

(2001) 09 DEL CK 0238
In the Delhi High Court
Case No : Suit No. 3260/89

Sh. R.N. Sawhney

APPELLANT

Vs

Sh. Roshan Lal Sawhney and Another

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Citation : (2001) 09 DEL CK 0238

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : B.N. Nayar, for the Appellant; O.P. Verma, for the Respondent

Judgement

V.S. Aggarwal, J.—Lajpat Rai Sawhney had purchased and built property bearing no. 30/5-6 Ramesh Nagar, New Delhi in an auction from Ministry of Rehabilitation in the year 1955. After having purchased the property he had applied for transfer of the ownership rights in his favor to the Assistant Settlement Commissioner, P Block, New Delhi New Delhi. He died on 26th July, 1957 leaving behind two sons Ram Nath and one Pishori Lal. Pishori Lal has since died leaving behind his wife who had also died besides Roshan Lal, defendant no. 1 and Swaran Kanta, defendant no. 2.

2. The present suit has been filed by the plaintiff seeking partition of the property and rendition of accounts asserting that his brother Pishori Lal died in 1977. After the death of Pishori Lal his wife and children for substitution of their names as successors in interest of Pishori Lal with respect to his 1/2 share in the above said property. It was so transferred. Pishori Lal was in the military service and after his retirement he shifted on the ground floor of the property. plaintiff asserts that defendant no.1 who is the son of Pishori Lal is now collecting rent of the first floor of the suit property for self and on behalf of the plaintiff. the plaintiff had thought it expedient and called upon defendant no.1 for partition of the property. It has not been done claiming that he is the owner to the extent 1/2 share. The present civil suit referred to above has been filed.

3. In the written statement filed defendant no.1 has contested the civil suit. It is asserted that the suit is not maintainable because plaintiff has no right to claim the partition of the property which exclusively belonged to defendant no.1. The plaintiff has already taken the properties which were jointly owned and disposed of the same without giving the defendants any share. It included agricultural land and houses in the village in Punjab which is the native place of the plaintiff and the defendants. plaintiff is also alleged to have spent the entire savings of his father without giving defendant no.1 any share in it. The suit is stated to be not maintainable.

4. On merits defendant no.1 did not dispute the relationship of the plaintiff but asserted that he has taken every penny which falls to his share out of the said property. When the father of the plaintiff died he made good the entire savings and after that has filed the present suit. Defendant no.1 is not even aware of the details of the ancestral property. He suspected that plaintiff must have fabricated false documents.

5. On 8th March, 1994 this court had framed the following issues:

1. Whether the plaintiff is entitled to claim partition in view of the averments contained in paras 1 to 3 of the preliminary objections in the written statement?

2. Whether defendant no.1 is entitled to the whole of the house bearing no. 30/5-6 Ramesh Nagar, New Delhi?

2. Relief.

6. Issues 1 & 2: Both these issues are inter connected and therefore can conveniently be disposed together. it is on basis of these issues that it has to be seen that if the plaintiff has any share in the property particularly he has already availed of the property left by the father of the plaintiff or in other words grand father of defendant no.1.

7. In support of its claim the plaintiff had examined Ram Babu, a clerk of the Ministry of Urban Affairs and Employment, PW1. He had brought the record pertaining to the suit premises i.e. 30/5-6 Ramesh Nagar, New Delhi. He stated that Ex. PW 1/1 is the letter addressed to Lajpat Rai Sawhney. The order had been passed by Assistant Settlement Commissioner. Pishori Lal and Ram Nath were substituted in place of Lajpat Rai Sawhney, a copy of that letter was proved as PW 1/2. He proved the other letter signed by managing officer, copy of which was PW 1/3. The witness had not been cross-examined.

8. The plaintiff also appeared as PW 2 to state that his father had purchased the property in question and shortly after the death of his father his mother also expired. the property was inherited by the plaintiff and his brother. they had made a joint application to Assistant Settlement Commissioner for substitution of their names as successors in interest. His brother died leaving behind defendant no. 1 and 2 as the two children. He stated further that after verification the managing officer had only substituted the name of defendant no. 1 and 2 the

extent of 1/2 share in the suit property. The witness went on to add that his father owned agricultural land in Pakistan. In lieu of this land he was allotted agricultural land in district Ludhiana. The land was barren and unproductive. His brother Pishori Lal was looking after the Same. The land was mutated in the name of the plaintiff and his brother after the death of their father. He stated that he had sold his half share and produced copy of the Jamabandi as PW 2/1. According to the witness the property in question is joint. During cross-examination the witness stated he did not owned any property in India before the death of his father and that he had never stayed in the suit property but used to visit the premises where his parents were residing. He denied the suggestion that after the death of his father Pishori Lal used to manage the entire property. He denied the suggestion further that after the death of his father he was ousted or debarred from having any claim in the said property or that it was because of this very reason no partition was claimed on an earlier occasion.

9. As against this evidence defendant no.1 appeared as DW1 and added that his father died in December 1976. At that time he was only 9 years old. Till the time of his death his father had be living in the house in question. plaintiff had never visited their house. His father had told the plaintiff that since he was in the Army the plaintiff was in possession of the all the jewellery. money etc. of the father of the plaintiff and that he was not left with any share in the said property in dispute. The plaintiff had not given them any share of the other assets left by his father. The plaintiff is stated of have never been in possession of the property.

10. In addition to that Chattar Singh. Assistant from L & amp; DO Department, Nirman Bhawan was examined. he stated that, as per the office record, a letter was written by Pishori Lal to the Settlement Commissioner who as per the record no order had been passed on letter DW 2/1. The last witness examined was Tek Ram, Head Constable, as DW 3. He stated that summoned record is not available.

11. The Evidence on the record, brief resume of which has been given above clearly indicates that it was the father of the plaintiff or in other words, the grand father of defendant no.1 who had purchased the property. Ex. PW 1/1 and PW 1/2 clearly show that the property had been mutated taking the plaintiff to be the half shareholder of the entire property. The contention of the defendant no.1 that in fact the plaintiff had utilised the other assets left by his father and was left with no share in the said property necessarily must be rejected. This gets fortification from the fact that Ex. PW 2/2A, is the copy of the sale deed with respect to the land in which the plaintiff had only described that he has half the share in the said property. In other words, it cannot be termed that plaintiff had utilised the other properties of his father to his own benefit or that it was to the exclusion of defendant no.1.

12. Ex. PW 1/2 order passed by the Assistant Settlement Commissioner on 28th August, 1958. It reveals that after the death of the father of the plaintiff the property was mutated in his name and that of his brother to the extent of 1/2

share. Even when the brother of the plaintiff Pishori Lal died mutation in the name of defendant 1 and 2 and their mother was effected vide PW 1/3 to the extent of 1/2 share of the said property in dispute. therefore, it is too late in the day for defendants 1 and 2 to assert and allege that in fact they are the owners of the entire house or that the plaintiff does not have 1/2 share therein. The contention of the defendants in this regard necessarily must be repelled.

13. The statement of defendant no.1 who appeared as DW 1 also does not demolish the claim of the plaintiff. The oral testimony by no stretch of imagination prove that the documentary evidence on the record is invalid and is incorrect.

14. During the course of submissions learned counsel for the defendant stated that plaintiff had been excluded inherit the property. Even this contention is devoid of any merit firstly because there is no plea in the written statement and even if for sake of argument it was to be considered there was no reliable evidence that plaintiff had been excluded from inheriting the property. The documents on the record clearly establishes that plaintiff was recognised in the departmental papers to be the owner of 1/2 share. The predecessor in interest of defendants 1 and 2 or defendant 1 and 2 themselves never challenged this fact. It must therefore be held that plaintiff is the owner of 1/2 share in the property in dispute. Issues are decided in favor of the plaintiff.

15. Relief: For these reasons a preliminary decree for partition is passed. The plaintiff is declared to be the owner of 1/2 share in the property 30/5-6 Ramesh Nagar and defendant no.1 and 2 will be taken to the owners of the other half. Defendant no.1 is to give accounts respecting the rent collected by him. Shri Ashish Kumar, Advocate is appointed Local Commissioner to partition the house by metes and bounds and also to take accounts from the first defendant. He will be paid Rs. 10,000/- as his fees which shall be payable by plaintiff and shall be subject to further orders of the court. A copy of the plaint as well s the plan of the house shall be supplied by the plaintiff to the local commissioner.

16. It be listed before the Joint Registrar (O) on 22nd February, 2002. List before the court only after the report of the local commissioner is received.