

(2012) 04 DEL CK 0475

In the Delhi High Court

Case No : Regular First Appeal (OS) 15 of 2012 and RFA (OS) 34 of 2012

Rajendra Shanker

APPELLANT

Vs

Davendra Shanker
 Davendra Shanker Vs Rajendra
Shanker

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0475

Hon'ble Judges : Siddharth Mridul, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : M.M. Kalra and Mr. Kunal Kalra in RFAOS 15/2012, FAOOS 64/2012 and FAOOS 65/2012 and Mr. R.M. Sinha and Mr. Ashwani K. Dubey in RFAOS 34/2012, FAOOS 147/2012 and FAOOS 148/2012, for the Appellant; R.M. Sinha, Advocate and Mr. Ashwani K. Dubey, Advocate in RFA(OS) 15/2012, None for R-1.Mr. R.M. Sinha, Advocate and Mr. Ashwani K.Dubey, Advocate for R-2 in FAO(OS) 64/2012 and FAO(OS) 65/2012 and Mr. M.M. Kalra, Advocate and Mr. Kunal Kalra, Advocate in RFA(OS) 34/2012, None for R-1 Mr. M.M. Kalra, Advocate and Mr. Kunal Kalra, Advocate for R-2 in FAO(OS) 147/2012 and FAO(OS) 148/2012, for the Respondent

Judgement

Pradeep Nandrajog, J.—Late Shri Damodar Das Mathur who died on February 07, 1995 and late Dr.R.D.Mathur who died on October 28, 1995 were real brothers. Whereas Dr.R.D.Mathur died issueless, Shri Damodar Das Mathur was blessed with two sons named Rajendra Shanker and Davendra Shanker. With respect to property bearing Municipal No. 104, Jor Bagh, New Delhi-110003, registered owner whereof was late Shri Damodar Das Mathur, a will was set up by Devendra Shanker, stated to have been executed by Damodar Das Mathur on April 12, 1994. He set up another will stated to have been executed by late Dr.R.D.Mathur on April 26, 1994. As per the first will, late Shri Damodar Das Mathur made a life term bequest of the property in question in favour of his brother Dr.R.D.Mathur, and thereafter his i.e. Dr.R.D.Mathur's wife. This was a life interest conferred. The ultimate beneficiaries were Rajendra Shanker and Davendra Shanker, sons of Damodar Das Mathur. He bequeathed the ground floor and first floor of the

property to Davendra Shanker and the partly constructed barsati floor to Rajendra Shanker. This was also the bequest made by Dr.R.D.Mathur, probably for the reason, if there was any dispute to he having acquired a life interest in the property or a residual interest under the will executed by his brother.

2. Rajendra Shanker sought partition of the said property vide CS(OS) No. 985/2002. He claimed intestate succession. Davendra Shanker thereupon filed two Probate Petitions seeking probate of the wills dated April 12, 1994 and April 26, 1994, which Probate Petitions were transferred to the Original Side of this Court and registered as CS(OS) No. 1701/2006 and CS(OS) No. 1702/2006.

3. Needless to state, CS(OS) No. 985/2002, CS(OS) No. 1701/2006 and CS(OS) No. 1702/2006 were clubbed and the main issue settled was: Whether the two wills propounded by Davendra Shanker were the last legal and valid testaments of late Shri Damodar Das Mathur and late Dr.R.D.Mathur and their effect.

4. Vide impugned judgment and decree dated December 05, 2011, the learned Single Judge has held that the two wills were duly proved and hence has ordered a probate to be granted with will annexed. However, it has been held that the subject property was treated as the Joint Family Property by late Shri Damodar Das Mathur and his brother Dr.R.D.Mathur, in which the two sons of late Shri Damodar Das Mathur i.e. Rajendra Shanker and Davendra Shankar were co-parceners thereof. Thus, the view taken by the learned Single Judge is that Damodar Das Mathur, Dr.R.D.Mathur, Rajendra Shanker and Davendra Shanker would be 1/4th owner each of the property in question; as a result thereof, the learned Single Judge has held that under the two wills bequest would require the subject property to be partitioned by declaring the share of Rajendra Shanker as 1/4th and that of Davendra Shanker as 3/4th i.e. the two wills have been held to operate only qua the 1/4th interest each of Damodar Das Mathur and Dr.R.D.Mathur in the subject property.

5. As per the impugned judgment, the learned Single Judge has held that this 3/4th and 1/4th share in the property would be vertically owned by the two brothers.

6. Yet in spite thereof, the final direction issued is that a Local Commissioner stands appointed to suggest partition of the property by metes and bounds.

7. Both brothers i.e. Rajendra Shanker and Davendra Shanker are aggrieved by the impugned decree and this explains two Regular First Appeals and four First Appeals against Orders. Three appeals have been filed by Rajendra Shanker and three by Davendra Shanker.

8. The appeals filed by Rajendra Shanker had come up for hearing on February 10, 2012 when notice was issued to his brother returnable for today. In the interregnum, Davendra Shanker has filed three appeals which are listed for preliminary hearing today.

9. When the appeals were taken up for hearing, learned counsel for the parties

informed that the two brothers have entered into a settlement and in respect whereof a joint statement of Shri Rajesh Mohan Sinha, Advocate and Shri M.M.Kalra, Advocate has been recorded. The statement has been signed by the two learned counsel. Separately, statement of Davendra Shanker and Rajendra Shanker have also been recorded in affirmation of the contents of the statements made by the two learned counsel, which statement embodies the terms of the settlement between the parties.

10. Needless to state, the six appeals stand disposed of recording the settlement between the parties as recorded in the joint statement made by Shri Rajesh Mohan Sinha and Shri M.M.Kalra, Advocates. The said statement would require no decree to be drawn up as regards CS(OS) No. 1701/2006 and CS(OS) No. 1702/2006, which two suits, actually being Probate Petitions, stand disposed of as compromised. No instrument pertaining to succession need be issued.

11. RFA(OS) No. 15/2012 and RFA(OS) No. 34/2012 stand disposed of decreeing CS(OS) No. 985/2002 in terms of the joint statement made by Shri Rajesh Mohan Sinha, Advocate and Shri M.M.Kalra, Advocate.

12. Decree be drawn accordingly in the two appeals.

13. Since as per the settlement between the parties Shri Rajendra Shanker has to occupy the barsati of property No. 104, Jor Bagh, New Delhi-110003, we take on record the undertaking of Shri Davendra Shanker that he would, by today evening, remove the lock at the entrance of the barsati floor and would permit his brother Rajendra Shanker to put his lock on the barsati floor. We also take on record the statement made by Shri Rajendra Shanker and Shri Davendra Shanker that they would not obstruct each other in the use and enjoyment of the existing construction which as of today consists of a ground floor, a first floor and a barsati floor, and would co-operate with each other to ensure that within the next four years the property is re-developed in sync with the ethos of the mutual understanding of the parties as reflected in the statement made by Shri Rajesh Mohan Sinha, Advocate and Shri M.M.Kalra, Advocate. No costs.