

Harish Bajaj vs.desh Raj Bajaj (Deceased) Through Lrs. & Ors.

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Court : Delhi

Decided On : Jan-11-2019

Appellant : Harish Bajaj

Respondent : Desh Raj Bajaj (Deceased) Through Lrs. & Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % HARISH BAJAJ RFA No.23/2019 11th January, 2019 Appellant Through: Mr. Aditya Shankar, Advocate with Mr. Avijit Singh, Advocate (M. No.8130729886). versus DESH RAJ BAJAJ (DECEASED) THROUGH LRS. & ORS.

... RESPONDENTS

Through: Mr. Gaurav Mitra, Advocate with Mr. Pratik Malik, Advocate, Mr. Kartikey Kumar, Advocate and Mr. Adit Singh, Advocate for respondent No.1 (M. No.9953212337). CORAM: HONBLE MR. JUSTICE VALMIKI J.

MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) Caveat No.16/2019 1. Counsel appears for the caveator. Caveat stands discharged. RFA No.23/2019 Page 1 of 12 C.M. No.950/2019(exemption) 2. Exemption allowed subject to just exceptions. C.M. stands disposed of. C.M. Nos. 951/2019(for condonation of delay in filing) & 952/2019(for condonation of delay in re-filing) 3. For the reasons stated in the applications, delay of 60 days in filing and 44 days in re-filing the appeal is

condoned. C.M.s stand disposed of. RFA No.23/2019 and C.M. Nos. 953/2019 (additional evidence) & 954/2019(stay) 4. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.1 in the suit impugning the Judgment of the trial court dated 11.05.2018 by which the trial court has decreed the suit for possession and mesne profits. The suit was originally filed by the father of respondent no.1/plaintiff who was also the father of the appellant/defendant no.1. The present plaintiff became the sole plaintiff after the death of the father, Sh. Desh Raj Bajaj (original plaintiff), as the father had executed a registered gift deed of the suit property, during his lifetime, in favour of the present plaintiff and who was therefore added as the plaintiff No.2 in the suit. Defendant nos. 2 to 4 in the suit were the RFA No.23/2019 Page 2 of 12 wife, son and daughter of the present appellant/defendant no.1 and these family members of the appellant have been arrayed as proforma respondent nos. 2 to 4 in this appeal.

5. The case of the father, Sh. Desh Raj Bajaj, the original plaintiff, was that the suit property was allotted in the name of his mother, Smt. Jamuna Devi, however, before the title documents could be executed in the favour of Smt. Jamuna Devi, she expired, and therefore the Delhi Administration (now Government of NCT of Delhi) executed the perpetual lease deed of the suit property B-2/66, Phase II, Ashok Vihar, New Delhi (hereinafter suit property) in favour of the three sons of Smt. Jamuna Devi, namely Sh. Amar Nath, Sh. Bishambar Nath and Sh. Desh Raj Bajaj (plaintiff no.1 in the suit) and after the three sisters had relinquished their rights in favour of the three brothers. One son, Sh. Bishambar Nath, relinquished his right, title and interest in the suit property in favour of Sh. Desh Raj Bajaj and Sh. Amar Nath vide Relinquishment Deed dated 12.01.1976, thereby resulting in plaintiff no.1 (Sh. Desh Raj Bajaj) and Sh. Amar Nath becoming the co-owners of the suit property. As between Sh. Amar Nath and Sh. Desh Raj Bajaj, an agreement was entered into on RFA No.23/2019 Page 3 of 12 09.09.1982 whereby the suit property was divided in two portions, with one half portion each falling to Sh. Amar Nath and Sh. Desh Raj Bajaj. Both, Sh. Amar Nath and Sh. Desh Raj Bajaj, thereafter, constructed dwelling units on their respective portions of the plot. Plaintiff no.1 had three sons, namely Sh. Satish Bajaj, Sh. Harish Bajaj (appellant/defendant No.1) and Sh. Parvesh Bajaj. The appellant/defendant No.1

along with his family members were allowed to occupy the ground floor portion of the suit premises as a gratuitous licencees but the behavior of the appellant/defendant No.1 and his family members was disrespectful to Sh. Desh Raj Bajaj/plaintiff no.1/father and therefore the licence of the appellant/ defendant No.1 and his family members was terminated by the Sh. Desh Raj Bajaj/plaintiff no.1/father vide the Legal Notice dated 29.11.1997. As stated above, the suit was originally filed by the father Sh. Desh Raj Bajaj, and during the lifetime of the father Sh. Desh Raj Bajaj, he had executed a registered Gift Deed dated 14.06.1999 in favour of his son, Sh. Parvesh Bajaj, and therefore, Sh. Parvesh Bajaj was impleaded as plaintiff No.2 in the proceedings. Sh. Desh Raj Bajaj/Plaintiff no.1/Father expired on 08.11.2003 and whereafter the RFA No.23/2019 Page 4 of 12 suit continued on behalf of the plaintiff No.2, who became the sole plaintiff.

6. The appellant/defendant No.1 and the other defendants contested the suit by filing their written statement. It was pleaded that the suit property was an HUF property. It was pleaded that the suit property was allotted to Smt. Jamuna Devi on account of the funds received from selling of the earlier property No.456-457 (plot II), measuring 1 bigha 8 biswas in Patti Jahan Numa, Subzi Mandi, Delhi and which was in fact allotted to Smt. Jamuna Devi as an HUF property on account of the claims received against properties left in Pakistan. It was, therefore, pleaded that since the suit property was acquired from the funds of the sale of the property at Subzi Mandi, Delhi, therefore the suit property was an HUF property. The suit was, therefore, prayed to be dismissed.

7. Issues were framed in the suit and which are recorded in paras 11 and 12 of the impugned judgment and these paras read as under:-

"11. On the basis of the pleadings of the parties the following issues were framed vide order dated 08.01.2008: RFA No.23/2019 Page 5 of 12 (1) Whether the plaintiff is entitled for a decree of possession against the defendants regarding suit premises as prayed in the plaint?. OPP (2) Whether plaintiff is entitled for a decree of mesne profits @ Rs.50,000/- per month against the defendant for the period w.e.f January, 1998 till the actual physical possession of suit premises is handed over to the plaintiff as prayed in the plaint?. OPP (3) Relief, if any.

12. Thereafter one more additional issue was framed vide order dated 21.01.2014 which is as under: (1A) Whether the suit premises No.B-2/66, Ashok Vihar, Phase II, Delhi is an ancestral property and is occupied by the defendants being its coparceners/co-owners?. OPD 8(i). It is seen that the Gift Deed executed in favour of the respondent No.1/plaintiff on 14.06.1999 by Sh. Desh Raj Bajaj/ plaintiff No.1/father was proved by the respondent No.1/plaintiff as Ex. PW1/2. The Relinquishment Deed executed by the one brother, Sh. Bishambar Nath, in favour of Sh. Desh Raj Bajaj/plaintiff No.1 and his brother Sh. Amar Nath was proved as Ex.PW1/7. The agreement between the two brothers Sh. Desh Raj Bajaj/plaintiff No.1/father and Sh. Amar Nath dividing the plot in two equal portions was proved as Ex.PW1/8. The mutation done in favour of the present plaintiff was proved by summoning a person from the Lease Administration Branch of DDA and this record was proved as Ex.PW

(colly) and Ex.PW5/1. The persons from the house tax RFA No.23/2019 Page 6 of 12 department were summoned as PW6 and PW7 and who produced the various property tax assessment orders, demand notice, mutation letters and house tax related documents in favour of the present plaintiff as Ex.PW

to Ex.PW

and Ex.PW

(colly). The allotment of the earlier property at Subzi Mandi in the name of Sh. Dhanpat Rai/Smt. Jamuna Devi was proved as Ex.DW3/1. 8(ii). The details of the account of payment with respect to the Subzi Mandi property was proved by the appellant/defendant no.1 through the letter of the department as Ex. DW (colly).

9. The only issue to be determined by this Court is as to whether the property at Subzi Mandi was an HUF property because this property was allotted on account of adjustment of the claims received against the HUF properties left in Pakistan. In this regard, the trial court has given a very exhaustive discussion and held that no documentary evidence has been led by the defendants (including the appellant herein) that there were any HUF properties left in Pakistan, and therefore, if any claim was adjusted for any properties left in Pakistan, it cannot be held simply for this reason that the property at Subzi Mandi was an HUF property. More importantly, the trial court RFA No.23/2019 Page 7 of 12 has noted that the total

sale consideration paid for the earlier Subzi Mandi property was Rs. 71,600/-, and that out of this total amount, only an amount of Rs. 6,273/- was adjusted towards the claim of the properties in Pakistan. Also, besides cash amounts of Rs. 890/- and Rs. 158/- being paid by Smt. Jamuna Devi for the Subzi Mandi property, the claims of various third parties were also adjusted towards the price of the Subzi Mandi property with such third parties being, namely Smt. Lillawati, Sh. Harbans Lal, Sh. Nanak Singh, Sh. Joginder Singh, Sh. Gian Chand, Sh. Dhanpat Rai and Sh. Chaman Lal. These relevant observations which have been made by the trial court are contained in paras 30 to 35 of the impugned judgment and which paras read as under: 30. A perusal of the documents Ex. DW to Ex.DW

and Ex. DW2/P-1 to Ex. DW2/P-3 reveals that plot No.B-2/66, Ashok Vihar, Phase-II, Delhi was allotted to Smt. Jamuna Devi in lieu of acquisition of her property situated at Adal Shahi Bagh, Sabzi Mandi Railway station, Delhi. It has been rightly contended by the defendants that this was the same property which has been referred to as property No.456, 457 (Plot II) measuring 1 Bigha 8 Biswa in Patti Jahan, Numa Subzi Mandi, Near Railway Station, Delhi.

31. Now the defendants have further contended that property bearing No.456, 457 (Plot II) measuring 1 Bigha 8 Biswa in Patti Jahan, Numa Subzi Mandi, Near Railway Station, Delhi had been purchased by Smt. Jamuna Devi with the aid of ancestral funds and out of the claim/compensation amount paid by the Ministry of Rehabilitation, Government of India in lieu of the HUF properties left behind in Pakistan at the time of partition of the Country. The documents Ex. DW to Ex. DW

were produced in this respect. A perusal of these documents reveals that these documents do not RFA No.23/2019 Page 8 of 12 establish the contention of the defendants that the Subzi Mandi property was purchased entirely out of the claim amount paid to Smt. Jamuna Devi in lieu of the properties acquired in Pakistan.

32. It is seen that the total sale consideration of the Sabzi Mandi property was Rs. 71,600/- and only an amount of Rs. 6273/- has been adjusted towards the claim amount payable to Smt. Jamuna Devi. Further cash amounts of Rs. 890/- and Rs. 158/- only had been paid by Smt. Jamuna Devi. There is no evidence on record to

show that this cash payment was made out of the HUF funds. The property was purchased in the name of Smt. Jamna Devi and accordingly the payment is deemed to have been made by Smt. Jamna Devi out of her own funds. In fact the documents reveal that Smt. Jamuna Devi had requested for extension of time for making payment as she was arranging the amount. At that time the husband of Smt. Jamuna Devi had already expired and therefore it cannot be said that the said amount was paid by Smt. Jamuna Devi out of ancestral funds.

33. At any rate there is no cogent and viable evidence on record to show that husband of Smt Jamuna Devi was in control of any HUF business or HUF property from which these funds could have been generated or which could have served as nucleus for the acquisition of the property. She could have paid this amount out of her own savings or could have generated the said amount out of her stridhan or could have paid the same out of any gift received from her parental family or from some other person. There is absolutely no evidence to show that the said amount was paid out of any HUF funds or any such HUF funds existed.

34. In so far as the claim amount payable to Smt. Jamuna Devi is concerned, there is no evidence to show that the property in lieu of which the claim amount of Rs. 6273/- was given was ancestral property/HUF property. There is no document to show that the properties were HUF properties. If they were not HUF properties the claim amount cannot be treated as HUF property. DW1 has also stated in his cross examination that he does not know the details of the properties which were left in Pakistan. DW1 further stated that he does not have documentary evidence to show that the properties left in Pakistan were ancestral properties of his family members or HUF properties. DW1 further stated in his cross examination that he cannot tell as to what work his father or grand-parents used to do in the year 1947 when they migrated from the Pakistan to India. He further stated that he has no idea about the money or the source of money his grandparents or parents had at that point of time. DW1 further stated that he has no knowledge that the RFA No.23/2019 Page 9 of 12 properties in Pakistan were self-acquired properties. The onus to prove that the properties left in Pakistan were HUF properties was on the defendants and the defendants have failed to discharge that onus by leading cogent and viable evidence. The result is that the claim amount was paid to Smt.

Jamuna Devi in her individual capacity and thus the same is to be treated as her separate property. importantly it is seen that majority of 35. Most the sale consideration out of the total amount of Rs. 71,600/- was paid by adjusting of the claims payable to various other third parties namely Smt. Lillawati, Sh. Harbans Lal, Sh. Nanak Singh, Sh. Joginder Singh, Sh. Gian Chand, Sh. Dhanpat Rai and Sh. Chaman Lal. These persons had given declarations that their claims be adjusted towards the price payable by Smt. Jamuna Devi in respect of property No.11/456-457, Adal Shahi Bagh, Subzi Mandi, Delhi and the sale certificate be issued solely in her name and the possession be also solely delivered to Smt. Jamuna Devi only. Once it has been established that majority of the sale consideration was paid by third parties, under whatever agreement with Smt. Jamuna Devi, it cannot be said by any stretch of imagination that the property at Patti Jahan, Numa Subzi Mandi, Delhi was HUF property. (Emphasis Supplied)

10. In my opinion, no fault whatsoever can be found with the reasoning, discussion and conclusion of the trial court because the existence of an HUF has to be proved by preponderance of probabilities to the satisfaction of the judicial conscience of the court. Besides the fact that there is no evidence, whatsoever, that the properties left in Pakistan were HUF properties, at best the value of the properties left in Pakistan was only Rs. 6,273/-, whereas the total price paid for the property was Rs. 71,600/-. Also, if the Subzi Mandi property or the suit property was an HUF property, then, surely there RFA No.23/2019 Page 10 of 12 would have been filed income tax returns and wealth tax returns to show that the suit property or the Subzi Mandi property was an HUF property, and which is not the position.

11. In this Court, the appellant/defendant No.1 has filed an application for additional evidence being C.M. No.953/2019, and the appellant/defendant No.1 seeks to place on record the wealth tax returns of Sh. Desh Raj Bajaj that an HUF was shown to exist in the wealth tax returns of Sh. Desh Raj Bajaj, however, even if these documents are considered, it is seen that these documents will in fact go against the appellant/defendant No.1 (and the other supporting defendants) because whereas these documents do show the existence of an HUF, however, these documents do not show the existence of the suit property as an HUF property and in fact immovable property which is shown in the wealth tax returns

as the HUF property is the property No.5166 at Kohla Pur House, Subzi Mandi, Delhi. Therefore, even if the application for additional evidence is allowed and the documents are considered, these additional documents do not help the appellant/defendant No.1 and the defendants to show that the suit property is an HUF property. RFA No.23/2019 Page 11 of 12 12. I may note that the present plaintiff had proved on record that he had become the owner of the suit property by virtue of the Gift Deed dated 14.06.1999 executed in his favour by Sh. Desh Raj Bajaj/plaintiff No.1/father and also that during the life time of the father, the property was got mutated in the name of the present plaintiff and the present plaintiff was paying the necessary house tax.

13. No other issues are urged before this Court except as discussed above.

14. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed. All pending applications also stand disposed off.
JANUARY11 2019 Ne VALMIKI J.

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