Dev Chander Sood & Ors vs.h.l.sud & Ors

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Court : Delhi

Decided On : Apr-06-2018

Appellant : Dev Chander Sood & Ors

Respondent : h.l.sud & Ors

Advocate for Pet/Ap. : Mr. Naresh Thanai Khushboo Singh

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

6. h April, 2018. CS(OS) 280/2011 & IAs No.1926/2011 (u/O XXXIX R-1&2 CPC) & 15149/2012 (of D-1 u/O XXXIX R-4 CPC) DEV CHANDER SOOD & ORS ..... Plaintiffs Through: Mr. Naresh Thanai Khushboo Singh, Advs. and Ms. Versus H.L.SUD & ORS CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 Through: Ms. Anisha Mahajan, Adv. ..... Defendants The three plaintiffs, namely (i) Dev Chander Sood; (ii) Pradeep Sood; and, (iii) Pramod Sood instituted this suit for partition and injunction against five defendants namely (a) H.L. Sud; (b) Swatantra Prakash Sud; (c) Ashish Sud; (d) Lalit Sood; and, (e) Neelam Gajri.

2. During the pendency of the suit, the defendant No.4 Lalit Sood died and had been substituted by his wife and two daughters namely (i) Geeta Sood; (ii) Sanya Sood; and, (iii) Anika Sood. The plaint was permitted to be amended during the pendency of the suit, according to the plaintiffs, to enable the plaintiffs to also claim the reliefs with respect to the gift deeds with respect to the immoveable

property subject matter of the suit executed by the defendant No.1, as disclosed in the written statement, advance copy of which was furnished to the counsel for the plaintiffs.

3. The case of the plaintiffs, as per the amended plaint dated 28th January, 2012, is (i) that dwelling house No.E-2, South Extension Part-I, CS(OS) 280/2011 Page 1 of 9 New Delhi belongs to the members of undivided family originally headed by Kishori Lal till his demise on 13th April, 1978 and thereafter by the defendant No.1 as Karta; (ii) that Kishori Lal had two sons namely the defendant No.1 H.L. sud and Ram Chander; (iii) that Ram Chander pre- deceased Kishori Lal and was not married; (iv) that plaintiff No.1 Dev Chander Sood, defendant No.2 Swatantra Prakash Sud and deceased defendant No.4 Lalit Sood are the sons of defendant No.1 H.L. Sud and the defendant No.5 Neelam Gajri is the daughter of defendant No.1 H.L. Sud; (v) that the plaintiffs No.2&3 Pradeep Sood and Pramod Sood are the sons of plaintiff No.1 Dev Chander Sood and defendant No.3 Ashish Sud is the son of defendant No.2 Swantantra Prakash Sud; (vi) that House No.E-2, South Extension Part-I was purchased for the benefit of the family; therefore sale deed was got executed in the name of defendant No.1; after the plot was purchased, a single storey house was constructed in the year 1961 and first and second floors were added in 1975-76; (vii) that the plaintiffs also contributed towards the cost of construction; (viii) that the property was purchased and constructed from the funds of Hindu Undivided Family (HUF) and was assessed in the name of HUF; (ix) that Kishori Lal was the Karta of Kishori Lal HUF which was assessed with the Income Tax Authorities; (x) that after the demise of Kishori Lal, the defendant No.1 became the Karta of Kishori Lal HUF and was maintaining accounts and filing Income Tax Returns with the Department; (xi) that besides the aforementioned property, HUF also had Account No.10732271872 with State Bank of India, South Extension Part-II, New Delhi Branch and Account No.493702010004912 with Union Bank of India, South Extension Part-II, New Delhi; (xii) that in October, 2006, the parties, to avoid any CS(OS) 280/2011 Page 2 of 9 dispute in respect of assets of HUF, discussed the modalities to distribute the assets owned by the HUF and it was agreed that the plaintiff No.1 and the defendants No.2 to 4 shall share 30% each of the assets of HUF and remaining 10% shall be shared by the defendant No.5; (xiii) that the understanding arrived amongst the parties was

reduced in writing in the form of an agreement which was retained by the defendant No.1; (xiv) that sometime in November/December, 2007, in pursuance to further discussions, the shares were worked out again with plaintiff No.1 and defendant No.2 getting 30% each and defendants No.4&5 getting 25% and 15% respectively and the same was reduced in writing and which was also retained by the defendant No.1; (xv) that the plaintiff No.2 has been residing in the house; (xvi) that the defendant No.1 however threatened to sell the property and which led to the filing of the present suit; (xvii) that the defendant No.1, in the advance copy of the written statement served on the counsel for the plaintiffs disclosed execution of (a) Gift Deed dated 20th March, 2009 registered on 21st March, 2009 with Sub Registrar-V, New Delhi vide Registration Number 3136, Additional Book No.I, Volume No.9140 at Pages 190 to 199, gifting 1/3rd suit property to defendant No.2 Swatantra Prakash Sud, (b) Gift Deed dated 13th April, 2009 registered on 15th April, 2009 with Sub Registrar-V, New Delhi vide Registration Number 4143, Additional Book No.I, Volume No.9181 at Pages 14 to 22, gifting 1/3rd suit property to defendant No.5 Neelam Gajri; and, (c) Gift Deed dated 24th April, 2009 registered on 27th April, 2009 with Sub Registrar-V, New Delhi vide Registration Number 4719, Additional Book No.I, Volume No.9204 at Pages 121 to 130, gifting 1/3rd suit property to defendant No.4 CS(OS) 280/2011 Page 3 of 9 Lalit Sood; and, (xviii) that the defendant No.1 has no right to gift any portion of the property.

4. The plaintiffs thus, besides the relief of partition of the property and the monies in the bank accounts aforesaid, have sought the relief of declaration of the Gift Deeds aforesaid as null and void and for cancellation thereof.

5. The counsel for the plaintiffs has informed that though the defendants had served advance copy of the written statement to the original plaint on the counsel for the plaintiffs and claimed to have filed the written statement but the same never came on record and the right of the defendants to file written statement was closed vide order dated 30th January, 2013. Attention is also drawn to the order dated 1st May, 2013 on the applications of the defendants being IAs No.7022/2013 and 7023/2013 stated to have been filed for recall of the order dated 30th January, 2013 closing the right of the defendants to file written statement and which applications were withdrawn stating that the defendants intended to challenge the

order dated 30th January, 2013 by way of Chamber Appeal. It is stated that thereafter no Chamber Appeal has been preferred. It is further informed that the plaintiffs in their evidence have examined plaintiff No.1 and who has been cross-examined by the counsel for all the defendants.

6. The counsel for the plaintiffs has drawn attention to page 6 of the Part III file being the order dated 3rd August, 1965 of the Income Tax Officer of assessment for the year 1964-65 of Shri Kishori Lal as HUF with three minor coparceners and showing the house situated at New Delhi as one of the properties of the HUF. It is stated that the HUF had no other property at CS(OS) 280/2011 Page 4 of 9 New Delhi except property No.E-2, South Extension Part-I, New Delhi. The said order has been proved as Ex.PW1/1.

7. The counsel for the plaintiffs has also drawn attention to the assessment order of the Income Tax Department for the assessment year 1977-78 of Shri Kishori Lal HUF expressly mentioning the income of the HUF from property No.E-2, NDSE-I, New Delhi. The said assessment order has been proved as Ex.PW1/2. The said order also records that in response to notice under Section 143(2) of the Income-Tax Act, 1961, Shri Har Kishan Lal son of the assessee attended with Shri Rajinder Singh, Advocate and had filed brief history of the case. On the basis thereof, it is contended that the defendant No.1 has been privy to assessment of Property No.E-2, South Extension Part-I as property of the HUF.

8. The counsel for the plaintiffs has lastly contended that though the plaintiffs did not have the originals of the agreements executed by the family members from time to time but the counsel for the defendants in cross- examination of the witness of the plaintiffs has put the photocopy of the Agreement dated 25th October, 2006 executed by the family members to the witness of the plaintiffs and the said agreement was proved as Ex.PW1/D1.

9. It is deemed appropriate to set out herein below the said agreement in its entirety: AGREEMENT This Agreement is made with the consent and desire and understand of Sh. H.L. Sud, D.C. Sud, S.P. Sud (sons of Sh. H.L. Sud) on October 25, 2006 at South Extension (E-2), Part-I. CS(OS) 280/2011 Page 5 of 9 1.

2.

3. All the members of H.L. Sud, his sons and daughter will be honest, fair to each other and will not involve in any fight and should do what is good for Papaji and the family. All the other sons of Sh. H.L. Sud will inherit 30% each and daughter (Neelam) 10% from all the assets of HUF and personal assets of Sh. H.L. Sud after his demise. Sh. H.L. Sud has full right to change the above share, any decision or investments as long as he is alive and any for the investments will be with his consent. HUF assets consist of house at E-2, South Ext.I, New Delhi, PPF A/c at SBI, South Ext.-II, BOB A/c, Hundai Car, personal assets consist of investments as below:

1.

2.

3.

4.

5.

6.

7. Various fixed deposits and saving A/c at PO Kidwai Nagar. Fixed deposits at OBC Bank, South Ext. Cash in Safe. Rs.150,000/- at SBI Sav A/c with S.L. Sud and S.P. Sud. __Share of 2 commercial plots of 90 sq. yds. Each at Baltan a which are in the name of Sh. D.C. Sud.
share from 2 plots (commercial) in Dhakoli, Punjab amount of in the names of Sh. H.L. Sud & D.C. Sood. Rs. 1.50 lac in the senior citizen qtrly int. A/c at Post Office, Panchkula is with name of Sh. H.L. Sud. CS(OS) 280/2011 Page 6 of 9 4. Papajis care present & future to continue as it is and expenses will be divided by 3 sons and born by them, if Sh. H.L. Sud unable to meet it. Sd/- Sd/- Sd/- Sd. 25.10.2006 25.10.2006 25.10.2006 True Copy 10. The counsel for the defendants, who though was interrupting the counsel for the plaintiffs and on enquiry stated that she was ready to address the final arguments in the suit but upon being called upon to

argue, seeks adjournment stating that she needs to obtain some clarifications.

11. Once the suit is listed for final hearing after closure of evidence and after hearing the counsel for the plaintiffs, the question of granting adjournment at this stage, does not arise. However, the counsel for the defendants repeatedly states that the defendants have filed an affidavit in this Court stating that they had indeed filed the written statement in the Court and it was misplaced by the Registry.

12. The order dated 30th January, 2013 closing the right of the defendants to file written statement has attained finality and it is today not open to the defendants to contend so.

13. I have perused the cross-examination of plaintiff No.1 appearing as PW1 by the counsel for the defendants and am unable to find, on a reading thereof, any part of the claim of the plaintiffs qua the property being of HUF having been dealt with. Rather, the counsel for the defendants, by putting Ex.PW1/D1 to the plaintiff No.1, has proved the said document and which is CS(OS) 280/2011 Page 7 of 9 executed by the defendant No.1 as well and which contains an admission of the subject property being of the HUF.

14. The counsel for the defendants has argued that the plaintiff No.1 was thrown out from the HUF since he had sold some other properties of the HUF. It is further contended that the suit does not cover the other properties of the HUF.

15. Once the right of the defendants to file written statement has been closed, all the said defences are not open to the defendants.

16. The counsel for the plaintiffs gives up the claim for partition of the monies in the bank accounts aforesaid or for rendition of accounts.

17. The plaintiffs, on the basis of evidence aforesaid, have made out a case for grant of a preliminary decree for partition of property No.E-2, South Extension Part-I, New Delhi. The shares of the respective parties in the said property would be as under: (I) Defendant No.1 H.L. Sud :

1. share (II) Defendants No.2&3 Swatantra Prakash Sud and Ashish Sud together :

1. share (III) Plaintiff No.1 Dev Chander Sood along with plaintiffs No.2&3 Pradeep Sood and Pramod Sood together (IV) Legal Heirs of defendant No.4 Lalit Sood together (V) Defendant No.5 Neelam Gajri : : :

1. share 1 share 1 share 18. A preliminary decree for partition be drawn up. CS(OS) 280/2011 Page 8 of 9 19. On enquiry, it is informed that the property is constructed over land admeasuring 200 sq. yds. and comprises of ground, first and half second floors and is not divisible by metes and bounds. No purpose will thus be served in deferring the passing of the final decree for partition.

20. A final decree for partition of property No.E-2, South Extension Part- I, New Delhi is also passed, of sale of the property and distribution of sale proceeds amongst the parties as per their shares declared in the preliminary decree for partition.

21. The parties shall however, before putting the property to sale to an outsider, be entitled to make inter se bids amongst themselves, with the highest bidder paying the value of the share/s of other/s.

22. The Gift Deeds aforesaid are also declared to be null and void to the extent inconsistent with the shares declared in the preliminary decree for partition.

23. Decree sheet be drawn up. RAJIV SAHAI ENDLAW, J.

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