
(2015) 02 DEL CK 0371
In the Delhi High Court
Case No : RFA(OS) 129 of 2014

Hanuman Dass Goel and Others

APPELLANT

Vs

Poonam Chand Goel and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Registration Act, 1908 — Section 17, 23, 4

Citation : (2015) 4 AD 673

Hon'ble Judges : Gita Mittal, J;P.S. Teji, J

Bench : Division Bench

Advocate : Arun Vohra and S.N. Pandey, for the Appellant; Anil Sapra, Sr. Adv., Sandeep Sharma and Ankur Goel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The record of CS No. 81/2007 has been received. We have heard Mr. Arun Vohra, learned counsel for the appellant and Mr. Anil Sapra, learned senior counsel appearing for the respondents in this case. The appellant assails the judgment and decree dated 8th May, 2014 passed in CS (OS) No. 81/2007. The facts giving rise to the present appeal are within a narrow compass and to the extent they are not disputed, we propose to summarize the same from the impugned judgment:-

(i) The sole appellant and the four respondents are sons of Late Shri Munshi Ram Goel.

(ii) The suit property is bearing No. 17-A, New Colony, Model Basti, New Delhi-110005 consisting of the land and a two and half storeyed residential house constructed on the plot admeasuring about 200 sq. yds. The plot of land on which the construction was raised was purchased by the parties jointly on 19th January, 1968 from one Kashi Nath Khemka which sale deed (Exhibit D-1) was registered on 31st January, 1968.

(iii) Each of the parties to the present appeal was as a result entitled to 20% share (1/5 share each) in the subject property.

(iv) Sh. Poonam Chand Goel-respondent No. 1 before us filed CS (OS) No. 81/2007 seeking declaration of shares of the parties and partition claiming his 1/5 share in the property.

The plaintiff had initially filed the present suit on 15th March, 1999. Thereafter, the suit was transferred to District Courts on account of pecuniary jurisdiction pursuant to Notification No. F. No. L-117015/1/02 dated 16th July, 2003. Subsequently, upon valuation of the plaint being enhanced, the suit was sent back to this court renumbered as CS (OS) 81/2007.

It appears that Sh. Bhagwan Dass Goel-respondent No. 2 herein and Sh. Subhash Chancier Goel-respondent No. 3 herein filed IA No. 1616/2004 seeking transposition as plaintiffs which was allowed by an order dated 8th May, 2008. As such Sh. Hanuman Dass Goel and Sh. Radhey Shyam Goel continued as defendants.

(v) As per the joint written statement filed by Shri Hanuman Dass Goel-appellant No. 1 and Sh. Radhey Shyam Goel-respondent No. 4, the suit property was purchased out of their earnings alone but keeping in view the desire of their father, the plot was purchased in the name of the five brothers on the agreement that the payment for the purchase of the plot would be reimbursed by all the brothers of the appellant herein.

(vi) It was further stated in the written statement that only the respondent No. 4 reimbursed the appellant towards the price of the plot. Consequently, the appellant filed a suit bearing No. 602/1971 before the District courts wherein a decree for declaration dated 28th September, 1971 was granted in favour of the appellant and the respondent No. 4 holding that they alone were the owners and in possession of the suit property.

(vii) The appellant also contended that the respondent Nos. 1 to 3 (plaintiffs in the suit) had been residing in the suit property as tenants for which they were paying rent to the defendants.

(viii) So far as Suit No. 602/1971 is concerned, the respondent Nos. 1 to 3 had taken a stand that such suit was filed only to enable the appellant to take a loan for construction of the suit property.

(ix) In the plaint in CS (OS) No. 81/2007, a stand was taken that the suit was necessitated as the respondent No. 1 received summons of a suit bearing No. 831/1998 titled Shri Bhagwan Dass Goel and Anr. v. Shri Radhey Shyam Goel and Anr. After going through the pleadings therein, the respondent No. 1 learnt on 14th January, 1999 that attempt was being made by the appellant and respondent No. 4 in collusion to usurp his share in the suit property. It has also been pleaded that the plaint dated 23rd November, 1998 of Suit No. 831/1998 made a reference (some decree dated 28th September, 1971 passed by Shri R.K.

Sain, Sub-Judge, First Class, Delhi) to the effect that the appellant and respondent No. 1 were the only owners of the suit property.

(x) The plaint in the present case also explains the circumstances in which the respondent No. 1 Sh. Poonam Chand Goel was estranged from his family on account of an inter-religion love marriage in 1968 for which reason, for about 3-4 years, there was no conversation at all between the respondent No. 1 and his family members.

(xi) The respondent No. 1/plaintiff also took the plea that in 1975 when construction of the house commenced, he also made contribution to the property and that he alongwith his family participated in the grah pravesh function. It is noteworthy that it was the case of the respondent No. 1 that he was never served summons in the suit. It was his plea that he had never appeared in Suit No. 602/1971; did not engage any counsel nor filed any written statement etc. and that he learnt about the alleged declaratory decree of 1971 only because of the plaint of Suit No. 831/1998.

(xii) The receipt of the summons in Suit No. 831/1998 along with the plaint, triggered of the filing of CS(OS) No. 598/1999 now renumbered as CS(OS) No. 81/2007 on 12th March, 1999 by the respondent No. 1 as a co-owner of the suit property with the other owners praying for grant of a decree for partition.

2. On 24th August, 2011, the following issues were struck by the learned Single Judge:-

"(i) Whether the plaintiffs are entitled to partition of the suit property? OPP

(ii) Whether defendants No. 1 and 2 are the absolute owners of the suit property on the basis of judgment and decree passed on 28.9.1971 in C.S. No. 602/1971? OPD

(iii) Whether the suit of the plaintiffs is barred by limitation? OPD

(iv) Whether the suit of the plaintiffs is without any cause of action and thus liable to be dismissed under Order VII Rule 11 of the CPC? OPD

(v) Relief."

3. On behalf of the plaintiffs/respondent Nos. 1-3, affidavits by way of evidence were filed. No evidence at all was led by the appellant or the respondent No. 4 herein even though the onus to prove the above issue Nos. (ii) to (iv) was on them.

4. An affidavit by way of evidence of Sh. Sanjeev Goel, son of the respondent No. 1 (who died during the pendency of the suit) was also filed.

5. Apart from the above, the following established facts are noted in the impugned judgment dated 8th May, 2004:-

(a) The suit property was acquired and the building constructed on the plot out

of joint funds of all the brothers.

(b) All five brothers are occupying the different portions of the suit property as co-owners in their own right, though of disproportionate portion, keeping in view the individual requirements.

(c) For the purposes of raising construction, the appellant and the respondent No. 4 wished to raise funds by taking a loan for which purpose they wish to mortgage the property. In order to enable them to mortgage the property, the respondent Nos. 1-3 agreed to such request in good faith and executed indemnity bond cum undertaking to secure their interest (Exhibit PW-2/1 and Exhibit PW-2/2).

(d) The respondent Nos. 1-3 never received summons of any suit; did not ever appear in any court; never engaged any lawyers for appearing on their behalf in any previous litigation.

(e) Property tax returns in respect of the suit property were being filed in the name of all the five brothers by Sh. Hanuman Dass Goel (appellant herein) throughout. The property tax returns for the year 1997-98 and 1994-95 stand executed as Exhibit P-3 and P-4.

(f) House tax assessment orders dated 25th January, 1972 (Exhibit PW-2/3) as well as house tax bills for the years 1974-75, 1976-77, 1978-79 (Exhibit PW-2/4 to 2/6) were issued by the MCD in the names of all five brothers.

(g) As per the property tax receipts (Exhibit Pw-2/7 and 2/8), the tax was deposited by all the five brothers.

(h) The appellant Hanuman Dass Goel addressed a letter dated 4th May, 1977 (Exhibit P-1) to the MCD as well as a letter dated 6th January, 1998 (Exhibit P-2) on behalf of the five brothers.

(i) Even if the decree dated 28th September, 1971 as alleged had actually come into existence, the same was never acted upon nor intended to be acted upon.

(j) The telephone connection installed in the premises was in the name of all the brothers as stands manifested from the telephone bills (Exhibit PW-2/9 to Exhibit PW-2/13).

(k) The appellant and the respondent No. 4 at no point of time denied the shares of the respondent Nos. 1 to 3 In the suit property, till the filing of the suit in the year 1998 wherein for the first time a right was asserted premised on a decree of 1971.

(l) The respondent Nos. 1 to 3 also led evidence of the 15 cheques paid by them establishing the contribution to the cost of construction of the property by deposits of amounts in the family concern M/s. Haryana Shudh Ghee Bhandar which have been noted in para 10 of the impugned judgment.

(m) Extract of books of accounts establishing making of payments stand

exhibited as Exhibit PW-2/14. Despite cross examination, the evidence led by respondent Nos. 1-3 could not be challenged by the appellant or respondent No. 4.

6. It is noteworthy that so far as the decree dated 28th September, 1971 relied upon by the appellant is concerned, we have perused the original record. It appears that alongwith the list of documents dated 4th March, 2010, the appellant has filed a photocopy of a decree dated 28th September, 1971. The appellant has not even filed a certified copy of the original decree sheet. No evidence was led to support the filing of the suit in which such decree was passed; the pleadings therein or the judgment premised whereon the decree has been drawn. The appellant also made no effort to summon the trial court record to substantiate even the factum of passing of such a decree. The photocopy of the said decree is also not legible. In any case, the document being completely inadmissible in evidence, does not require to detain us any further.

7. In this background, the learned Single Judge has rightly noted that the defendants have failed to lead any evidence in support of issue Nos. (ii) to (iv) or to discharge the onus on proof thereon.

8. So far as the first issue with regard to the right of the plaintiffs to partition of the suit property is concerned, in view of the above noted facts, it was established before the teamed Single Judge that the suit property was owned by the five brothers who are parties before us. Consequently, by the judgment dated 4th May, 2014, a preliminary decree defining the share of all the parties as 1/5 each has been recorded. It appears that Sh. Hanuman Dass Goel-appellant herein (defendant No. 1 before the learned Single Judge), was present in the court on that date and made a statement on his behalf as well as on behalf of Sh. Radhey Shyam Goel (defendant No. 2 in the suit and respondent No. 4 herein), that the suit property could not be divided by metes and bounds. The respondents also accepted this position and submitted that the property could not remain joint. A prayer was made for passing of a final decree. Consequently, the learned Single Judge gave three months to the parties to arrive at an arrangement of purchase of share of each other. It was directed that in case no arrangement could be arrived at within this period, any of the parties can seek execution of the decree. As a result, a final decree defining the share of the each parties as 1/5 in the property was passed.

9. We are informed that no arrangement for dividing the property has so far been urged. However, no execution has been filed till date.

10. We may note the other submissions which have been pressed before us. The learned Single Judge has considered the matter from the angle of the bindingness of the decree dated 28th September, 1971 so far as the rights of the parties are concerned. It has been noted that the decree dated 28th September, 1971 which was relied upon by the appellant and respondent No. 4 declaring them to be the owners of the suit property to the exclusion of respondent Nos. 1

to 3, requires extinguishing the right, title and (merest of the respondent Nos. 1 to 3 and creation of right, title and interest therein of the appellant and respondent No. 4 herein. It was urged before the learned Single Judge that such a decree which created new right, title or interest in praesenti in immoveable property was compulsorily registrable under Section 4 of the Registration Act. The learned Single Judge has also noted Section 17 of the Registration Act (wrongly noted as Section 4 in para 20 of the impugned judgment) which prescribes that a registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

11. Our attention has been drawn to Section 23 of the Registration Act which debars the Registrar from accepting any document for registration unless presented for that purpose to the proper answer "within four months from the date of its execution". The proviso to Section 23 extends the period so far as presentation of a decree or order for registration is concerned to a period of four months from the day the decree or order becomes official i.e. upon adjudication of the appeal. It is undisputed before us that so far as the decree dated 28th September, 1971 was concerned, no appeal assailing the same was filed by any party. The period of four months from the date of passing of such decree would, therefore have come to an end on or about the 27th January, 1972.

12. So far as the requirement of registration of such a decree is concerned, our attention has been drawn to the pronouncement of the Supreme Court in Bhoop Singh Vs. Ram Singh Major and others, AIR 1996 SC 196 : AIR 1995 SC 196 : (1996) 2 BC 365 : (1995) 6 JT 534 : (1996) 112 PLR 559 : (1995) 5 SCALE 228 : (1995) 5 SCC 709 : (1995) 3 SCR 466 Supp The learned Single Judge has also relied upon the following portion thereof:-

"16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs. 100/- or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registrable."

13. There can be no manner of doubt that the decree dated 28th September,

1971 (assuming that it existed), which was extinguishing the rights of the respondent Nos. 1 to 3 in the suit property, required compulsory registration. The same not having been effected, such decree is of no, legal effect or consequence and cannot take away or extinguish the existing rights of respondent Nos. 1 to 3. It has therefore been rightly held by the learned Single Judge that the same could not effect the binding rights of respondent Nos. 1 to 3.

14. We may note that when the appeal came to be listed before us for the first time on 8th September, 2014, it was contended on behalf of the appellants that there was an inconsistency between the pronouncement in Bhoop Singh's case and the judgment of the Supreme Court in K. Raghunandan and Others Vs. Ali Hussain Sabir and Others, AIR 2008 SC 2337 : (2008) 13 SCC 102 : (2008) AIRSCW 3844 As a result, by an order dated 31st March, 2009 passed in Civil Appeal No. 1240/2005 Phool Patti and Anr. V. Ram Singh (Dead) Through IRs. and Anr., the entire matter had been referred to a larger Bench.

15. The appeal in Phool Patti was consequently placed before a Bench of three learned Judges of the court which thereafter, by an order dated 24th July, 2014, has observed that there was no inconsistency between the two decisions. We may note that Phool Patti has been finally decided by the judgment dated 6th January, 2015 by a Bench of two learned Judges of the Supreme Court. We may note that the court has relied on the law laid down in Bhoop Singh. The findings of the court in para 32 may usefully be extracted and reads thus:-

"32. The terms of the family settlement are not on record. As mentioned above, the family settlement could relate to the ancestral as well as self-acquired property of Bhagwana or only the ancestral property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a hibba). The decree relating to 32 kanals of land did not require compulsory registration, as mentioned above. However, the self acquired property of Bhagwana that is 20 kanals, therefore, in view of the law laid down in Bhoop Singh the gift of 20 kanals of land by Bhagwana in favour of Ram Singh, notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than Rs. 100/- in favour of Ram Singh."

16. Given the undisputed position which emerged before the learned Single Judge with regard to the title and possession of the suit property, in our view the learned Single Judge had no option but to proceed to judgment and to define the shares of the parties in the property. Thereafter in view of the statement of the parties to the effect that it was not possible to partition the property by metes and bounds, the learned Single Judge had a duty to proceed to final decree as has been done in the present case. Given the close relationship between the parties, the learned Single Judge has fairly given the time of three months to the parties and postponed the execution by such period.

17. For all the foregoing reasons, we find no merit in this appeal.

18. The appeal is accordingly dismissed with costs which are quantified at Rs. 50,000/-

CM Nos. 14539/2014 and 14541/2014

In view of the dismissal of the appeal, these applications do not survive for consideration and are dismissed.