided share of Sh. B.B. Vohra (the father of the parties) in the said plot, was transferred jointly to him and his



wife, Smt. Primla Vohra (since deceased), by a letter dated 08.02.1991, issued by the Delhi Development Authority to the Secretary, Government Servants CHBS Ltd., Vasant Vihar, New Delhi.

4. The president of India executed a perpetual lease deed dated 12.02.1991 in favour Sh. B.B. Vohra and Smt. Primla Vohra (parents of the parties) along with the other co-owners in respect of the plot of land described as Plot No.7, Street No.D-7 in the lay out plan of Vasant Vihar (Site B) of the Government Servants CHBS Ltd.

5. Thereafter, the abovementioned co-owners applied for a sanction to build a residential house on the subject plot of land. The Municipal Corporation of Delhi approved the building plans by a sanction letter dated 14.05.1991.

6. Thereafter, the residential building was constructed on the subject plot of land. Admittedly, Sh. B.B. Vohra and Smt. Primla Vohra moved into the said residential building in the year 1993 and occupied the Suit Property – a part of the basement and the ground floor (left hand side) more particularly described in the site plan as annexed with the suit.

7. Sh. B.B. Vohra expired intestate on 08.09.1997. His widow, Smt. Primla Vohra expired on 01.06.2019.



8. There is no dispute that the Suit Property devolved on the parties in equal shares. Admittedly, the Suit Property was mutated in the name of the parties.

9. The appellant filed a written statement, claiming that besides the Suit Property, there are two other immovable properties, which form a part of the estate of Late Smt. Primla Vohra. The said properties are described as: (i) Flat No.6011, Pocket 6 and 7, Sector C, Vasant Kunj, New Delhi (hereafter '**Vasant Kunj Property**'); and (ii) 14 acres of Agricultural land in Village Panchigujran, Tehsil Ganaur, District Sonipat, Haryana (hereafter '**Sonipat Land**').

10. The appellant claims that Smt. Primla Vohra did not die intestate and had executed a Will dated 14.01.2014 (hereafter '**the Will**'). He claims that in terms of the said Will, the estate of Late Smt. Primla Vohra including the Vasant Kunj Property and the Sonipat Property, devolved on the parties. The appellant does not dispute that he is in occupation of the Suit Property. He claims that the Vasant Kunj Property is in occupation of respondent no.2 (Sudhir K Vohra) and despite being called upon by the appellant to hand over the keys, he has not handed over the keys to the said property.

11. Since there was no dispute that Suit Property belonged to the parties in equal shares, and that the same was also mutated in their names, the learned Single Judge passed the preliminary decree on the basis of admissions and declared each of the parties as owners of



1/4th share each in the Suit Property, along with proportionate rights in the land underneath.

12. It was conceded by the parties before the learned Single Judge that the Suit Property could not be partitioned by metes and bounds and the learned counsel for the parties had also stated that they would apply for a proclamation of sale and for a final decree.

13. The impugned order reads as under:

“1. The Plaintiffs had filed the present suit seeking a decree of partition declaring Plaintiffs and Defendant to be the owners of 1/4th undivided share each of property bearing No. D-7/7, Vasant Vihar, New Delhi comprising of Part Basement and Ground Floor (left hand side) of land measuring 780 square yards and the land underneath [*hereinafter the “Suit Property”*].

2. The Plaintiffs and Defendant are brothers. It is also not in dispute between them that the property originally jointly belonged to late Shri. B.B. Vohra and Smt. Primla Vohra. Late Shri. B. B. Vohra died intestate on 8th September, 1997– which is also undisputed. After his death, the property devolved upon the Plaintiffs, the Defendant and Smt. Primla Vohra. Thereafter, unfortunately Smt. Primla Vohra passed away on 1st June, 2019. According to the Plaintiff, Smt. Primla Vohra died intestate, however, Defendant claims that she executed a Will dated 14th January, 2014. However, counsel for the Defendant does not dispute that even under the Will, the 1/4th share which belong to Smt. Primla Vohra was bequeathed to all the parties to the suit in equal share.



3. In view of the above, therefore, it clearly emerges that in so far as the Suit Property is concerned, there is no dispute between the parties as to their share therein.

4. Accordingly, a preliminary decree is passed, declaring the Plaintiffs No.1-3 and the Defendant, as owner of 1/4th share each, in respect of the Suit Property, along with 1/4th share each to the proportionate land rights in the land underneath.

5. All the parties agree that the property cannot be partitioned be metes and bounds. Counsel for the parties state that they will apply for a proclamation of sale and accordingly, a final decree has to be passed.

6. List on 19th April, 2022.”

14. The appellant filed a review petition seeking review (Review Petition 111/2022 in CS(OS) 508/2021) of the impugned order. It was contended on behalf of the appellant that the suit for the partial partition was impermissible. It is contended that since the respondents (plaintiffs) dispute their mother's Will and that the suit is confined only to the Suit Property and not the Vasant Kunj Property or the Sonipat Property, the final decree cannot be passed. According to the appellant, it is necessary to defer the division of the Suit Property to await the conclusion of the dispute regarding the title of Vasant Kunj Property and the Sonipat Property.

15. The learned Single Judge dismissed the review petition by an order dated 18.11.2022. The learned Single Judge observed that the rule for not entertaining a piecemeal partition suit is attracted at the discretion of the court in relation to joint family properties and not to



properties, where rights of the parties are that of tenants-in-common. The learned Single Judge referred to the decisions in ***Sardar Jarnail Singh and Anr. v. Sardar Amarjit Singh and Ors.***¹ and ***Radhey Shyam Bagla v. Smt. Ratni Devi Kahnani***² as supporting the said conclusion.

16. Mr Ravi Gupta, learned senior counsel appearing for the appellant submits that the suit is not maintainable, as it is for the partial partition of joint properties. He submits that the appellant had averred that the estate of the Smt. Primila Vhora includes other properties (the Vasant Kunj Property and the Sonipat Property) and that she had left a Will. He contends that the learned Single Judge had erred in proceeding on the basis that the parties were tenants-in-common and therefore, it was not necessary to await the resolution of the disputes regarding the Vasant Kunj Property and the Sonipat Property before proceeding to pass the final decree of partition of the Suit Property by metes and bounds. He contends that, since the parties had inherited the Suit Property by virtue of the Will, the Suit Property is a joint family property as also the Vasant Kunj Property and the Sonipat Property. He referred to the decisions in the case of ***Sardar Jarnail Singh v. Sardar Amarjit Singh and Ors.***¹ and ***Radhey Shyam Bagla v. Ratni Devi Kahnani***² and contends that the said decisions, clearly acknowledge that as a general rule, partial partition is impermissible and that the learned Single Judge had erred in not appreciating the same.

¹2016 SCC OnLine Del 6666

²2014 SCC OnLine Del 7103



Reasons and Conclusion

17. The appellant's contention that he, along with his siblings (respondents) are joint tenants of the Suit Property and not tenants-in-common is erroneous. In ***Suresh Kumar Kohli v. Rakesh Jain and Anr***³, the Supreme Court explained the concept of joint tenancy and tenancy-in-common as under:

“14. The issue at hand is what would be the status of the succeeding legal representatives after the death of the statutory tenant. In this regard, it would be worthy to discuss the two capacities, viz., tenancy-in-common and joint tenancy, and the rights that one holds in these two different capacities. Fundamentally, the concepts of joint tenancy and tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different: joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship.

15. Tenancy-in-common is a different concept. There is unity of possession but no unity of title, i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy. Consequently, the privity exists between the landlord and the tenant in common in respect of such estate.”

³(2018) 6 SCC 708



18. In the present case, there is no dispute that the Suit Property is a self-acquired property of the parents of the parties. The question whether it devolved on the parties in equal shares by virtue of the Will or on account of Late Smt. Primla Vohra dying intestate is inconsequential to determine the nature of the properties in the hands of the parties.

19. It is relevant to refer to Section 19 and Section 30 of the Hindu Succession Act, 1956 (hereafter '**the Act**'). The same are set out below:

“19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property,—

- (a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and
- (b) as tenants-in-common and not as joint tenants.

30. Testamentary succession.—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so [disposed of by him or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.”

20. A conjoint reading of Sections 19 and 30 of the Act makes it amply clear that the property devolving on the heirs of a Hindu whether he / she dies intestate, devolves on them as tenants-in-common and not as joint tenants.

21. The question whether the heirs of a deceased tenant inherit the statutory tenancy as tenants-in-common or as joint tenants has been a



subject matter of much debate. In *H.C. Pandey v. G.C. Paul*⁴, the Supreme Court held as under:

“4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable thereof. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants....”

22. In a later decision in *Mst. Surayya Begum v. Mohd. Usman & Ors.*⁵, the Supreme Court clarified as under:

“8. So far as Section 19 of the Hindu Succession Act, 1956, is concerned, when it directs that the heirs of a Hindu dying intestate shall take his property as tenants-in- common, it is dealing with the rights of the heirs inter se amongst them, and not with their relationship with a stranger having a superior or distinctly separate right therein. The relationship between the stranger and the heirs of a deceased tenant is not the subject matter of the section....”

23. In case of a statutory tenancy, the same devolves on the heirs as a joint tenancy vis-à-vis the landlord. However, as explained by the Supreme Court in *Mst. Surayya Begum v. Mohd. Usman & Ors.*⁵ inter se the heirs, inherit the property of the predecessor as tenants-in-common. In the present case, since there is no dispute that the Suit Property is a self-acquired property and had devolved on the parties in equal shares, the decision of the learned Single Judge to pass a

⁴(1989) 3 SCC 77

⁵(1991) 3 SCC 114



preliminary decree and set down the matter for passing a final decree on the aforesaid basis cannot be faulted.

24. In *Kenchegowda (Since Deceased) by LRs v. Siddegowda Alias Motegowda*⁶, the Supreme Court had set out the rule in respect of maintainability of suits for partial partition as under:

“16....Even otherwise, a suit for partial partition in the absence of the inclusion of other joint family properties and the impleadment of the other co-sharers was not warranted in law.”

25. The aforesaid decision was noted by the Division Bench of this Court in *Radhey Shyam Bagla (Since Deceased) through LRs v. Smt. Ratni Devi Kahnani (Since Deceased) through Lrs*². In the said case, this Court also noticed the decisions of the Karnataka High Court in *Sri Tukaram v. Sri Sambhaji & Ors.*⁷ as well as the decision of the Calcutta High Court in *Satchidananda Samanta v. Ranjan Kumar Basu and Ors.*⁸ wherein, the principle was accepted that, in a suit for partition of shares of members of a joint family, it is necessary to bring all the joint properties into the hotchpot failing which, the suit would be for a partial partition, which is not maintainable. However, it is necessary to note that in *Mst. Hateshar Kuer & Ors. v. Sakaldeo Singh & Ors.*⁹, the Supreme Court had observed as under:

"The rule requiring inclusion of the entire joint estate in a suit for partition is not a rigid and in elastic rule which can admit of no exception. This rule aims at preventing multiplicity of legal proceedings which must result if separate suits were to be instituted in respect of fragments of joint estates. Normally

⁶(1994) 4 SCC 294

⁷1997 SCC OnLine Kar 554

⁸AIR 1992 Cal 222

⁹1969 (2) SCWR 414



speaking, it is more convenient to institute one suit for partition of all the joint properties and implead all the interested co-sharers so that all questions relating to the share of the various co-owners and the equitable distribution and adjustment of accounts can be finally determined. But, this being a rule dictated by consideration of practical convenience and equity may justifiably be ignored when, in a given case there are cogent grounds for departing from it."

26. Thus, the suit for partial partition would not be proceeded with unless and until all other joint properties are brought into the hotchpot and all co-sharers are impleaded as parties. However, the said rule is applicable in respect of joint family properties or coparcenary properties and not where the properties are held by the parties as tenants-in-common. This principle was noticed by the Bombay High Court in *Sitaram Vinayak Hasabnis & Ors. v. Narayan Shankarrao Hasabnis & Ors.*¹⁰, where it was held as under:

"3. The rule is subject to exceptions arising out of convenience and from other causes. But it applies primarily to coparcenary property. The parties in this case are not coparceners but tenants-in-common; and in our view that may well make a substantial difference in the applicability of the rule.

.....We have not been shown any direct authority, that a suit for partition of common property, not joint property, is liable to dismissal on the ground that all the joint property in respect of which might have been brought, has not been included. Shortly, we have not been shown that the objection, founded on what is usually described as the plea of partial partition is available when a suit for division of common property, not joint property is in question."

¹⁰AIR 1943 Bom. 216



27. In view of the above, Mr. Gupta's contention that the suit in respect of the Suit Property is not maintainable or could not be proceeded with, is unmerited.

28. It is also material to note that the appellant had not taken any ground in his written statement to contest the maintainability of the suit. A plain reading of the impugned order indicates that the learned Single Judge had proceeded on the basis that there was no contest between the parties in respect of the Suit Property. It is important to note that although the appellant had filed the review petition seeking review of the impugned order, but, had not challenged the first four paragraphs of the impugned order relating to the issuance of the preliminary decree. This was noted by the learned Single Judge in the order dated 18.11.2022 whereby the appellant's review petition (Review Petition No.111/2022 in CS(OS) No.508/2021) was dismissed.

29. The contentions now advanced are clearly an afterthought and were not subject to the controversy before the learned Single Judge at the material time. This Court is also informed that the appellant has instituted a separate suit in respect of the Vasant Kunj Property and the Sonipat Property, which he claims also forms a part of the estate of Late Smt. Primla Vohra. In view of the above, the contention that the learned Single Judge was required to defer the passing of the final decree in respect of the Suit Property is insubstantial.



30. In view of the above, we consider it apposite to dismiss the present appeal with costs quantified at ₹50,000/-. It is so directed.

31. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 13, 2023
RK

