

(2008) 05 DEL CK 0087
In the Delhi High Court
Case No : CS (OS) No. 750 of 2007

Arun Bhatia

APPELLANT

Vs

Madhuri Bhatia

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Partition Act, 1893 — Section 2, 3

Citation : (2008) 05 DEL CK 0087

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : M.S. Vinaik and Pankaj Kumar, for the Appellant; Sanjeev Sachdeva, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—plaintiff filed this suit for partition of the properties left behind by mother of the plaintiff and the defendant, late Ms. Bimla Bhatia who died intestate on 16th January, 2007. Following 3 immovable properties: 1) 1,Rajdoot Marg, Chanakyapuri, New Delhi; 2)C-23, Green Park (main), New Delhi; and 3) E-201, Blue Hills, Nagar Road, Pune, Maharashtra are the subject matter of partition. plaintiff alleged that apart from 3 immovable properties, mother also left behind some movable assets, being household effects, investments, bank balances, shares, Fixed Deposits, etc.

2. The plaintiff placed the value of Rajdoot Marg property at approximately Rs. 20 crore, Green Park property at approximately Rs. 12 Crore. The defendant after putting appearance filed written statement cum counter claim wherein she stated that the plaintiff was in possession of all jewellery of the mother, fixed deposits, all documents and files, bonds and other cash assets and household effects to which defendant had no access. The plaintiff had not disclosed these assets and value thereof. She stated that the defendant, as no point of time, has ever refused partition of the property and was willing to partition the entire movable and immovable assets in an equitable manner. She had requested plaintiff to disclose the value and amount of all movable and immovable assets

including bank accounts, FDRs, bonds, jewellery and household effects. The plaintiff supplied only a selective list of bank and another documents which was incomplete. In the counter claim, she stated that the mother had left behind following movable assets:

Movable Properties

- (1) Savings Bank Account NO. 52610037826 in Standard Chartered Bank. Jointly with both the parties. (Connaught Place)
- (2) Savings Bank Account NO. 52410006544 in Standard Chartered Bank. Joint. (Chanakya Puri.)
- (3) Savings Bank Account with Bank of India. (Connaught Place.)
- (4) Savings Bank Account with Bank of India. Pension Account. (Connaught Place.)
- (5) National Saving Scheme.
- (6) RBI Relief Bonds.
- (7) RBI Saving Bonds.
- (8) IDBI Relief Bonds.
- (9) SCHIL Relief Bonds.
- (10) HDFC Mutual Funds.
- (11) Templeton Mutual Funds.
- (12) Household goods.

The Defendant claimed she was not aware of the exact total of household assets.

3. She also stated that parties were not in a position to remain joint with each other in respect of movable and immovable properties and defendant had requested the plaintiff to partition the properties by metes and bounds and had also requested the defendant to sell the properties or divide the sale proceeds equally. However, it is the plaintiff who refused to partition the property on one or the other pretext. She submitted that the value of the third property, i.e., E-201, Blue Hills was approximately 56 lacs and the value of movable assets was around Rs. 1,75,00,000/-. She also wanted a decree of partition for movable and immovable properties. Along with her counter claim she filed a number of e-mails exchanged between parties in support of her contention that she has always been willing and ready to partition the property and it is only the plaintiff who had not been responding favorably. She also gave a proposed sharing of household goods lying in E-201, Blue Hills.

4. In replication, the plaintiff denied the allegations of concealment of the facts. The plaintiff insisted that he was a very fair person and had been fair to his

sister. Although, his sister was ready to give Rajdoot Marg property to him in return for rest of the inheritance but plaintiff refused it as it would not have been fair to her. The plaintiff was not interested in selling the properties and defendant was interested in selling the properties. The plaintiff wanted to live in Delhi. The plaintiff also denied that he had provided a selective list of movable assets and stated that listing and valuation of movable assets was joint responsibility of both the parties but claimed that the main properties were 3 immovable assets given in Para 1 above. The plaintiff and defendant both had drawn, from the joint account, equal amount, i.e., 30 lacs each and both went together to remove jewellery from the safe and inspected jewellery kept in the Green Park and agreed to have it valued at a latter date. The jewellery was kept with the plaintiff for safe keeping by the defendant. It is admitted by the plaintiff that the parties were having strained relations and defendant may not like to stay along with plaintiff in Green Park house where the plaintiff was earlier staying. The plaintiff later on moved to Rajdoot Marg house when this house got vacated during pendency of this petition.

5. After considering the facts that both plaintiff and defendant had asked for partition of the assets left behind by their mother and both claimed 50% share in the assets, a preliminary decree was passed by this Court on 30th May, 2007 holding that the parties have 50% share in the three immovable properties, i.e., 1, Rajdoot Marg, Chanakyapuri, New Delhi; C-23, Green Park (main), New Delhi and E-201, Blue Hills, Nagar Road, Pune, Maharashtra and also have 50% share each in all movable assets mentioned by the defendant in counter claim and other movable assets left behind by the deceased in possession or knowledge of the parties.

6. After passing of partition decree, the plaintiff was given an option to suggest a partition by making 2 lots of the properties with the defendant having right to choose any of the lot first. The plaintiff was agreeable to this suggestion on 30th May, 2007. He was asked to give proposal in writing by making 2 lots within 30 days as to how the 2 lots are to be prepared and how the properties be divided.

7. In the meantime, the properties at 1, Rajdoot Marg, Chanakya Puri got vacated. Defendant wanted to occupy this property. plaintiff was already in occupation of C-23, Green Park. However, plaintiff opposed this occupation of Rajdoot Marg property by defendant. He was prepared to give keys of C-23, Green Park(Main) to the defendant so that defendant as and when wants to use the property on her visit to Delhi may do so till the partition of property by metes and bounds takes place. He wanted to shift to Rajdoot Marg property.

8. The property at Rajdoot Marg is, Therefore, occupied by the plaintiff and the keys of C-23, Green Park were handed over to the defendant. The plaintiff instead of making 2 lots of the properties insisted on floor-wise division of the two properties at Delhi stating that one floor should be given to each party. This was not agreeable to the defendant and defendant refused to have floor-wise partition of the property. She, however, gave a counter proposal to the plaintiff

making 2 lots of the property, one lot consisting of Green Park and Pune property and movable assets while other lot consisting of Rajdoot Marg property at Chanakya Puri and a sum of Rs. 4 crore to be paid by the person who retains Rajdoot Marg property to the other, who opts for rest of the properties. Defendant gave option to the plaintiff to choose either of the lot, i.e., Rajdoot Marg, Chanakya Puri property minus Rs. 4 crore or rest of the properties including movable assets plus Rs. 4 crore. The plaintiff rejected the proposal stating that the plaintiff was not interested in unit-wise division of the property. plaintiff insisted on appointment of a Local Commissioner to suggest division of the two Delhi properties by metes and bounds. Since the defendant was not agreeable to floor-wise division and rejected floor-wise partition, the Local Commissioner was appointed to suggest vertical division of both the properties, i.e., Green Park and Rajdoot Marg, Chanakya Puri properties. The Local Commissioner submitted a report that vertical division was not feasible. Even otherwise since both the properties in the record of Municipal authorities are single plots, partition of the plots in two verticle units may not be feasible and no building plan would be sanctioned after division of the plots. This would also entail other consequences, viz. if one demolishes his part of the constructed portion, in the process he will damage the others property (if verticle partition is done with existing structure) or the existing structure will have to be pulled down. Considering the fact that brother and sister are at loggerheads, the verticle partition of each property is not feasible.

9. In view of the Local Commissioner's report and above circumstances this Court asked the parties to again consider the proposal of 2 lots: one consisting of Green Park property, Pune property, all movable assets plus Rs. 4 crore to be paid by the person who takes Rajdoot Marg, Chanakya Puri property. The defendant stated that she was agreeable for either of the lots and let plaintiff choose. However, plaintiff insisted that he was not interested in lots. He wants to live in both the properties i.e. Green Park property and Rajdoot Marg, Chanakya Puri property since the properties have sentimental values for him. He wants one floor of each property. He stated that he was prepared to accept first floor of each of the properties and let ground floor of each of two properties remain with the defendant. However, he was not agreeable to the fact that defendant may reconstruct, add or increase the FAR either of the properties which even otherwise would not have been feasible because if the first floor is kept intact, no re-construction is possible and the person who is at first floor can always create hindrance in re- construction and re-utilization of the property.

10. It only seems that plaintiff is less interested in partition of properties but more interested in seeing that the properties don't get partitioned and the defendant is deprived of utilizing her share in the properties left behind by her mother. He himself did not form two lots giving liberty to defendant to chose one. When defendant form two lots and liberty to him to chose one first, he refused to do so. He expressed sentimental value for properties in Delhi only and no sentiments for property in Pune. His Counsel time and again insisted on floor-

wise partition and did not see reason in partition by lots coupled with owelty.

11. When the parties did not agree to a mutually acceptable partition of the property, the Court, Therefore, heard both the parties about the mode of partition. Counsel for the plaintiff states that principal of Owelty was not applicable in this case since the properties can be partitioned floor-wise. On the other hand, counsel for the defendant stated that defendant cannot be put to restructure and put to disadvantage by accepting floor-wise partition, neither the defendant can be made to suffer because of the obstinate attitude of the plaintiff. plaintiff has relied upon *Badri Narain Prasad Choudhary and Others Vs. Nil Ratan Sarkar*, wherein Hon"ble Supreme Court observed as under:

Thus considered, it is clear that the provisions of Sections 2 and 3 of the Partition Act are not applicable to the peculiar circumstances of the case. At the same time, there is a concurrent finding of fact recorded by the courts below that the suit property is so small, that it cannot be partitioned by metes and bounds, without destroying its intrinsic worth. This finding is unassailable. In our opinion in such a situation, the Court can devise such other feasible mode for effecting partition as may appear to it to be just and equitable in the circumstances of the case.

20. The suit property, being incapable of division in specie, there is no alternative but to resort to the process called owelty, according to which the rights and interests of the parties in the property will be separated, only by allowing one of them to retain the whole of the suit property on payment of just compensation to the other. As rightly pointed out by K.Subba Rao, C.J. (speaking for a Division Bench of Andhra High Court in *R. Ramaprasada Rao Vs. R. Subbaramaiah and Others*,), in cases not covered by Ss. 2 and 3 of the Partition Act, the power of the Court to partition property by any equiable method is not affected by the said Act.

12. In *M.L. Subbaraya Setty (Dead) by Lrs. and Others Vs. M.L. Nagappa Setty (Dead) by Lrs. and Others*, , Hon"ble Supreme Court held as under:

It may also not be necessary that if the properties consist of movable and immovable properties then each party must necessarily be given a share in all movable and immovable properties. While effecting partition of joint family properties, it may not be possible to divide every property by metes and bounds. The allocation of properties of unequal value may come to the share of a member of a joint family at the time of effecting partition but for that necessary adjustments have to be made. It can also happen that some of the co-sharers on partition may not get any share in immovable property. No hard-and-fast rule can be laid. It depends upon the facts of each case. It depends upon the nature of the immovable property and number of such properties as also the number of properties as also the number of members amongst whom it is required to be divided. Properties of a larger value may go to one member. Property of lesser value may go to another. What is necessary, however, is the adjustment of the

value by providing for payment by one who gets property of higher value. In short, there has to be equalization of shares.(Para 28)

It is also possible that in a given case, the value of one property may appreciate drastically while not so in the case of other properties or it may even decline and some of the parties may be in possession of those properties. It has been the endeavor of the courts in such suits to protect, preserve and respect the possession of the parties as far as possible. While so protecting, there has to be equalization of shares which has been recognized in law "by making a provision for payment of owelty (Page 29)".

13. I consider that the partition in this case can only be done by making 2 lots or sale of all the properties and dividing the money among the plaintiff and defendant equally. The property at Rajdoot Marg, Chanakya Puri, New Delhi is at one of the most prime locations of Delhi and is of considerable value. The plaintiff himself put the value of this property at Rs. 20 crore while the property at Green Park though in South Delhi, is not of the same value as the property in Chanakya Puri, New Delhi. The plaintiff himself showed a difference of Rs. 8 crore in the value of the 2 properties. I consider that the properties can be partitioned only by making 2 lots and resorting to principal of owelty or by sale of properties. Since the plaintiff is not agreeable to sale of the property as well and wants to live in Delhi in both the properties, the only mode of partition is by making 2 lots and resorting to principal of owelty. One lot shall consist of Chanakya Puri property and other lot shall consist of Green Park property, Pune Property and the movable assets. The person who chooses Chanakya Puri Property shall pay a sum of Rs. 4 crore to the other person so that the partition is of all the assets in equal value. The amount of Rs. 4 crore shall be a lien on the Chanakya Puri property and so long as this amount is not paid, the property shall not be sold, mortgaged or parted with possession.

14. The final partition decree is passed in following terms:

Both plaintiff and defendant to have 50% share in all movable and immovable assets. The properties are divided in following two lots:

1st lot

1, Rajdoot Marg, Chanakya Puri, New Delhi minus 4(four) crore of rupees.

2nd lot

i) C-23 Green Park (Main), New Delhi;

ii) E-201, Blue Hills, Nagar Road, Pune; and

iii) All movable assets left behind by mother of parties inclusive of jewellery, shares and FDs etc. plus Rs. 4 (four) crore of rupees.

15. Since plaintiff is already in possession of Chanakya Puri property, he is given 60 days time to pay a sum of Rs. 4 crore to the defendant and give all

movable assets of deceased lying in his custody to the defendant. The possession for this period of the properties of Green Park and Pune shall remain with the defendant. However, in case plaintiff fails to pay this amount of Rs. 4 crore to the defendant within 60 days, he shall shift to the Green Park Property and hand over the possession of 1. Rajdoot Marg, Chankaya Puri to the defendant and defendant shall give him keys of Green Park Property and Pune Property as well as movable assets in her possession and a sum of Rs. 4 crore. The amount of Rs. 4 crore and movable assets shall be given to the plaintiff by defendant within 60 days of his vacating the Chanakaya Puri property and shifting to Green Park property.

16. The value of the share of the plaintiff for the purpose of Court fee and Stamp Duty shall be considered as Rs. 17 crore in view of the total valuation of movable and immovable assets.

The decree sheet of partition be prepared accordingly on stamp paper of appropriate Stamp Duty.