

(2011) 11 DEL CK 0217

In the Delhi High Court

Case No : Regular First Appeal 25 of 2009

Trilochan Kaur

APPELLANT

Vs

S Jagat Singh and Others

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Transfer of Property Act, 1882 — Section 53

Citation : (2011) 11 DEL CK 0217

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; Sachin Kumar Gupta, Advocate for R-1 and 2, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal filed u/s 96 CPC (CPC) is to the impugned judgment of the trial

Court dated 1st September, 2008 which decreed the suit for possession and recovery by inter se granting a relief of monetary value to the share of the appellant/plaintiff in the suit property.

2. I may note that all the defendants were ex-parte in the trial Court and it is only appellant/plaintiff who lead evidence and proved her case. The

trial Court had for some inexplicable reasons decreed the suit for partition by suo moto deciding the monetary value of the share of the

appellant/plaintiff in the suit property although, the respondents/ defendants were proceeded ex-parte, as stated above.

3. The brief facts of the case are that the appellant/plaintiff filed a suit for partition/recovery of possession, declaration and injunction with respect

to the suit property being 27/59, Old Rajender Nagar, New Delhi. It was pleaded

that the suit property belonged to Sardar Mohar Singh, who was the grandfather of the appellant/plaintiff. Sardar Mohar Singh had a sale deed in this favour of the suit property dated 17th January, 1969 and he died on 4th January, 1980 leaving behind his three sons namely, Sardar Balwant Singh, Sardar Thakur Singh and Sardar Jagat Singh. With respect to the appearance of the respondent/defendants, the trial Court has observed following in para 15 of the impugned judgment.

15. Defendants No. 1,2,9,14,15 and 17 were proceeded ex-parte on 24.11.05 while the other defendants except Defendant No.12 and 13 were held ex-parte on 04.02.06 Defendants No. 12 and 13 were proceeded ex-parte on 06.10.07. On the application of Defendants No. 1 and 2, ex-parte order against them were recalled on 17.07.06 however, they have again been proceeded ex-parte on 03.03.08.

4. So far as the entitlement of the appellant/plaintiff is concerned, the trial Court held in favour of the appellant/plaintiff by referring to a stand of the defendants inspite of the fact that they were ex-parte. The relevant observations of the trial Court in this regard are contained in paras 25 to 29 of the impugned judgment and which reads as under:-

25. Defendant No.1 has contended that there was an oral family partition in 1974-75 whereunder the proerpty of Amar Colony came to the share of S Balwant Singh, that of Vasant Vihar to the share of S Thakur Singh and the suit property to the share of Defendant No.1. Had that really been the case, Defendant No.1 would not have waited for 23 years after demise of this father, for getting the property mutated in his name by twisting and misrepresenting the facts before, Defendant No.11. The factum of partition is also not reflected in correspondence, if exchanged between the parties not find support from the version put forth by Defendants No. 10 and 11.

26. A meek plea of Defendant No.1 having become owner of the suit property by way of adverse possession having resided in it continuously from August, 1980 without interference from any of the family members was also raised in the written statement. It however, was not put into service in conducting cross-examination of the Plaintiff. It has also not been shown that since when the possession of Defendant No. 1 became hostile to the knowledge of Plaintiff. The plea I the teeth of ownership claim on the basis of conveyance deed dated 11.02.03, Ex. PW2/1 is not

only contradictory but also self destructive.

27. The stand of Defendant No. 10 and 11 that Defendant No. 1 had represented himself to be the only legal heir of S Mohar Singh and furnished

affidavits, indemnity bond, undertaking etc. for substitution of his exclusive name in the records of Defendant No.11 in place of the deceased title

holder of the suit property and getting conveyance deed executed in his favour, has not been opposed/contested by Defendant NO.1. Apparently

the conveyance deed Ex.PW2/1 was executed in his favour on his false representation. That however would not affect the title of Defendants No.

12 and 13 as they have been able to show themselves to be the bonafide purchasers of the property for value without knowledge of the correct

actual facts, per section 53 of the Transfer of Property Act. Even though sale deed in their favour has been grossly undervalued, yet their bonafide

entitlement has not been challenged by the plaintiff.

28. In view of the above reasons it crystallizes that property NO. 27/59, Old Rajender Nagar, New Delhi remained joint property of the legal

heirs of S. Mohar Singh till it was fraudulently disposed off by Defendant No.1 to Defendants No. 12 and 13 who, in turn further disposed it off to

Defendants Nos. 14 to 17.

29. The three sons of deceased owner were entitled to equal shares in the property ie 1/3rd each. Father of Plaintiff is survived by four daughters

and one son who inherit his share of suit property equally. Plaintiff thus was entitled to 1/15th share in the suit property.

5. A reading of the aforesaid para shows that the appellant/ plaintiff was held entitled to 1/15th share of the suit property and in view thereof the

trial Court, by a procedure which is totally unknown to law, valued for the benefit of respondents/defendant Nos. 14 to 17, although they were ex-

parte. The monetary share valuing to the share of the appellant/plaintiff by observing as under:-

30. Since the suit property has already been disposed off, the relief of possession of her share in it cannot be granted to the Plaintiff. The relief of

permanent injunction for restraining the Defendants from making addition, alteration in it, transferring, alienating or in any other manner creating

thirdparty interest or charge qua the suit property has also been rendered infructuous. Instead of making a preliminary decree therefore, I would

proceed to dispose the suit off finally.

31. The Defendant No. 1 had sold the suit property to Defendants No. 12 and 13 in April, 2003 for a sum of Rs.6,35,000/-. Even then the

valuation of suit property at Rs15,00,000/- by the Plaintiff in the suit, was resented by him. No evidence about the market value of suit property at

the time of filing of suit has been produced. The valuation convessed by the Plaintiff was also not put to test. The value of the property estimated by

the Plaintiff thus is taken to have been duly proved. As the suit property is o more capable of partition by metes and bounds, the Plaintiff is entitled

to recover her monetary share from its market value.

32. Judicial notice of the fact that prices of immovable properties have grown by leaps and bounds during last 4-5 years, can legitimately be taken.

After giving fair adjustment of the expenses incurred by Defendant No.1 in maintenance, repairs and upkeep of the suit property during all these

years, by adopting conservative measure the value of property must have risen three times during the pendency of the suit. Thereby raising the

monetary share of Plaintiff in the suit property to Rs. 3,00,000/- as on date.

33. As a corollary, final decree of partition holding Plaintiff to be entitled to recover a sum of Rs. 3,00,000/- from Defendant No. by way of her

share of the joint suit property is hereby passed in her favour and against Defendant No.1. The amount shall be paid by Defendant No.1 to her

within a period of 3 months failing which Plaintiff shall be entitled to recover it with interest at the rate of 12% per annum w.e.f 01.12.08 till

realization.

6. The impugned judgment is therefore clearly illegal and deserves to be set aside because once it is found that the appellant was 1/15th share

holder of the property and the same was illegally sold, the buyer of the property, therefore, cannot have any legal right, more so because they

never bothered to appear in the proceedings. It is unknown to law for a Court to suo moto, in view of the share of the appellant/plaintiff, grant

money decree with respect to the suit property.

7. I for once may not be aware of any provision of law whereby the appellant/plaintiff can only be granted a money decree for a share, although

the stage is only a preliminary decree to declare the share of the plaintiff/appellant. More so, as already stated above all the

respondents/defendants are ex-parte.

8. In view of the above, the impugned judgment and decree is set aside to the extent that the observations contained in paras 30 to 33 of the

impugned judgment, which is the operative portion of the judgment and set aside the operative operation of the judgment contained in para 29 and

which grants 1/15th share of the suit property to the appellant/plaintiff.

9. Accordingly, a preliminary decree is passed in favour of the appellant/plaintiff and against the respondents declaring the appellant/plaintiff entitled

to 1/10th share in the suit property being 27/59, Old Rajender Nagar, New Delhi. The other legal heirs of Sardar Mohar Singh and now who

include the grand children of Sardar Mohar Singh shall be entitled to proportional share in the suit property. The exact share of the suit property, to

which all the legal heirs being the sons and other legal heirs of Sardar Mohar Singh, will now be crystallized by the trial Court by passing a

preliminary decree declaring the share of even such legal heirs of Sardar Mohan Singh.

10. The appeal is, accordingly, allowed to the extent as stated above leaving the parties to bear their own costs. Parties to appear before the

District and Sessions Judge, Delhi on 21st December, 2011, on which date the District and Sessions Judge will mark the suit to a competent Court

for decision in accordance with law in terms of the observations made in the present judgment. Before proceeding to pass a final decree the trial

Court will issue notices to the necessary parties so as to draw final decree.

11. After passing of the preliminary decree, the trial Court will take further steps to pass a final decree in accordance with law.

12. The present appeal is disposed of accordingly.