

Ram Gopal Vs. Ram Charan

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Court : Delhi

Decided On : Jan-30-2015

Judge : Jayant Nath

Appellant : Ram Gopal

Respondent : Ram Charan

Judgement :

§~A-1 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgement reserved on:

15. 01.2015 Judgment pronounced on:

30. 01.2015 + CS(OS) 737/1984 RAM GOPAL versus RAM CHARAN Plaintiff Through Mr. Samar Bansal and Mr. Vinayak Mehrotra Advs Defendant Through Mr. Anil Sapra, Sr Adv. with Sandeep Mital, Ms. Rupali Kapoor and Mr. Mridul Yadav Advs. CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

IA.No.13663/2013 (for rectification of decree dated 14.02.2008 by defendant No.1)

1. This is an application filed by defendant No.1 under Sections 151, 152 and 153 of CPC for rectification/modification of order dated 14.02.2008.

2. A brief narration of background facts is necessary. This litigation is one of the various family litigations that were pending within the family of late Sh. Ganeshi Lal

and Smt.Kasturi Devi. Sh. Ram Gopal, the plaintiff and Sh.Ram Charan, defendant No.1 are the two sons of late Sh. Ganeshi Lal and Smt. Kasturi. In 1962 the plaintiff, defendant No.1 and their father late Sh. Ganeshi Lal commenced a business in partnership under the name and style of M/s Lalji Mal Tika Ram i.e. Defendant No.2. Sh. Ganeshi Lal passed away in 1981. CS(OS) 737/1984 1 of 19 Disputes arose between the two sons and their families resulting in multifarious litigations. The present suit is filed by the plaintiff Ram Gopal for dissolution of the partnership i.e. defendant No.2 and rendition of accounts. Various other litigations were also filed by the parties and their relatives.

3. During the pendency of the said suits, by the intervention of the court a compromise was arrived at. The terms of the compromise were recorded vide consent order dated 23.10.2007. The order records that it was agreed by the parties that the immovable properties would be divided half and half between the plaintiff and defendant No.1. Three separate lots were to be made i.e. for properties at Mumbai, Delhi and Hathras, U.P. respectively. The parties were to bid for the three lots separately and the party having the highest bid was to take the property of that lot and pay 50% of the bid amount to the other side. If for some reason the party making the highest bid was unable to pay within the stipulated period, the other party would be entitled to the properties in question on payment of 50% of that party's (lower bidders) bid. Certain other disputes were also sorted out which are not relevant for the purpose of the present application.

4. Pursuant to the bids, the order dated 14.02.2008 was passed. The bids of the two parties were as follows: Ram Gopal Aggarwals Bid plaintiff (Rs.) Delhi 4 crores Mumbai 3 crores Hathras 1 crore Lots 5. Ram Charan Aggarwals Bid defendant No.1(Rs.) 7.10 crores 3.25 crores 1.5 crores Hence, Ram Charan, namely, defendant No.1 was the highest bidder in respect of all the three lots. Ram Charan paid the money for the Delhi lot and CS(OS) 737/1984 2 of 19 the Mumbai lot but did not pay for the Hathras lot. On payment, he became entitled to the properties forming part of the Delhi and Bombay lot.

6. The controversy centres around one of the properties which form part of the Delhi lot, namely, 1375, Katra Lehswan, Chandni Chowk, Delhi. This property was

owned by Smt. Prem Lata and Sh.Ram Kishan i.e. the wife and the son of Sh.Ram Gopal, namely, the plaintiff. This was purchased by the said owners vide sale deed dated 25.05.1998. The ground floor of the said property was in occupation of the firm defendant No.2. Previous litigation regarding this property was also pending between the parties inasmuch as in 1999 defendant No.1 had filed a suit for prohibitory injunction against Ram Gopal i.e. the plaintiff herein and his wife and son praying that the said persons be restrained from making additions, alterations or structural changes to the ground floor of the said property.

7. It is the contention of the applicant/defendant No.1 that what was part of the Delhi lot and was bid by the parties, was the ownership rights of the said property at Chandni Chowk, Delhi. It is further alleged that the bid accepted by the court pursuant to order dated 14.02.2008 was the bid pertaining to the ownership rights in the said property in the Chandni Chowk, New Delhi. Hence it is the contention of defendant No.1 that pursuant to the order of this court dated 14.02.2008 and the subsequent tender of payment by defendant No.1 pursuant to the bid, he became the absolute owner of the said property. Defendant No.1 subsequently filed an execution petition for directions to the plaintiff, his wife and son to execute a conveyance deed in favour of defendant No.1 in respect of the said property. This execution was allowed by the learned Single Judge of this High Court vide order dated 30.08.2010. In appeal, the CS(OS) 737/1984 3 of 19 Division Bench in EFA (OS) 23-24/2010 by an order dated 03.08.2012 reversed the order of the learned Single Judge and dismissed the execution petition of defendant No.1. It is urged by defendant No.1 that the Division Bench while allowing the appeal of the plaintiff and dismissing the execution petition of defendant No.1, granted liberty to defendant No.1 to approach this court by way of the present application for modification and amendment of the decree. Hence, the present application has been filed.

8. Leaned senior counsel appearing for defendant No.1/applicant has strenuously urged that there is a clear ambiguity in the orders of this court dated 23.10.2007 and 14.02.2008 and hence a clarification/modification is required. It is submitted that the applicant/defendant No.1 had made a bid for the Delhi lot for the title of the said property at Chandni Chowk, Delhi and not for the tenancy rights for the

said property. It is urged that when the bid was accepted by the court on 14.02.2008 and an appropriate decree was passed, it implicitly implied that what had been accepted by the court is the bid of the applicant/defendant No.1 for the ownership rights in the said property. It is further urged that based on the circle rates of the area in question where the particular property is located, the market value comes to only Rs.1.6 crores. The applicant/defendant No.1 had bid Rs. 3 crores for the said property whereas the plaintiff had bid a paltry amount of Rs. 4 crores for three properties including the first floor of one 1304 Katra Dhulia, Chandni Chowk and House No.1287, Sultan Singh Estate, Kashmere Gate. The combined bid for these three properties of defendant No.1 was Rs. 7.10 crores. It is urged that there was a big gap between the bid of the plaintiff and that of defendant No.1 pertaining to the said property at Lehswan Katra and this is a clear indication that what CS(OS) 737/1984 4 of 19 defendant No.1 had bid was the ownership rights of the said property. It is next urged that what was bid was the ownership right is also apparent from the fact that though the wife of the plaintiff is not a party to the present suit her statement was recorded saying that she has authorised her husband to make the statement on her behalf.

9. It is further urged that the plaintiff has now become dishonest after having received the consideration of Rs.1.5 crores for the said property being his share of the bid amount. He has now filed an eviction petition against defendant No.1 for bona fide needs which shows the mala fide intentions of the plaintiff. Reliance is also placed on the statement recorded of Sh. Ram Gopal i.e. the plaintiff on 14.02.2008 on the date of the compromise which states that no further claim shall be made by him or his family against defendant No.1 or his family members in respect of the partnership firm as also properties which form the subject matter of the disputes in these matters. It is apparent from the said statement, it is urged that the plaintiff had agreed not to make any claim in respect of the present property in dispute. It is lastly urged that even if for some reason it is held by this court that the subject matter of the settlement between the parties pertained to the tenancy of the disputed property, then an agreement envisaging transfer of tenancy rights for consideration would be illegal and void inasmuch as it is contrary to and is hit by Section 5(3) of the Delhi Rent Control Act. Hence, it is urged that the parties could not have entered into an illegal agreement and the

court would also not have granted its stamp of approval on the said agreement. Hence, it is urged that a clarification be issued that the settlement between the parties entered into on 14.02.2008 and recorded on the said date included the ownership rights of the disputed property. CS(OS) 737/1984 5 of 19 10. Learned counsel appearing for the plaintiff has strenuously opposed the application submitting that it is nothing but a gross abuse of the process of the court. Learned counsel submits that all the contentions herein raised by defendant No.1/applicant have been dealt with in a detailed order passed by the Division Bench on 03.08.2012 in EFA(OS) No.23-24/2010. It is urged that defendant No.1 is now estopped from re-agitating those claims and contentions which have been rejected by the Division Bench of this High Court. It is further strenuously urged that a perusal of order dated 03.08.2012 would show that no liberty of any sort has been granted to defendant No.1 to move this application as has been wrongly and mischievously contended. Learned counsel also relies upon the following documents to submit that the conduct of defendant No.1 after passing of the decree dated 14.02.2008 would show that defendant No.1 at no stage envisaged or was under the impression that the consent decree passed by this court on 14.02.2008 comprised ownership rights to the disputed property and not the tenancy rights only. The following are the documents relied upon :(a) I.A. No.4476/2008 filed by defendant No.1 in April 2008 wherein para 5, 6 defendant No.1 states as follows:

5. That the order dated 14.02.2008 does not mention the identifying details of the properties of the firm at Mumbai, Delhi and Hathras and the same need to be incorporated in the order dated 14.02.2008 and also the consequential decree-sheet. Also, directions are required to be issued to the Appropriate Authorities in respect of the ownership properties and to the Landlords in respect of the tenancies to transfer the properties in the name of the successful bidder i.e. the higher or CS(OS) 737/1984 6 of 19 the default bidder.

6. Thus the following details of the properties be incorporated and directions to the corresponding Authorities and the Landlords need to be issued to give effect to the order dated 14.02.2008: ... B) Delhi Lot i. Shop at 1375, Katra Lheswan, Delhi - 110 006. Directions to: Smt. Premlata Ramgopal and Ramkrishna Ramgopal

regarding tenancy and rent receipt.

(emphasis added) Based on the above, it is urged that even in April 2008 defendant No.1 was only seeking permission pertaining to the tenancy rights of the disputed property. Reliance is also placed on order dated 12.05.2008 by which the above application was dismissed as not maintainable and where an observation was made that the terms between the parties are clear. (b) The application filed by defendant No.1 under Section 25B of the Delhi Rent Control Act dated 13.03.2009 before the Additional Rent Controller relevant portion of which reads as follows:

xii) the records establish that Shri Ram Charan (i.e., the respondent - deponent herein) gave a bid of Rs.7.10 crores (Rupees Seven crores ten Lakhs) for the properties at Delhi. This amount included an amount of Rs.3.00 crore (Rupees three crores) for the tenancy rights of 1375, Katra Lheswan, Chandni Chowk, Delhi (i.e., the property CS(OS) 737/1984 7 of 19 in dispute) (emphasis added) (c) Reliance is also placed on a letter dated 22.09.2008 written by defendant No.1 to Smt. Prem Lata, wife of the plaintiff which stated as follows:

I attempted to contact you at the address A-2, Bhamashah Marg, Opp. Guru Harkishan Public School, Delhi- 110 033; to offer you rent for the premises at 1375, Katra Lheswan, Chandni Chowk, Delhi - 110 006. However, I was not able to locate your address. Kindly let me know the place, time and mode of payment desired by you to enable me to tender the rent.

Hence, it is urged that after the decree defendant No.1 has himself admitted to contact the landlord/wife of the plaintiff for the payment of rents. Clearly, defendant No.1 had envisaged that he had only got tenancy rights in respect of the consent decree. (d) Reliance is also placed on the decree sheet drawn up by the court pursuant to order dated 14.02.2008 which clearly states that the property in question is the tenancy rights in the disputed property.

11. Based on the above four documents, learned counsel submits that defendant No.1 always understood that what was bid was the tenancy rights of the said property and what he get was the tenancy rights. Learned counsel further strenuously urges that the present application is another round of litigation without

any basis commenced by defendant No.1 to harass the plaintiff and the same should be dismissed.

12. In rebuttal defendant No.1 has sought to clarify the documents relied upon by the plaintiff as follows:CS(OS) 737/1984 8 of 19 (a) Regarding I.A. No.4476/2008, it is urged that as is apparent from the reading of the application what the applicant sought was a clarification inasmuch as the order dated 14.02.2008 does not mention the identifying details of the properties which need to be incorporated in the order. It was in this context that the application was moved and it has no connection with the present dispute. (b) Regarding the application filed before the Additional Rent Controller, it is urged that a full reading of the application would show that defendant No.1 has pointed out in para 12 that the title of the wife and son of the plaintiff is not admitted as the actual landlord of the same is the firm defendant No.2 as the plaintiff has used his own name to create a title to the property whereas the funds have originated from defendant No.2 firm. (c) Regarding the offer of rent as contained in letter dated 22.09.2008, it is urged that this is immediately after the decree dated 14.02.2008 and pertained to rentals payable to the wife and son of the plaintiff prior to the completion of the bidding process and not for the period subsequent thereto. It is urged that at no stage any rent has been paid or tendered to the plaintiff or his wife and son. (d) It is urged that there is no merit in the contention regarding the decree order sheet and defendant No.1 did file an execution petition for directions to the plaintiff his wife and son regarding the said property to register a Conveyance Deed in favour of defendant no.1.

13. I will first deal with the contention of the applicant that liberty was granted by the Division Bench by the said order dated 03.08.2012 to approach CS(OS) 737/1984 9 of 19 this court by moving of the present application. We may look at the relevant portion of the order of the Division Bench dated 03.08.2012. The applicant has relied upon the following observations in para 29 of the judgment which reads as follows:

We record that the respondent has not asked for amendment or modification of the decree but had filed an execution petition stating that the decree itself postulates

execution of the conveyance deed by Prem Lata and Ram Kishan. The decree as discussed above, does not stipulate or say so and is to the contrary.

14. It is clear from the reading of the said para 29 of the judgment that the Division Bench has merely recorded that defendant No.1 has not asked for amendment or modification of the decree. It does not in any way stipulate or state that any liberty is granted to defendant No.1 to move the present application to re-agitate and re-argue all the contentions and submissions that have already been made before the Division Bench and dealt with by the Division Bench. In fact the above observations in the order appear to be a contention to support the view taken by the Division Bench that defendant No.1 all along envisaged when he made the bid and when the consent decree was passed that the court was only dealing with the tenancy rights in respect of the disputed property and nothing else. The submissions of the applicant are without any merits and have to be rejected. No liberty has been granted by the Division Bench to file the present application. No such liberty can be deciphered in the said order.

15. Even otherwise, in my opinion, the present application is hit by principles akin to res judicata. In the execution petition out of which the judgment of the Division Bench dated 03.08.2012 was passed, the issue was regarding the CS(OS) 737/1984 10 of 19 execution of the decree as sought by defendant No.1. The execution sought ownership rights in the disputed property and not the tenancy rights. The submissions in support of the said execution are being repeated here for supporting this application. The defendant no.1 is relying on the same submissions to press this application. The only difference in the present application is in the prayer clause i.e., here instead of execution defendant No.1 seeks amendment/modification/clarification of the decree. In my opinion, the contention of defendant No.1 are clearly hit by principles akin to res judicata.

16. A reference in the above context may be had to the judgment of the Supreme Court in Arjun Singh v. Mohindra Kumar and Ors AIR 1964 SC993 wherein in para 16, the Supreme Court held as follows:

16. That the question of fact which arose in the two proceedings was identical would not be in doubt. Of course, they were not in successive suits so as to make

the provisions of s. 11 of the Civil Procedure Code applicable in terms. That the scope of the principle of res judicata is not confined to what is contained in s. 11 but is of more general application is also not in dispute. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were referred to what this Court said in Satyadhyan Ghosal v. Sm. Deorajin Debi MANU/SC/0295/1960MANU/SC/0295/1960 : [1960].3SCR590 where Das Gupta, J.

speaking for the Court expressed himself thus : "The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or on a question of law - has been decided between two parties in one suit or proceeding CS(OS) 737/1984 11 of 19 and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again..... The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

17. Similarly, in Satyadhyan Ghosal and Ors v. Sm. Deorajin Debi and Anr. AIR 1960 SC941 the Supreme Court in para 7 and 8 held as follows:

7. The principle of res judicata is based on the need of giving a finality of judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or an a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle

of res judicata is embodied in relation to suits in s. 11 of the Code of Civil Procedure; but even where s. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether CS(OS) 737/1984 12 of 19 the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.

18. Hence, the adjudication of disputes as per the judgment of the Division Bench though may have taken place in a different stage of proceedings i.e. in the execution petition the same would be binding on defendant No.1. It is not open to defendant No.1 to re-agitate and re-argue the entire submissions and now seek amendment/modification/clarification of decree on the same grounds. I may, however, note that there is only one ground which appears to have not been argued before the Division Bench i.e., that the consent decree passed by this Court was vitiated as it is contrary to Section 5(2) of the Delhi Rent Control Act as consideration is being paid for transferring the tenancy to defendant No.1. That difference does not in any manner effect the legal position that defendant no.1 cannot re-agitate the issues already decided by the Division Bench.

19. De hors the above legal position, I have examined the contentions of the applicant on merits. Even on merits the entire contentions and submissions of defendant No.1 are baseless and completely without any merit. The order of this court dated 23.10.2007 clearly records as follows:

Insofar as the tenancy rights in respect of 1375, Lhtswa Katra, Chandni Chowk, Delhi-6 are concerned, they are also the subject matter of the bid in respect of the Delhi Properties. It is stated by the parties that the ownership of the said property belongs to the wife of Ram Gopal and his son. It is made clear that whoever succeeds to this property consequent to the bid would not be hindered in the enjoyment of the same.

CS(OS) 737/1984 13 of 19 20. The said order of this Court clearly envisages that what is the subject matter of the bid that was to take place between plaintiff and defendant No.1 is the tenancy rights of the said disputed property and not its ownership rights. All contentions of the applicant/defendant No.1 are completely devoid of merits. The last sentence of the order, namely, whoever succeeds to this property consequent to the bid would not be hindered in the enjoyment of the same cannot be considered to imply that what was being bid was the ownership rights in the property. Any such construction would be wholly contrary to the clear and unambiguous language of the order. In view of this Order, it is clear that there is no ambiguity or confusion of any sort, as is sought to be projected. There are no grounds to clarify or modify the Order dated 14.02.2008.

21. The next argument of the applicant/defendant No.1 i.e. that the circle rates of the area are Rs.1.6 crores and bid of the defendant was of Rs.3 crores is of no consequence. It is a matter of common public knowledge that the circle rates may not necessarily reflect the current market value of the property. Even otherwise circle rates are fixed for an area. There could be other reasons and factors as to why a particular property can be more valuable than the circle rates including the fact that it has a location suitable for the business needs and requirement of a particular party. This argument is of no merits whatsoever. This high bid of defendant No.1 does not imply and cannot imply that what was bid for was the ownership rights to the property in question and not the tenancy rights.

22. There is also merit in the contentions of the plaintiff while relying on the four documents pointed out above. Perusal of the said documents does show that even after order dated 14.02.2008, defendant no.1 has assumed that the bid CS(OS) 737/1984 14 of 19 pertains to tenancy rights of the said property and not the ownership rights. Regarding the first document relied upon by the plaintiff i.e. I.A. No.4476/2008 filed by the applicant/defendant No.1 which was filed in April 2008; this I.A. clearly states that the bid was for the disputed property in respect of the tenancy rights only. Merely because the applicant sought some other relief would not be a ground to reject this contention. Further, regarding the second document i.e. the application filed before the Additional Rent Controller, in this application also the applicant has categorically mentioned that the bid involved the tenancy

rights of the disputed property. Though some attempt has been made at another place in the application to dispute the title of the plaintiff and his family by claiming that the property is bought from the funds/siphoned off from defendant No.2 that per se does not wash away the clear admission made in the application that the bid pertained to the tenancy rights of the disputed property. The dispute now sought to be created that in the said application pertaining to the title of the plaintiff and his family appears to have been raised for the first time before the Rent Controller Tribunal and was not a subject matter of the present suit.

23. Similarly coming to the third document relied upon by the plaintiff i.e. the communication dated 22.09.2008 sent by the applicant offering rent cannot be construed to imply that it pertained to rent prior to the date of the decree dated 14.02.2008 as is sought to be mischievously alleged. There was no reason for defendant No.1 to try and pay rent for that period when the firm was the tenant of the disputed property i.e. prior to the decree.

24. Similarly, as far as the fourth document is concerned i.e. the decree sheet, it is on record that the decree sheet clearly stipulates what is being transferred to CS(OS) 737/1984 15 of 19 defendant No.1 are only the tenancy rights in the suit property. The decree was passed on 14.02.2008. The defendant No.1 at no earlier stage sought correction or modification of the said decree sheet, till filing of the present application on 26.08.2013, that too, after having lost in the Division Bench.

25. Hence to repeat, the four documents relied upon by the plaintiff clearly show that all along the defendant No.1 was aware that the consent decree dated 14.02.2008 pertained to tenancy rights of the disputed property and not its ownership rights. There is no confusion or ambiguity in the decree.

26. Coming to the submission of defendant No.1 regarding decree sheet being vitiated on account of it being contrary to Section 5(3) of the Delhi Rent Control Act, Section 5(3) of the Act reads as under:5. Unlawful changes not to be claimed or received. - (1) (2) (3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a subtenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or sub-tenancy, as the case may be, of any premises.

27. The property is owned by the wife and son of the plaintiff. The ground floor had been given on rent to the partnership firm defendant No.2. Defendant No.1 was a partner of defendant No.2. The suit is filed for dissolution of the said firm and rendition of accounts.

28. As per the settlement and decree dated 14.02.2008, all claims and disputes in respect of the matters pending in this Court or before any other court have been settled by the parties. Presumably, in view of the fact that all the CS(OS) 737/1984 16 of 19 assets have been distributed and accounts have been settled, the firm defendant no.2 obviously had ceased to exist. The fact that the disputed property had fallen to the share of defendant No.1, who was an erstwhile partner, cannot mean that any subletting has taken place or tenancy has changed hands. Reference in this context may be had to the judgment of the Division Bench of this Court in the case of Kanahiya Lal Balkishan Dass v. Labhu Ram AIR1971 Delhi 219, wherein in para 7, this Court held as follows:

7. Mr. Radhey Mohan Lal argues that even if Labhu Ram was a partner of firm Gokal Chang Jagan Nath the allotment of the premises in dispute of him on the dissolution of the firm should be held to amount to subletting. The learned counsel in this context has emphasised the fact that the original tenant of the premises was firm Gokal Chand Jagan Nath. There is no force in the above contention. A firm, it is well known, is a compendious name of the partners Constituting the firm. According to Section 4 of the Indian Partnership Act, 1932, persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm'. It would Therefore, follow that when firm Gokal Chand Jagan Nath took the premises in dispute on rent from the appellants, Labhu Ram who was one of the partners of the firm became along with the other partners a tenant in the premises. Subletting essentially entails the induction of a third person into the premises. The allotment of the shop to one of the partners of the firm, which was the tenant of the premises, upon its dissolution cannot amount to subletting. We are fortified in this conclusion by a Bench decision (Andley and Tatachar, JJ) of this Court in Smt. Saraswati Devi v. L. Gian Chand, 1970 Ren Cr 874 (Delhi). It was held in that case that where premises were leased out to a partnership firm and one of the partners left the firm and a CS(OS) 737/1984 17 of 19 new partner

entered the firm, it did not amount to subletting. In *Murli Dhar v. Chuni La.*, 1970 Rcj 922 (SC), it was held by their Lordships of the Supreme Court that the firm name was only a compendious way of describing the partners of the firm was the same as occupation by its partners. The Court held that where the old and new firms had a common partner, the occupation by the new firm of a premises shall be taken to be the occupation by the old tenant as the common partner will be considered to be in possession all through in his individual capacity. In *Ram Viuchar v. Daulat Ram Mohan Das*, 1967, Delhi Lr 223, a Division Bench of the Punjab High Court (Mahajan and Kapur, JJ.) held that there would be no subletting of the premises if the firm consisting of 6 to 10 partners was no longer in possession of the premises and a firm consisting of 4 partners, who were also partners of the first firm, was in possession.

29. The above judgment also noted with approval by this Court in the case of *Shri Narayan Shamnani v. Shri Rajender Prasad and Ors.* ILR (2011) Supp. (2) Delhi 77.

30. In the light of the above, there is no merit in the contention of defendant No.1 that the decree dated 14.02.2008 is vitiated on account it the same being contrary to the Delhi Rent Control Act. The tenancy has devolved as per law on defendant no.1. There is no transfer of tenancy, as claimed.

31. Even otherwise the applicant is stopped on equity from now raising the present contention. He has willingly participated in the bidding process. After his bid was accepted, he has voluntarily paid the bid amount. Thereafter, after the final decree, he has received exclusive possession of the disputed property which possession he has enjoyed. The entire partition has been done based on the bidding process. Now, by filing the present application claiming that the bid qua the disputed property is hit by Delhi Rent Control Act is clearly a plea CS(OS) 737/1984 18 of 19 which in equity cannot be accepted.

32. There are no grounds made out to modify the decree passed on 14.02.2008.

33. The present application is clearly is frivolous and is without any merit. The same is dismissed with costs of Rs.50,000/-. IA No.18400/2013 In view of order

passed today in IA.No.13663/2013 the present application is disposed of as infructuous. JAYANT NATH (Judge) JANUARY30 2015 An/rb/raj CS(OS) 737/1984 19 of 19

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