

Anil Kumar vs.devender Kumar & Ors

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Court : Delhi

Decided On : Sep-02-2019

Appellant : Anil Kumar

Respondent : Devender Kumar & Ors

Advocate for Def. : Mr. Ajay Kumar

Advocate for Pet/Ap. : Mr. K.K. Sharma

Judgement :

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

2. d September, 2019 CS(OS) 350/2018 & IA No.9403/2019 (u/O XXXIX R-1&2 CPC) ANIL KUMAR Plaintiff Through: Mr. K.K. Sharma, Adv. Versus DEVENDER KUMAR & ORS Defendants Through: Mr. Ajay Kumar, Adv. for D- 1&2. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 The counsel for the defendants no.1 and 2 states that the costs imposed vide order dated 10th July, 2019 have been paid and has furnished the receipt of the same to the Court Master.

2. The plaintiff has instituted this suit against as many as 13 defendants, for partition of properties bearing Nos.(a) H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi, (b) K-25/2, Gali No.20, Gangotri Vihar, Ghonda, Delhi, (c) D-406/2, Gali No.20, Bhajanpura, Delhi, (d) D-408, Main Gamri Road, Ghonda, Delhi, and, (e) H-75/11, Gamri Road, Jain Prakash Nagar,

Ghonda, Delhi.

3. The suit was entertained, though no ex parte relief sought granted. Pleadings have since been completed and the suit is ripe for framing of issues.

4. The counsel for the plaintiff has handed over proposed issues which are taken on record. CS(OS) No.350/2018 Page 1 of 8 5. The counsel for the defendants no.1 and 2, though appearing, has not proposed any issues.

6. 7. None appears for the other defendants. The counsel for the plaintiff states that the other defendants are supporting the plaintiff.

8. I have perused the plaint to decipher the controversy and find the plaintiff to have pleaded, that (i) the plaintiff and the defendant no.1 (Devender Kumar), defendant no.11 (Rajender Kumar), defendant no.12 (Sunita Mittal) and defendant no.13 (Sushila Goel) are siblings; (ii) the defendant no.2 is the wife of defendant no.1; (iii) the defendants no.3 to 5 are the legal heirs of Late Gyanender Kumar, another brother of the plaintiff; (iv) the defendants no.5 to 10 are the legal heirs of Late Lalit Kumar, yet another brother of the plaintiff; (v) the father of the plaintiff on 21st November, 1974 purchased property bearing No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi in the name of mother of the plaintiff; (vi) after sometime of purchase of the said property, the parents of the plaintiff started residing in the property along with their family members including the plaintiff who still continues to reside in the property; (vii) in the year 1978, the father of the plaintiff started a family business, by opening a grocery store at the front portion of the said property, while continuing to reside with his family in the rear portion of the property; (viii) slowly the grocery store was converted into a wholesale grocery store and was running successfully; (ix) the plaintiff and the other family members used to work in the said CS(OS) No.350/2018 Page 2 of 8 grocery store and the livelihood of all the family members was dependent on the earnings of the said grocery store; (x) the deceased Gyanender Kumar and Lalit Kumar, brothers of the plaintiff did not enjoy the faith of the father; (xi) the father of the plaintiff, had faith in the defendant no.1 being the third eldest son; (xii) the father of the plaintiff believed that the defendant no.1 will run the family business of the grocery store along with other brothers and

shall not hit the rights of the others in future; (xiii) only for this reason, the father of the plaintiff purchased all the other four properties, in the name of defendant no.1 and/or defendant no.2; (xiv) all the said properties were purchased from the earnings of the family business of grocery stores at H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi; (xv) in purchase of the property No.D- 408, Main Gamri Road, Ghonda, Delhi, besides earnings of grocery store, some ancestral funds of agricultural land of village Thore Bankapur, District Gautambudh Nagar, Uttar Pradesh were also utilized; (xvi) the mother of the plaintiff died intestate on 21st May, 2002; (xvii) since then, the intentions of the defendant no.1 and defendant no.2 have become mala fide and they have started enjoying all the properties and earning from the grocery store as well as rental income from the other properties; (xviii) on 29th September, 2016, father of the plaintiff also died intestate; and, (xix) the plaintiff has been requesting the defendants no.1 and 2 for partition of the properties but the defendants no.1 and 2 are denying the same.

9. The plaintiff, in the plaint itself having admitted the other four properties, besides property No.H-75/14, Khasra No.419,428 and CS(OS) No.350/2018 Page 3 of 8 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi, to have been acquired in the name of defendant no.1 and / or 2, I have enquired from the counsel for the plaintiff, the need to frame an issue on the plea of the plaintiff of the said properties having been purchased by the father of the plaintiff in the name of defendant no.1 and / or 2 from the earnings of the said grocery store. It has been enquired from the counsel for the plaintiff, whether not such a claim is barred by the Prohibition of Benami Property Transactions Act, 1988.

10. It has further been enquired from the counsel for the plaintiff that even if the remaining four properties are purchased from monies earned from the grocery store, what is there to show that the grocery store was a joint family business and / or that the plaintiff has a share in the property acquired from income thereof.

11. Law provides for title to the property, either by purchase / acquisition or as a member of a coparcenary / Joint Hindu Family. There is no plea in the present case of any coparcenary. In fact, the father of the plaintiff is stated to have died

only on 29th September, 2016 i.e. much after the coming into force of the Hindu Succession Act, 1956 and there is no plea even, of the father having constituted any coparcenary / Joint Hindu Family and / or the properties having been thrown into the hotch potch of coparcenary or Joint Hindu Family. Merely because the income of the grocery store, even if the plaintiff had any share therein, has been utilized to purchase the remaining four properties, the right of the plaintiff, as having a share in the said business, would only be to recover the amounts advanced CS(OS) No.350/2018 Page 4 of 8 for the said business to the defendant no.1 and / or 2 for purchase of the four properties and merely on the basis of the plaintiff having been privy to a business which had lent the monies to the defendants no.1 and 2 to purchase the properties would not make the plaintiff owner of the property or having share in the properties.

12. The counsel for the plaintiff merely reiterates that the money for purchase had flown from the joint family business.

13. I have enquired from the counsel for the plaintiff, the constitution of the business of the grocery store i.e. whether it was a proprietary or a partnership.

14. The counsel for the plaintiff states that there was no such constitution.

15. I have further enquired, in whose name the said grocery store was registered with the Office of Shop and Establishment and / or in whose name the sale was assessed for the purpose of Sales Tax / Value Added Tax (VAT).

16. No answers are forthcoming and there is no plea in the plaint.

17. The plaintiff has also not filed any document to show the business to be of joint family.

18. I have enquired from the counsel for the plaintiff, the vocation of the plaintiff.

19. It is stated that the plaintiff runs a furniture shop in another property.

20. The same lets the cat out of the bag. CS(OS) No.350/2018 Page 5 of 8 21. The counsel for the defendants no.1 and 2 states that it is the plea of the defendants no.1 and 2 that there was no such joint family business of a grocery

store and it is the defendants no.1 and 2 who are running grocery store in their own name in their properties.

22. Thus, no case for putting the claim of the plaintiff for partition of any of the properties, save for property No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi, is made out.

23. The suit for partition of all the other properties save property No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi is dismissed.

24. As far as property No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi is concerned, there is no dispute that the same belonged to the mother of the parties and on her demise, all her heirs would have a share therein.

25. Accordingly, a preliminary decree for partition of property No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi is passed, declaring (i) the plaintiff Anil Kumar, defendant no.1 Devender Kumar, defendant no.11 Rajender Kumar, defendant no.12 Sunita Mittal and defendant no.13 Sushila Goel to be having one-seventh undivided share therein; (ii) the defendants no.3 to 5 together to be having one-seventh undivided share therein; and, (iii) the defendants no.5 to 10 together to be having the remaining one- seventh share therein.

26. Preliminary decree for partition be drawn up. CS(OS) No.350/2018 Page 6 of 8

27. Both counsels agree that the property No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi is not divisible by metes and bounds.

28. On enquiry, it is stated that the property is in joint possession of the parties and there is no outsider in occupation of any portion of the property.

29. In view of the submission that the property is impartible by metes and bounds, a final decree for partition of property No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi is also passed, of sale thereof and

of distribution of sale proceeds amongst the parties as per shares declared in the preliminary decree for partition.

30. However before the property is sold to outsiders, the party/s shall be entitled to make inter se bids with respect thereto, with the party/s bidding the highest acquiring the share of others on payment of consideration, execution of requisite documents and delivery of possession.

31. On any of the party/s in possession / occupation of the property No.H-75/14, Khasra No.419,428 and 429, Gamri Road, Jai Prakash Nagar, Ghonda, Delhi failing to vacate the property and deliver possession thereof to the highest bidder or to the purchaser, the said party/s shall also be liable to be dispossessed therefrom as if in pursuance to a decree for recovery of possession of immovable property. CS(OS) No.350/2018 Page 7 of 8 32. The stamp duty / court fees for drawing up of the final decree for partition be borne by the parties in proportion to their shares under the preliminary decree for partition. Final decree for partition be drawn up. RAJIV SAHAI ENDLAW, J SEPTEMBER02 2019 gsr.. CS(OS) No.350/2018 Page 8 of 8

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