
(2009) 07 DEL CK 0200
In the Delhi High Court
Case No : CS (OS) 2078 of 1995

Shri Shyam Lal

APPELLANT

Vs

Shri Khushal Chand Ahuja and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0200

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Akshay Makhija, for Sanjiv Bahl, for the Appellant; Sanjeet Singh, for the Respondent

Judgement

S. Ravindra Bhat, J.—The plaintiff sues the defendants for partition claiming 1/3rd share in the property bearing No. 3/55, Old Rajinder Nagar, New Delhi (hereafter referred to as suit property).

2. The facts emerging from the pleadings are that the plaintiff and the father of defendant Nos. 1-8 Late Govind Ram Ahuja, who died in August, 1989 and Triloki Nath Ahuja, the ninth defendant were the three sons of Late Murlidhar Ahuja. The plaintiff claims 1/3rd share in the suit property as a joint undivided owner. According to him, Murlidhar Ahuja expired on 22.2.1949 and was survived by the present parties to the proceedings. It is stated that the said property was allotted to Late Murlidhar Ahuja in the wake of the country's partition after he migrated to India.

3. The plaintiff has, in support of his submissions, alluded to a conveyance deed executed by the President of India conferring lease hold rights in respect of the suit property on 21.11.1961. The same are marked as PW-1/1 and PW-1/2.

4. The plaintiff also relies upon a certified copies of order dated 19.10.1962 by the Assistant Settlement Officer mutating the property in his favour jointly with his brothers.

5. The common defence made out in the written statement of defendant Nos. 1-8 (who have contested these proceedings) is that the parties had conveniently partitioned the property soon after the death of Murlidhar Ahuja, in 1949. They rely upon the circumstance that the three sons of Late Murlidhar Ahuja are in occupation of distinct portions of the property. It is also alleged that one of the sons, defendant No. 9 is a tehbazari holder and carries on his trade from a portion earmarked for this purpose.

6. It is also alleged that the ninth defendant has constructed upon a portion of the property without any hindrance or objection by the plaintiff and the other co-owners/defendant No. 1-8. On the basis of the pleadings and the materials on record, this Court had framed the following issues on 17.08.2001

1. Whether the Suit filed by the plaintiff is time barred?

2. Whether the Suit has been properly valued for the purposes of court fee and jurisdiction? OPP

3. Whether the suit property has already been partitioned as alleged in para 3 of the written statement? OPD

4. If issue No. 3 is not proved, whether the plaintiff is entitled to the partition of the suit property and what are the shares of the parties in the suit property? OPP

5. Relief.

Issue No. -1-

7. The common written statement filed in this case does not object the Suit on the ground of limitation. Besides it is a settled law that there is no period of limitation prescribed in the case of Suit for partition. In the circumstances, issue is answered in favour of the plaintiff and against the defendants.

Issue No. -2-

8. No arguments were made on this issue on behalf of the defendant; in any event, in the event of the plaintiff succeeding in the claim, at the stage of final decree, the shares would have to be appropriately valued and Court fee paid. This issue is accordingly answered.

Issue No. -3 & 4

9. These issues go to the root of dispute between the parties. The plaintiff asserts that the property is owned jointly and that all parties (i.e. the plaintiff, defendant Nos. 1-8 being the heirs of Govind Ram Ahuja) and Triloki Nath Ahuja are entitled to 1/3 share each as the heirs of the original allottee i.e. Murlidhar Ahuja. The contesting defendants, on the other hand, submits that partition has effectively taken place sometime in 1949 around the time of the death of Murlidhar Ahuja. Concededly, there is no documentary evidence in support of the defendants arguments about partition having agreed in 1949. Defendants examined DW-1, i.e., Om Prakash Ahuja, who is also the second defendant in the

Suit and one of the heirs of Govind Ram Ahuja and DW-2 Raj Kumar Ahuja, the son of ninth defendant. They deposed more or less in the same way. In the cross-examination, DW-1 admitted that he was born in 1953 after the death of Murlidhar Ahuja and that the partition settlement never took place in his presence. He also conceded that no documents had been executed, partitioning the property, and Govind Ram Ahuja did not write any letter or communicate to any authority about the partition. He states that L&DO prepared joint lease deed in 1966 in the names of three sons of Murlidhar Ahuja i.e. his father Govind Ram Ahuja, plaintiff and the defendant No. 9.

10. The defendants rely upon what are termed as admissions by the plaintiff in the course of his cross-examination. In the plaintiffs cross-examination, the defendants were able to elicit the existence of three kitchens in the premises and also a statement about some mutual understanding between all legal heirs of Late Murlidhar Ahuja that one room and kitchen were to be occupied by each legal heir. The witness i.e. plaintiff also stated that he did not contribute any money towards the alteration or renovation made by DW-2, son of defendant No. 9 in his portion that formed a part of the property. It was submitted that on the strength of these, the plaintiff has unambiguously admitted to the parties and that he never objected to a construction of a distinct portion by the ninth defendant.

11. Learned Counsel Mr. Sanjeet Singh persuasively submitted that the above circumstances bear out the defendants arguments that there was a partition to the mutual satisfaction of all parties sometime 1949, which is evidenced by the by their conduct; he further emphasized on the statement of the plaintiff that all co-sharers of Late Murlidhar had been occupying the property according to their mutual understanding.

12. The above discussion shows that the defendants dispute the plaintiffs claim for partition on the ground that the Suit property had been partitioned in 1949 itself. The defendants concededly were unable to produce any evidence in support of this plea. It is undisputed position that in 1966, the lease deed was prepared in the names of the plaintiff and his brother i.e. the father of defendant Nos. 1-8 and the 9th defendant. No doubt, the plaintiff has deposed about existence of some mutual understanding with regard to the occupancy of the property by the three co-sharers. The defendants have also been able to secure a concession that there were three kitchens in the premises.

13. It is a matter of record that construction on one portion of the property was carried out by ninth defendant. The defendants contend that there is no need for a written document to evidence the partition deed. It is also urged that partition can be inferred through conduct. There may not be any dispute on these propositions. The law is settled to this extent that oral partition may be evidenced by memorandum drawn later and even documents which purport to be something else can be treated as settlement. The question, however, is whether in the facts of this case, the defendant has been able to successfully establish a

partition in 1949 was as to non-suit the plaintiff claim

14. The Suit property is a plot allotted to Late Govind Ram Ahuja in the year 1949. The DW-1/1 mentions a dimension of the land as 85.9 Sq. Yds. It is a common case of the parties that the land is constructed only to the extent of a ground floor. Apparently, the parties have been living together for the last 60 years or so in distinct portions. In such circumstances, where the original allottee owner dies and is survived by heirs which has substantial family, some kind of understanding is inevitable and perhaps necessary. Failing such living on a day-to-day basis could be a nightmare. The evidence brought on the record discloses that the parties entered into a lease deed with the President of India in 1966; all the proposed heirs (i.e. the heirs of Late Murlidhar Ahuja) were shown as co-owners. This clearly establishes that each one of them had undivided 1/3rd share to the property.

15. The admissions or statements elicited from the plaintiff, which are highlighted by learned Counsel during the course of the submissions, in the opinion of the court, cannot be so construed (in the circumstances of this case) as to inevitably lead to an inference of partition for more than one reason. The precise time when such partition took place is unknown. The plaintiff stated in the course of his deposition that he was married in 1959. If such were the position, it is unclear whether the three distinct kitchens, separate portion was earmarked then or at a later date. Similarly, the fact that the parties concerned occupied different portions without any clearly demarcated entitlement by itself would not lead to the inference that they wish the partition in the manner as existing. This aspect is important, because the existing arrangement does not determine the shares in the property, nor they indicated which is the only basis for future development or construction on the suit property. There can be no dispute about the fact that all the legal heirs of late Murlidhar Ahuja are equally entitled to the shares in the land. In view of this discussion, these two issues are held in favour of the plaintiff and against the defendants.

Issue No. - 5

16. In view of the findings in Issue No. 3&4, it is held that the plaintiff is entitled to 1/3rd share in the Suit property; the other 1/3rd shares each would fall to defendant Nos. 1-8 on the one hand and defendant No. 9 on the other.

17. During the course of submissions, the counsel for the defendant has stated that yet another attempt could be made to try and resolve their disputes through mediation. Since the Court has now rendered its findings as to the entitlement of the respective parties to the share in the partition, they are first directed to approach the Delhi High Court Mediation and Conciliation Centre, for working out the modalities for partition by meets and bounds or by any other appropriate method.

18. List on 17th August, 2009 before the Delhi High Court Mediation and Conciliation Centre. Parties or their representatives shall be present before the

Delhi High Court Mediation and Conciliation Centre on 17th August, 2009.

19. List on 18th September, 2009 for further proceedings. In case mediation efforts cannot succeed, the Court shall proceed by appointing Local Commissioner for partition by meets and bounds.

20. For the above reasons, the Court is of the opinion that the defence setup by the defendant that the Suit property was partitioned in 1949 cannot be countenanced. The plaintiff has, therefore, established his entitlement to 1/3rd share in the property. Let preliminary decree be drawn up in these terms.