



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 03.07.2024

% *Judgment Pronounced on: 19.07.2024*

+ **RFA(OS) 30/2024 & CM APPL. 36388-90/2024**

SHYAM LAL BANSALAppellant

Through: Mr S.C. Singhal, Advocate.

versus

NIRMAL BANSAL & ORS.Respondents

Through: Ms Smita Maan and Mr Vishal Maan,
Advocates for R-1 and 2.

Mr R.K. Dhawan, Standing counsel
for DDA/R-3 with Ms Nisha Dhawan,
Mr V.K. Teng, Ms Shivani Taneja
and Ms Anwesha Singh, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.:

CM APPL. 36390/2024 [Exemption]

1. Allowed, subject to just exceptions.

CM APPL. 36288/2024 [Application filed on behalf of the appellant seeking condonation of delay of 30 days in filing the appeal]

2. This application has been filed on behalf of the appellant seeking condonation of delay in filing the appeal.

2.1 According to the appellant, there is a delay of 30 days.

3. Having regard to the period involved, we are inclined to condone the



delay.

3.1. It is ordered accordingly.

4. The application is disposed of.

RFA(OS) 30/2024 & CM APPL. 36389/2024

5. The present appeal has been filed assailing the judgment dated 1st May, 2024 passed by the learned Single Judge in CS(OS) 462/2019. By way of the said judgment a Preliminary Decree of partition was passed in favour of the plaintiffs/respondents no.2 and 3.

6. Issue Notice.

7. Notice is accepted by the counsel appearing on behalf of the respondents.

8. With the consent of the counsel for the parties, the present appeal is being taken up for final hearing and disposal at this stage itself.

9. Brief facts relevant for the adjudication of the present appeal are enumerated hereunder:

9.1. The original defendant/appellant herein, Sh. Shyam Lal Bansal, along with his brother Sh. Krishan Kumar Bansal jointly acquired the property being Plot No. B-3/9, Janak Puri, New Delhi (hereafter the 'suit property') via registered Perpetual Lease Deed dated 3rd September, 1974.

9.2. In 1977, on the basis of an oral agreement, it was agreed that Sh. Krishan Kumar Bansal would take exclusive possession of the front portion of the suit property and the rear portion would be in the exclusive possession of the appellant.

9.3. On 5th October, 2006, Sh. Krishan Kumar Bansal passed away leaving behind a Will dated 19th January, 2006 (hereinafter the 'Will'), in terms of which, the front portion of the suit property that was in possession of Late



Sh. Krishan Kumar Bansal, devolved on his daughter in law, Nirmal Bansal and his grandson, Gaurav Bansal [the original plaintiffs/respondents no. 1 and 2 herein].

9.4. The Delhi Development Authority (DDA) [respondent no.3 herein] allowed mutation of the suit property in favour of the respondents no.1 and 2 *via* Letter dated 10th October, 2011.

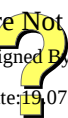
9.5. The respondents sent a Legal Notice dated 10th November, 2017, requesting the appellant to convert the suit property from leasehold to freehold in order to effect a partition of the suit property by metes and bounds. However, *vide* Reply dated 20th November, 2017, the appellant rejected the aforesaid request.

10. Accordingly, the respondents filed a suit seeking partition and permanent injunction before this Court [CS(OS) 462/2019].

11. In the written statement filed on behalf of the appellant/defendant, it was stated that the respondents no.1 and 2 were not the only legal heirs of Late Sh. Krishan Kumar Bansal. There were other children of Late Sh. Krishan Kumar Bansal, who were not made parties in the aforesaid suit. Hence, the aforesaid suit is bad for non-joinder of proper and necessary parties. Reliance placed by the respondents on the Will of Late Sh. Krishan Kumar Bansal is misplaced as the said Will has not been probated.

12. It was further stated that the appellant is entitled to 60 percent of the share in the suit property and Late Sh. Krishan Kumar Bansal was entitled to only 40 percent share, in proportion with the expenditure incurred by them in raising construction on the suit property.

13. The learned Single Judge framed issues and on the basis of the evidence led on behalf of the parties, arrived at the following findings in the





suit:

Issue No.1

“Whether the plaintiffs have no locus standi to file the present suit for decree of partition and permanent injunction as mentioned in para 1 of the preliminary objections?”

14. The Will executed by Late Sh. Krishan Kumar Bansal was duly proved on behalf of the respondents/plaintiffs in the trial and in terms of the said Will, the suit property had devolved upon the respondents/plaintiffs. Accordingly, Issue No.1 was decided in favour of the respondents/plaintiffs.

Issue No.2

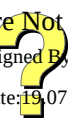
“Whether the suit of the plaintiffs is not maintainable on account of misjoinder and non-joinder of proper and necessary parties?”

15. In view of the findings in Issue No.1 that the respondents/plaintiffs had inherited the suit property by virtue of Will of Late Sh. Krishan Kumar Bansal, it was held that the other legal heirs of Late Sh. Krishan Kumar Bansal were neither necessary nor proper parties to the suit. Hence, Issue No.2 was also decided in favour of the respondents/plaintiffs.

Issue No.3

“Whether the plaintiffs are the owners of 1/2 share of the suit property by virtue of the registered Will dated 19.01.2006 executed by Late Sh. K.K. Bansal?”

16. Since the suit property had been jointly acquired by Late Sh. Krishan Kumar Bansal and the appellant, they would both have equal half share in the suit property. Even though, both brothers mutually agreed to be in possession of half portion each of the suit property and raise construction thereon, the suit property was never partitioned by metes and bounds.





Issue No.4

“Whether the plaintiffs are entitled for a decree of partition as prayed for?”

17. Since the respondents/plaintiffs as well as the appellant were held to be entitled to equal half share in the suit property and the said property was yet to be partitioned, a preliminary decree of partition was passed declaring the share of the appellant and the respondents/plaintiffs at 50 percent each of the suit property.

Issue No.5

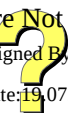
“Whether the plaintiffs are entitled for a decree of permanent injunction as prayed for?”

18. A decree of permanent injunction was passed restraining appellant from creating third party rights in respect of the half undivided share of the respondents/plaintiffs in the suit property.

ANALYSIS AND FINDINGS

19. Counsel appearing on behalf of the appellant submits that the reliance placed on the Registered Will of Late Sh. Krishan Kumar Bansal was untenable as the respondents/plaintiffs had not filed any probate proceedings or proceedings for grant of letters of administration. *Per contra*, counsel appearing on behalf of the respondents/plaintiffs submits that the aforesaid Will was duly proved on behalf of the respondents/plaintiffs.

20. We do not find any merit in the aforesaid submission made on behalf of the appellant. The impugned judgment duly notes that the Will executed by Late Sh. Krishan Kumar Bansal has been duly proved on behalf of the respondents/plaintiffs. One of the attesting witnesses to the Will, Mrs. Usha Gupta @ Sunita Gupta, who is the daughter of the Testator, duly deposed in





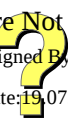
the suit and proved the Will. Admittedly, there is no requirement for probate of a Will in Delhi.

21. Counsel for the appellant further submitted that the suit filed by the respondents/plaintiffs was bad for non-joinder of parties as the other legal heirs of Late Sh. Krishan Kumar Bansal were not impleaded in the suit. It is stated that there may be a subsequent legal challenge by the aforesaid legal heirs, which would prejudice the interest of the appellant.

22. Once again, there is no merit in the aforesaid submission. In terms of the Will, the suit property has been bequeathed in favour of the respondents/plaintiffs. In view of the above, the learned Single Judge has correctly held that the remaining children/legal heirs of Late Sh. Krishan Kumar Bansal were neither necessary nor proper parties to the suit. It is an admitted position that none of the legal heirs of Late Sh. Krishan Kumar Bansal have challenged the Will or laid down any claim in respect of the suit property.

23. Even in the event of such legal heirs raising a claim towards the suit property, their entitlement would only be from the 50 percent share that belonged to Late Sh. Krishan Kumar Bansal, which has been bequeathed in favour of the respondents/plaintiffs by his Will.

24. The next contention raised on behalf of the appellant is that partition of the suit property had already been affected between Late Sh. Krishan Kumar Bansal, the predecessor in interest of the respondents/plaintiffs and the appellant and therefore, no fresh decree of partition could have been passed. In this regard, reference is made to the contents of the Will, wherein it is stated that an oral partition had been affected between Late Sh. Krishan Kumar Bansal and the appellant. A similar reference to oral partition has





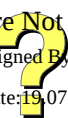
been made in the plaint.

25. Counsel for the respondents/plaintiffs submits that this is an entirely new ground raised by the appellant for the first time in the present appeal. The stand of the appellant in the written statement was that the suit property is undivided and that the appellant is entitled to 60 percent share in the suit property and not 50 percent share, as asserted in the suit.

26. We do not find merit in the aforesaid submission made on behalf of the appellant. The counsel for the respondents/plaintiffs has correctly contended that the defense of the property being already divided was not taken by the appellant in his written statement. On the contrary, the case set up in the written statement was that the appellant was entitled to 60 percent share in the suit property, which was rejected by the learned Single Judge.

27. Even on merits, the impugned judgment records that after jointly purchasing the suit property, Late Sh. Krishan Kumar Bansal and the appellant agreed to be in possession of their respective portions of the suit property and raise construction thereon. Late Sh. Krishan Kumar Bansal occupied the front portion of the suit property, whereas the appellant occupied the back portion. However, the suit property was never formally partitioned between them by metes and bounds. In fact, the appellant has categorically stated in his written statement that the suit property remained undivided. Therefore, there is no infirmity in the impugned judgment holding that the suit property was liable to be partitioned between the appellant and the respondents/plaintiffs equally and passing a preliminary decree of partition.

28. In view of the discussion above, no grounds for interference are made out. There is no merit in the present appeal and is accordingly, dismissed.





2024:DHC:5305-DB



29. All pending applications stand disposed of.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

JULY 19, 2024
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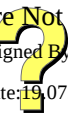
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KUMAR

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