

Vimla Devi and ors. Vs. Chander Krishan Gupta and ors.

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Court : Delhi

Decided On : Jul-22-2005

Reported in : 122(2005)DLT392; 2005(83)DRJ29

Judge : B.A. Khan and; Anil Kumar, JJ.

Acts : Delhi High Court Act - Sections 10; Urban Land (Ceiling and Regulation) Act, 1976; [Partition Act, 1893](#) - Sections 2

Appeal No. : FAO(OS) No.178/2002

Appellant : Vimla Devi and ors.

Respondent : Chander Krishan Gupta and ors.

Advocate for Def. : J.P. Gupta, Adv. for R-1, ; Avtar Krishan Gupta, Adv. R-2 and ;

Advocate for Pet/Ap. : Sangeeta Jain, Adv

Disposition : Appeal dismissed

Judgement :

Anil Kumar, J.

1. This order will dispose of Appellant's appeal under Section 10 of the Delhi High Court Act against the impugned order dated 8th April, 2002 passed by learned

Single Judge in S.No.127/1980 appointing a local commissioner for taking necessary steps to sell the suit property on plot No.16-B, Block -I, 38, Ratendon Road, New Delhi after preliminary decree for partition so that the sale proceeds be divided among the four co-owners.

2. In a suit for partition between the parties, a preliminary decree was passed on 8th May, 1980. The preliminary decree was passed after the parties agreed regarding their shares as:- Sh.Chander Krishan Gupta, plaintiff, 1/4th ; Sh.Brij Krishan Gupta, Defendant No.1, 1/4th ; Avtar Krishan Gupta, Defendant No.2, 1/4th ; Balraj Krishan Gupta, Defendant No.3, 1/8th ; Kumari Anjali Gupta, Defendant No.4, 1/8th share.

3. Pursuant to the preliminary decree passed by the learned Single Judge, a local commissioner Sh.S.R.Tikekar was appointed to suggest the mode of partition. Since the property is a leasehold property, the learned local commissioner corresponded with the L&DO; and Delhi Development Authority who informed him that the property in dispute could not be partitioned physically by meets and bounds. He was also advised by the competent authority, Land and Development Office that the property in suit cannot be sold under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. Consequently, he filed an interim report dated 8th November, 1980 stating that the sub division of the property was not permissible and possible.

4. It seems that thereafter, at the instance of some of the parties, a clarification was sought from L&DO; regarding division of property on the ground that sub division of other similarly situated properties at Ratandon Road and adjoining Prithviraj Road had been permitted. On this the matter was again taken up regarding sub division of the property with Land and Development Office, New Delhi and Delhi Development Authority but no reply was received suggesting that property could be sub-divided. The alleged discrimination of authorities in granting permission for sub division to other similarly situated properties and not to the property of the parties in the present appeal was also not challenged before any authority or Court.

5. In view of the communication of the Land and Development Office, absence of any communication or order of authorities since 1980 permitting sub division of the property being contrary to Master and Zonal plan, the learned Single Judge was pleased to order sale of the said property by auction vide order dated 8.4.2002. A local commissioner to take steps to put the property for sale, so that the sale proceeds may be distributed amongst all the four co-owners in accordance with their shares.

6. The appellant impugns order dated 8.4.2002 on the ground that the suit property was partable by meets and bounds and the local commissioner who was appointed by the Court had not submitted his final report before the learned Single Judge though he had submitted an interim report contending that according to the communication received from L&DO; and DDA the plot could not be sub divided. The appellants have also contended that since other properties on the Ratendon Road and adjoining Prithviraj Road were allowed to be sub divided, the local commissioner had raised the matter with the L&DO; and DDA and had also sent the reminders, however, no final report has been filed by him and in absence of his final report, it cannot be inferred that the property cannot be sub divided. The appellant has also doubted the letter dated 20th January, 1998 addressed to the respondent No.2 reiterating their stand taken by L&DO; in letter dated 2.4.1980.

7. The appellants have specifically contended that the sole motive and objective of the respondents is to throw out appellants from the suit property though they are in occupation of it for past 31 years and deprive them of its enjoyment. The order of the learned Single Judge is also impugned on the ground that he had failed to fix the value of the suit property for auction sale.

8. While admitting the petition on 29.5.2002, at the instance of appellants they were given an opportunity to obtain a written confirmation from the L&DO; that sub division of the property was permissible. In this order it was provided that if the written confirmation was not obtained by the appellant, the appeal would be considered and disposed of thereafter. Several opportunities were sought by and granted to the appellant to obtain written confirmation from L&DO; regarding permission for sub division of the property, but they have failed.

9. On consideration of the detailed submissions by the parties, it transpires that the local commissioner had given report as far back as 1980 when L&DO; and DDA had intimated him that sub division of the plot was not permissible and that the property can not be divided by meets and bounds as contemplated under the provisions of [Partition Act,1893](#). The position has remained the same till the order dated 8.4.2002 was passed by the learned Single Judge. thereforee confronted with this position that an item of property is not capable of physical partition, the only available option is the sale of the property. The appellants were granted opportunity to obtain permission of the concerned authorities that physical sub division of the property was permissible, but they have failed. Their plea that division of some other properties was permitted by the L& D.O and D.D.A at some stage is besides the point.

10. The contention of the appellant that final report regarding impartibility of the property in dispute was not filed by the local commissioner also becomes irrelevant in the present facts and circumstances of the case because the position on the impartibility of the property has remained unchanged. Even subsequent letters of Land and Development Office dated 20th January, 1998 addressed to respondent No.2 reiterate the stand of L&DO; taken in letter dated 2.4.1980 regarding non permissibility of sub division. The impugned order ordering sale of the property, thereforee, can not be faulted as there is nothing on record to show that the property is partible and permission would be granted by the Land & Development Office so as to divide the property by meets and bounds.

11. The language of Section 2 of the Partition Act does not make it obligatory on the Court to give a positive finding that the property is incapable of division by metes and bounds. It should only appear that it is not so capable of division. The judgment of apex Court in R.Ramamurthy Vs Rajeshwararao : [1973]1SCR904 can be noted and relied on in this regard.

12. The plea of the appellant that he is in possession of the property for last 31 years and he should not be ousted from his residential house also does not hold good as the respondents also have rights in the property. If the property can not be sub divided, the other co-owners can not be deprived of their rights in the

property and the appellant can not be allowed to perpetuate their possession.

13. Consequently the appeal is dismissed and parties are left to bear their own costs.

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