

Ashok Kumar vs.rakesh Kumar & Anr

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Court : Delhi

Decided On : Sep-22-2017

Appellant : Ashok Kumar

Respondent : Rakesh Kumar & Anr

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on : September 22nd, 2017 RFA4532009 ASHOK KUMAR Appellant Through: Mr. Sacchin Puri, Sr. Advocate with Mr. Ravi Chawla, Mr. Vivek Luthra and Ms. Mehak, Advs. versus RAKESH KUMAR & ANR

... RESPONDENTS

+ RFA4542009 ASHOK KUMAR Through: Mr. Ajay Kohli and Ms. Bhumika Kapoor, Advs. for R-1 Ms. Ashima Puri, Adv. for R-5 AND Appellant Through: Mr. Sacchin Puri, Sr. Advocate with Mr. Ravi Chawla, Mr. Vivek Luthra and Ms. Mehak Tanwar, Advs. versus RAKESH KUMAR & ORS

... RESPONDENTS

Through: Mr. Ajay Kohli and Ms. Bhumika Kapoor, Advs. for R-1 Ms. Ashima Puri, Adv. for R-5 CORAM: RFA453/2009&RFA454/2009 Page 1of 13 HON'BLE MR. JUSTICE P.S.TEJI P.S.TEJI, J.

JUDGMENT1 The appellant has filed two appeals being aggrieved by the common judgment and decree dated 26.08.2009 passed by the learned Additional District

Judge, Delhi whereby the Suit no.60 of 2004 filed by the respondent no.1-herein has been decreed in his favour whereas Suit no.56 of 2004 filed by the appellant/plaintiff was dismissed. respondent-Rakesh Kumar 2. It is apparent from the record that two suits were filed by the parties against each other. Suit no.60/2004 was filed by the appellant (defendant no.2) and other defendants, namely, Diwan Chand (defendant no.1), Naresh (defendant no.3), Sanjay (defendant no.4), Smt.Saroj Sharma (defendant no.5), Smt.Sharda Chadha (defendant no.6), Smt.Madhu Agnihotri (defendant no.7) and Smt.Poonam Bhaskar (defendant no.8). The said suit was filed for declaration and partition with the prayer to declare the partition deed dated 01.03.1993 and gift deed dated 09.02.1999 as null and void and also to pass a decree for partition declaring the share of each of the member of the Hindu Undivided Family. Suit no.56/2004 was filed by the appellant-Ashok Sharma against the respondent-Rakesh Kumar and Rajat Sharma (defendant no.2). The said suit was filed for dissolution of partnership firm against the RFA453/2009&RFA454/2009 Page 2 of 13 and rendition of accounts. Both the suits were decided by a common judgment under challenge. The facts in brief are that the plaintiff/respondent

Rakesh Kumar is a member of a HUF with defendant no.1 (his father), defendant no.2/appellant to defendant no.4 are brothers, defendants no.5-8 are his sisters. After having migrated from Pakistan, out of the ancestral funds, property at West Patel Nagar (first property) and property at Gaffar Market (second property) were purchased in the name of defendant no.1-deceased father of the appellant. The parties were in a fiduciary relationship with each other being father and sons. The first property is being used for residential purposes and second property is being used for the family business of watches. The second property is the only source of income of the joint family. The plaintiff/respondent was and defendant no.2/appellant in the matter of accounts and taxation purposes for the shop. On the pretext of requirement for running of business and taxation purposes, defendant no.2/appellant and defendant no.1 got certain blank papers signed by the plaintiff/respondent. Ill feelings developed with defendant no.2/appellant and his father who tried to exclude the plaintiff/respondent from the family business and had not even accounted for the earnings. On 25.05.1999 plaintiff/respondent sought to talk to his father to enquire about the behavior of defendant

no.2/appellant when defendant no.1 asked him to vacate the shop completely relying upon his father the reasons for RFA453/2009&RFA454/2009 Page 3 of 13 and house and to look for his own livelihood and residence. It was further revealed by defendant no.1 that the entire properties of HUF had been partitioned as per the gift deed executed by him to the exclusion of all others and the copies of the same were given to the plaintiff/respondent. The documents were all false and fabricated and plaintiff had been cheated with respect to the same. Plaintiff/respondent requested the defendant no.2/appellant and his father for a peaceful partition of the property, but taken into consideration owing to the hostile attitude of all family members towards plaintiff/respondent no.1. It was alleged that the same was not in the written statement filed on behalf of the

4. defendant no.2/appellant and defendant no.1, it was objected that the properties were sought to be partitioned by way of the suit in question, as they did not form a part of the HUF. It was further stated that both the properties were acquired by the defendant no.1 (since deceased) out of his own income and in his individual name. The written statement further mentioned that both the properties were put in the common pool of HUF of defendant no.1 for taxation purposes but from time to time, partition was carried out. Deeds of confirmation for partition dated 12.08.1986 and 31.03.1993 were stood exclusively in the name of defendant no.1. It is further stated that a gift deed was also executed on 09.02.1999 for the first property executed and the properties RFA453/2009&RFA454/2009 Page 4 of 13 in question in favor of defendant no.2/appellant by the defendant no.1 to carry on the family business after him. Suit No.56/2004 was filed by the defendant

5. no.2/appellant seeking dissolution of partnership and rendition of accounts for running the second property i.e. the shop at Gaffar Market. Replications to the written statements were filed on

6. behalf of the defendants. On the basis of pleadings of the parties, following issues were framed by the Court below : (1) Whether the suit property is self earned property of defendant no.1?. If so, its effect?. (OPD1) (2) Whether the HUF properties of parties were partitioned by way of deed of confirmation of partition deed 12.08.1993 and 31.03.1993?. If so, in what manner (OPD1)

(3) Whether plaintiff is entitled to decree of declaration to the effect that the partition deed dated dated 09.02.1999 are null and void?. (OPP) (4)Whether plaintiff is entitled to decree of partition against the defendants?. (OPP)

(5) Whether the plaintiff is entitled to rendition of accounts and dissolution of partnership firm created partnership deed dated 07.08.1997?. (OPP)

(6) Whether defendant of suit no.is entitled to declaration that gift deed dated 01.03.1993 deed and gift RFA453/2009&RFA454/2009 Page 5of 13 09.02.1999 and mutation dated 19.05.1999 are null and void?. (OPD)

(7) Whether defendant no.1 had bequeathed the suit property in favor of defendant no.2 by way of will dated 09.12.1999?. OPD

(8) Relief.

7. To prove his case, the plaintiff/respondent examined himself as PW1 and thereafter he closed his evidence. Defendant no.2/appellant examined himself as D2W1, Dumesh Chadda as D2W2, Babu Lal -D2W3, Deepa Verma-D2W4. Defendant no.3 also appeared as a witness -D4W1 and Parveen Chadha as D2W5. Feeling aggrieved by the common judgment and 8. decree in the present suit, the present appeal has been filed.

9. Argument advanced by the counsel for the appellant is that partition deed dated 31.05.1975 was executed between the appellant, respondent-Rakesh Kumar and late Sh.Diwan Chand vide which the business of M/s Collegiate Watch Co. and rights in shop no.90, Gaffar Market, New Delhi were transferred in favour of late Sh.Diwan Chand while the appellant and respondent-Rakesh Kumar were paid Rs.10,000/- each. A confirmation of deed of partition dated 12.08.1986 was executed between late Sh.Diwan Chand, Naresh Kumar, Sanjay Kumar and late Smt.Phula Rani vide which ownership rights of the said shop were given up in favour of late Sh.Diwan Chand by all three and they were paid Rs.10,000/- each. The business of Collegiate RFA453/2009&RFA454/2009 Page 6of 13 Watch Co. was also taken over by late Sh.Diwan Chand. A confirmation of deed of partition dated 31.03.1993 was executed vide which house no.A-11-13, West Patel Nagar,

New Delhi, shop no.90, Gaffar Market, New Delhi and business of Collegiate Watch Co. was taken over by late Sh.Diwan Chand from his wife Smt.Phula Rani, appellant-Ashok Kumar, respondent-Rakesh Kumar, Sanjay Sharma and Akhil Sharma and they were paid Rs.50,000/- each. A gift deed dated 09.02.1999 was executed by late Sh.Diwan Chand vide which he gifted all his rights with respect to shop no.90, Gaffar Market, New Delhi in favour of appellant-Ashok Kumar. A will dated 09.12.1999 was executed by late Sh.Diwan Chand vide which he bequeathed all his movable and immovable properties to the appellant-Ashok Kumar. Further, it was argued that the above documents were admitted documents by the respondent and the same were acted upon by using them for taxation. It was further argued that the daughters of late Sh.Diwan Chand were not coparceners and the documents being oral did not require partition by metes and bounds. registration of said documents. It was further argued that the Court below erred in holding that the partition deed and gift deed were null and void. It was further argued that the Court below erred in holding that the properties in question were not the self acquired properties of late Sh.Diwan Chand. There was no necessity for RFA453/2009&RFA454/2009 Page 7 of 13 10. In support of the above submissions, learned counsel has relied upon the judgments in the case of Prakash & ors. v. Phulavati & ors (2016) 2 SCC36 Mukesh & Ors. v. Bharat Singh & Ors. 149 (2008) DLT114 Sparsh Builders Pvt. Ltd. v. Maharishi Ayurveda Products Pvt. Ltd. (2009) 163 DLT411 Nani Bai v. Gita Bai Kom Rama Gunge 1959 SCR479 Kale & Ors. v. Deputy Director of Consolidation and Ors (1976) 3 SCR202 Chanderwati v. Lakhmi Chand & Ors. AIR1988 Del 13, Nitin Jain v. Anuj Jain & Ors. 2007 (96) DRJ335nd Roshan Singh & Ors. v. Zile Singh & Ors. AIR 1988 SC881 11. On the contrary, counsel for the respondent-Rakesh Kumar has argued that the entire transaction by way of partition deed and deed of confirmation was the result of undue influence by the appellant and father being in a position to dominate the younger brothers with a view to usurp the entire property of the family. The family was joint and carrying on a joint family business in the shop in question. Business was controlled by the father and eldest son i.e. appellant and for smooth running of business and taxation purpose, they had been getting the signatures of respondent-Rakesh Kumar and other brothers on blank papers. The appellant had miserably failed to show on record that the alleged

partition deeds were without any undue influence. The documents relied upon by the appellant were sham and bogus. It was further argued that the partition deed dated 31.05.1975 was inadmissible being unregistered and the RFA453/2009&RFA454/2009 Page 8 of 13 consequent confirmation of deed of partition dated 12.08.1986 and 15.05.1993 were vitiated. In the partition deed dated 31.05.1975, the daughters were referred to as constituents of HUF having a share in all the assets, whereas in documents dated 12.08.1986 and 15.05.1993, they were not given any share in the assets of HUF.

12. In support of the above submissions, judgments in the case of Krishna Mohan Kul @ Nani Charan Kul and Anr. v. Pratima Maity and Ors. MANU/SC/0690/2003, R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr. MANU/SC/0798/2003, Mohan Lal Bhatnagar v. Kamlesh Kumar Bhatnagar & ors. MANU/DE/4422/2011, Jagdish Rai v. Tek Chand and Ors. MANU/DE/1111/2001, Chanderwati and Ors. v. Lakhmi Chand MANU/DE/0466/1987 and Manoj Jain v. Krishna Jain & ors. (CS(OS) 2413/2007 decided by this Court on 04.10.2012) have been relied upon.

13. I have heard the arguments advanced by the counsel for the parties and have gone through the record available on record. The main grouse of the appellant is that the Court 14. below erred in holding that the properties in question were not the self acquired properties of late Sh.Diwan Chand and that the documents executed in the present case are null and void. Case of the appellant is that the properties which were sought to be partitioned by the respondent-herein were not part of HUF and RFA453/2009&RFA454/2009 Page 9 of 13 lease deed The dated the same cannot be partitioned as the same were acquired by late Sh.Diwan Chand. 28.04.1962 Ex.D2W1/D1 was produced on record. Perusal of this lease deed shows that it was executed between the President of India and late Sh.Diwan Chand. Conveyance deed Ex.DW1/D2 is dated 26.12.1984. A perusal of this conveyance deed shows that the same was made as per Section 8 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It is apparent from the record that the suit properties were allotted to late Sh.Diwan Chand out of the compensation pool for payment of compensation and rehabilitation grants being a displaced person in lieu of his property in Pakistan. In view of the lease

deed Ex.D2W1/D1, both the properties i.e. house and shop in question were allotted to late Sh.Diwan Chand as a compensation and it cannot be said that the same were his self acquired properties. It is apparent from the deposition of the appellant-Ashok Kumar that both these properties were put in the common hotchpot of HUF of late Sh.Diwan Chand. Since it is the admitted case of the appellant himself that the said properties were put in the common hotchpot of HUF, then the same became part of joint property of all the coparceners and members of joint family.

15. So far as the contention whether the properties of HUF were partitioned by way of deeds dated 12.08.1986 and 31.03.1993, it is apparent from the record that a partition deed dated 31.05.1975 Ex.PW1/D1 was executed in which late RFA453/2009&RFA454/2009 Page 10 of 13 Sh.Diwan Chand, appellant-Ashok Kumar and Smt.Phoola Rani were the parties of the first part, whereas respondent-Rakesh In this partition deed Kumar was party of the second part. Ex.PW1/D1, there is no mention of the daughters of late Sh.Diwan Chand and the same also do not bear their signatures. It is also apparent that at the time of execution of this partition deed, daughters were unmarried. It is pertinent to mention that this partition deed was not a registered document. There is no mention of portion of defendant no.5 to 8 i.e. daughters of late Sh.Diwan Chand in the said partition deed. It is a settled law that while entering into a partition, all the parties connected thereto are either to give up their share or their share has to be mentioned therein. It appears that this partition deed was executed with the purpose of filing tax and thus had no value in the eyes of law being a sham.

16. Confirmation of deed of partition dated 12.08.1986 is Ex.D2W1/D4. A perusal of this deed also shows that the position remained the same. There is no mention of defendant no.5 to 8 in this deed also. This deed was executed in furtherance of partition deed Ex.PW1/D1. In Ex.D2W1/D4, the business of watches and shop in question was taken over by late Sh.Diwan Chand being Karta of smaller HUF. Since it has already been observed that this deed which was executed in the partition deed Ex.PW1/D1 was a sham furtherance of document and not admissible in the eyes of law being RFA453/2009&RFA454/2009 Page 11 of 13 unregistered, the right of appellant and respondent no.1 herein could not have

extinguished. Similar is the situation with regard to confirmation of deed of partition dated 31.03.1993 Ex.PW1/D2 in which also no share of defendant no.5 to 8 has been mentioned. In these three It all is an admitted fact 17. documents Ex.PW1/D1, Ex.D2W1/D4 and Ex.PW1/D2, there is no mention of rights and shares of defendant no.5 to 8 i.e. daughters of late Sh.Diwan Chand nor do they bear their signatures. It is also apparent from the record that since the partition deed Ex.PW1/D1 was not a registered document too, it creates suspicion in the mind of the court that it was executed in the manner as pleaded by the appellant. that Ex.D2W1/D4 and Ex.PW1/D2 were executed in furtherance of Ex.PW1/D1 which itself was a false fabricated document, so the other documents were did not have any legal sanctity in the eyes of the law. Contention of the appellant that since the partition deed was oral and need not be registered, is not acceptable as it has duly been established on the record that the properties in question were not partitioned by metes and bounds and it was an oral arrangement. It has also been established that all the above three deeds were sham documents as they did mention about the share and portion of all the coparceners of the HUF. Therefore, the judgments in the case of Prakash & ors. v. Phulavati (supra), Mukesh & Ors. v. Bharat Singh & Ors. (supra), Sparsh Builders Pvt. Ltd. v. RFA453/2009&RFA454/2009 Page 12of 13 Maharishi Ayurveda Products Pvt. Ltd. (supra), Nani Bai v. Gita Bai Kom Rama Gunge (supra), Kale & Ors. v. Deputy Director of Consolidation and Ors (supra), Chanderwati v. Lakhmi Chand & Ors. (supra), Nitin Jain v. Anuj Jain & Ors. (supra) and Roshan Singh & Ors. v. Zile Singh & Ors. (supra) are of no consequence and of no help to the appellant.

18. In view of the fact that the partition deed and gift deed were null and void being sham documents, nothing remains in the suit filed by the appellant that gift deed dated 09.02.1999 and mutation dated 19.05.199 were null and void since the properties in question were found to be a part of undivided shares of all the coparceners of HUF and the same were not partitioned by legally permissible document and the documents placed on record were found to be sham and bogus. suit of the 19. In view of the above discussion, this Court does not find any fault in the findings returned by the Court below while allowing the and dismissing the suit of the appellant-Ashok Kumar. There is no illegality or infirmity in the impugned judgment and decree. Same is accordingly upheld. Both the appeals are

accordingly dismissed. respondent-Rakesh Kumar 20. No order as to costs.
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