

(2013) 05 DEL CK 0350

In the Delhi High Court

Case No : Regular First Appeal (OS) 29 of 2013 and CM Application 3459 to 3463 of 2013

Rajinder Pal Singh Bhatia

APPELLANT

Vs

Shri Gurbachan Singh and Others

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Registration Act, 1908 — Section 17(1)(b), 17(2)

Citation : (2013) 137 DRJ 108

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Anil Sapra, with Mr. Rajat Aneja, for the Appellant; Sandeep Agarwal with Mr. M.K. Singh, Advocate for Resp-1 and 4, for the Respondent

Judgement

S. Ravindra Bhat, J.—The appellant is the unsuccessful plaintiff in CS (OS) No. 1441/1990 which was dismissed by learned Single Judge by the impugned judgment dated 23.11.2012. The suit sought dissolution of the partnership firm Royal Safe Company, rendition of accounts and partition of the immovable properties of the firm. The brief facts are that the first Defendant (now deceased) was plaintiff's father; the other parties, second to fifth defendants are his brothers, all of whom were partners in business of furniture and decorators, which was carried out under the name of M/s. Royal Safe Company in terms of the partnership deed dated 01.04.1967. While the plaintiff had 20% share in the partnership, Defendant No. 1 to Defendant No. 5 had 15%, 20%, 20%, 15% and 10% respectively. The business was admittedly discontinued in September 1979.

2. The plaintiff had contended that despite discontinuance of the business, neither was the partnership firm dissolved, nor were the immovable properties of the firm partitioned. He, therefore filed the suit, the dismissal of which is being challenged, seeking dissolution of the partnership, partition of the immovable properties, and rendition of accounts in respect of the rent received from such immovable properties.

3. All five defendants contested the suit, and asserted, in their written statements (Defendant Nos. 1, 2 and 5 filed a common written statement, whereas Defendant Nos. 3 and 4 each filed separate written statements), that the firm had been dissolved and its properties had been distributed amongst the partners; and that the arrangement had even been acted upon by the parties. During their testimony in the trial, however, Defendant Nos. 3 and 4 changed their stand and contended that no final distribution of immovable properties had been done; instead, only a temporary working arrangement had been worked out. The change in stand, to the extent contrary to the pleadings, was held to be untenable by the learned Single Judge.

4. The business of the partnership was being carried out from the following immovable properties:

- (i) 53, M.M. Road, New Delhi (MMR property)
- (ii) G-26, South Extension., Part I, New Delhi (SE property)
- (iii) 13/39, Western Extension Area, Arya Samaj Road, Karol Bagh, New Delhi (KB property)
- (iv) N-29, Gali No. 4, Anand Parbat Industrial Area, New Delhi (AP property)
- (v) C-114, Naraina Industrial Area Phase-I, New Delhi (Naraina property)

Of these, it was found by the learned Single Judge, without any opposition from any of the parties to the suit that the MMR property was owned by Defendant No. 1 in his personal capacity, and was not, unlike the other properties, partnership property. After September 1979, when the partnership business discontinued, the plaintiff carried on business under the name of M/s. King Furnishing and Safe Company (South); the first defendant under the style M/s. Royal Safe Company (Karol Bagh) and fourth defendant as M/s. Royal Safe Company (M.M. Road). Furthermore, the plaintiff is in exclusive possession of a specific portion of the AP property, the remaining portion of which is possessed by Defendant No. 3; the MMR property was physically partitioned after discontinuance of the partnership business; the ground floor being divided into three portions; while the plaintiff has been in possession of the middle portion of it, carrying out his business from there, the mezzanine and basement floor has been with Defendant No. 4. Defendant No. 1 was in occupation of the SE property, which was then surrendered to its landlord. Defendant No. 5 came in possession of a portion of the KB and Naraina properties.

5. The learned Single Judge found that the properties had been partitioned/divided between the erstwhile partners. To arrive at this conclusion, he relied on the following reasons:

- (a) The suit was filed only in 1990; so for 11 years there was no objection, and no explanation was furnished during the trial for the lack of such objection.
- (b) The physical partition of the MMR property, coupled with exclusive possession

by the plaintiff, despite the fact that the plaintiff has been paying some rent; the amount of rent was just a token amount, considering the huge area of the property situated in a commercial area. Had the property been meant to provide a steady income to Defendant No. 1, he would have let it out at prevailing market rates, or sold it.

(c) Neither Defendant No. 3 (who had 20% share in the firm) nor Defendant No. 4 got any share in the Naraina property or the SE property or the KB property. They did not object at all to this arrangement, not even in their pleadings, where they have admitted to the division having taken place. This showed that the parties were in agreement about the principles which would govern the division of assets and business.

(d) AP property had been Defendant No. 1's (father's) personal property. A portion of it is with the Plaintiff and another with Defendant No. 3. Had division not happened, there was no reason for Defendant Nos. 1 and 2 to shift their business from there, handing over the same to Plaintiff and Defendant No. 3.

(e) If division had not happened, no explanation has come from the plaintiff as to why he did not object to the use, albeit in a partial manner, of the partnership firm's name, along with the location-suffix.

(f) Apparently, plaintiff's assessment order for Assessment Year 1980-81 records his admission that the firm was "under dissolution". Learned Single Judge reasoned that since the case of the plaintiff as per the pleadings has been that the firm was never dissolved, and even Defendant Nos. 3 and 4 who denied division but admitted dissolution, therefore, the "under dissolution" argument was without merit. Moreover, there was no requirement to intimate the Income Tax Office about dissolution of partnership firms.

(g) It was unlikely that after dissolution, the partners would divide movable assets, but not immovable assets.

(h) Partners of the firm were all family members, who agreed to a settlement; therefore, it is not open to the Court to assess whether the value of the properties allocated upon division was as per the shares of each partner in the partnership, since nothing prevents a partner from taking less than his share at the time of dissolution.

(i) Absence of the Schedule did not disprove division, which had been proved by the conduct of the parties since 1979.

(j) Even though all parties stated before the Competent Authority under the Urban Land (Ceiling & Regulation) Act, 1976 that the Naraina property was owned jointly by them, there was no doubt over the factum of division, especially in light of the explanation that so asserting before the authority-which was done consensually by all parties-prevented the authority from acquiring the excess land, which it would have had it been told that the property had gone to the share of Defendant Nos. 1, 2 and 5 only.

6. Learned counsel for the plaintiff-appellant argued before this Court that the impugned judgment fell into error. He emphasized on the absence of the schedule to the Dissolution Deed dated 22.09.1979 to assail the finding of division of immovable property having taken place. In the absence of the schedule, as was required by the Dissolution Deed, the parties had failed to explain how and in what manner the division of the immovable properties came about. He relied on the cross-examination of DW-1 (Defendant No. 2 in the suit) wherein he admitted that no schedule had been prepared; on DW-2's (Defendant No. 3 in the suit) testimony that the distribution was only a mutually agreed working arrangement; on DW-2/Defendant No. 3's cross-examination wherein he admitted that Defendant No. 1 (their late father) distributed stock and machinery but not the properties; and lastly, on the affidavit of Defendant No. 4 (DW-3) wherein he gave the same version as Defendant No. 3.

7. It was further urged that the learned Single Judge failed to consider that for the MMR property (which belonged to Defendant No. 1 in his personal capacity) plaintiff was paying rent on the basis of Lease Deed dated 01.10.1979; therefore, it cannot be said that the same came to him by fact of the dissolution, and the partition subsequent to it. Furthermore, he contended that the observation that the AP property had not been acquired by the government was totally misconceived, as it was in lieu of the AP property that the Naraina property was allotted by the Delhi Development Authority (DDA). He however, did not deny that the possession of the AP property had remained with the plaintiff, and had not been taken over by the government.

8. The main thrust of the plaintiff's case therefore was that there was no written proof/documentation about the distribution of the immovable properties. He further asserted that the distribution in terms of the alleged Family Settlement document dated 15.07.1979 (which was, in the alternative, sought to be relied upon by the defendants to assert that distribution had indeed taken place) was itself contrary to the case set up by the defendants in their written statements. He also urged that even though the partnership had discontinued business, the firm M/s. Royal Safe Co. still continued to exist in the records of the Sales Tax and Income Tax departments. In this regard, counsel relied on the testimony of PW-3 Satish Kumar, an official from the Sales Tax Authority who had proved all the Assessment Orders in respect of the partnership firm from 1980 to 1988. Counsel further stressed that no intimation had been sent to the Registrar of Firms.

9. Lastly, plaintiff's counsel urged if the defendants' version is to be believed, then what has come to the plaintiff (who had 20% share in the partnership firm) is only 1/3rd portion of the MMR property on rent, which admittedly belonged to his father late Joginder Singh (Defendant No. 1), when the firm possessed 3 other prime properties (viz. AP, Naraina and SE properties). This clearly could not have been mutually agreed.

10. The Respondent Nos. 1 and 4 (Defendant Nos. 2 and 5) were both

represented by a common counsel, Shri Sandeep Agarwal. None appeared for the other two respondents. Shri Agarwal defended the impugned judgment, contending that the division of immovable property had already taken place, as found by the learned Single Judge. He sought dismissal of the appeal, urging that, inter alia, the conduct of the parties was proof that the arrangement/settlement was meant to be final. Learned counsel fully supported the reasoning of the learned Single Judge.

11. This Court would first deal with the question of how evidence of the defendants had to be dealt with. The learned Single Judge rejected the submission of the plaintiff, to the extent he relied on the oral evidence of some of the defendants, i.e. the second and fourth defendants, who deposed as DW-2 and DW-3. The plaintiff's reliance on the evidence of Defendant No. 3 (DW-2) and Defendant No. 4 (DW-3) was, in the opinion of the court, rightly rejected by the learned Single Judge on the ground that it was inconsistent with their pleadings. (Ref. Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, and Viswalakshmi Sasidharan (Mrs) and Others Vs. Branch Manager, Syndicate Bank, Belgaum, . It is far too well established that no amount of evidence contrary to the pleadings can be gone into.

12. The plaintiff has contended that despite him having had 20% share in the partnership, he only got 1/3rd share in the MMR property, for which too he used to pay monthly rent to his father Defendant No. 1; however, he failed to account in his argument that he has also been in possession of the AP property. In any case, it is not a requirement of law that distribution of assets upon dispersion of a joint family, shares mathematically equal to those each sharer possessed have to be necessarily given. In the present case, the firm was a joint Hindu family entity. As long as the distribution is mutually agreeable amongst the partners, there is no requirement that it should be in accordance with the share of each partner, and that it should be evidenced by a formal document setting out the respective shares of each party. This would not be required when the partners are members of the same family, like in the present case.

13. This court is conscious of a considerable body of case law which suggests that family arrangements which promote peace, to overcome strife and conflicts, have to be construed broadly, and a minute scrutiny about the entitlements should not be undertaken, as long as the Court is satisfied about their bona fide and voluntary character. In Potti Lakshmi Perumallu Vs. Potti Krishnavenamma, it was held that:

No doubt, a family arrangement which is for the benefit of the family generally can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. It is quite clear that there is complete absence of evidence to show that there was such an occasion or the arrangement indicated in the will was acted upon. The letter Ex. B12 upon which reliance was placed before the High Court on behalf of the defendant has not been found by it to be genuine.

The defendant had also pleaded that the provisions under the will were given effect to but no satisfactory evidence has been adduced to prove that the plaintiff was in enjoyment of the properties allotted to her under the will.

In *Kale and Others Vs. Deputy Director of Consolidation and Others*, and subsequently in *Hansa Industries Pvt. Ltd. and Others Vs. Kidarsons Industries Pvt. Ltd.*, , the Supreme Court has consistently ruled on the sanctity of family arrangements. The following extracts from *Kale (supra)* briefly sums up the position:

9.... A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour...

Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be educed into the form of the following propositions:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
- (3) The family arrangements may be even oral in which case no registration is necessary;
- (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

13. In *Sahu Madho Das and Others Vs. Mukand Ram and Another*, , this Court appears to have amplified the doctrine of validity of the family arrangement to the farthest possible extent, where Bose, J. Speaking for the Court, observed as follows:

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present.

In *Ram Charan Das Vs. Girjanandini Devi and Others*, this Court observed as follows:

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word "family" in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having

a right of succession or having a claim to a share in the property in dispute....The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.

(emphasis supplied)

14. In *Om Parkash and Another Vs. Ram Nath and Another*, the Court held that the intention to leave things as they were could be seen from the conduct of the plaintiff partner in moving out of the firm by accepting the goods or articles and then never taking interest in the firm for sixteen years. The court said that no earthly reason could be shown for remaining silent for over 16 years and then filing a suit for dissolution and accounts.

15. Whilst the argument of the plaintiff that the family settlement or the deed of dissolution are not binding because they appear to be incomplete documents, appears attractive, there is no gainsaying that the court has been approached after a considerable period of time. During this period, the plaintiff and defendants have been enjoying the properties which fell to their shares, in accordance with the arrangements that they had worked out. No doubt, the plaintiff and defendants were members of a firm; equally, that firm comprised only of family members, i.e. brothers and their father. The best evidence in the form of bank accounts of the firm, and sales tax assessments to show that the business was continuing or had continued in a certain manner, ought to have been brought on record. If the plaintiff is right in contending that the firm was never dissolved, there is no explanation forthcoming how the assets and liabilities, movables, and contracts of the firm were dealt with. By all accounts, the plaintiff appears to have willingly and voluntarily accepted the arrangement, set up his own business, and reaped its benefits. He nowhere states that any effort was made to seek his share in the firm. No bank account statements disclosing that the accounts had become defunct, or had become in operational, or anything to that effect, was shown to the court. In view of the foregoing discussion, the Court is of opinion that the findings and judgment of the learned Single Judge in the present case do not call for interference; the appeal and pending applications, being meritless, are, therefore, dismissed without any order as to costs.