

Krishan Dev Sharma and ors. Vs. Som Dutt Sharma

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Court : Delhi

Decided On : Nov-16-1994

Reported in : 1994IVAD(Delhi)969; 58(1995)DLT424

Judge : D.P. Wadhwa and; D.K. Jain, JJ.

Appeal No. : R.F.A. No. 304 of 1982

Appellant : Krishan Dev Sharma and ors.

Respondent : Som Dutt Sharma

Advocate for Def. : Shyamla Pappu, Sr. Adv. and ; M.R. Krishnamurthy, Adv.

Advocate for Pet/Ap. : R.K. Makhija, Sr. Adv. and; Rajiv K. Garg, Adv

Disposition : Appeal dismissed

Judgement :

Mr. D.P. Wadhwa, J.

1. This is defendants appeal against the judgment and decree dated 4 June, 1982 of the Additional District Judge, (Mr. B.B. Gupta), Delhi, where by the suit of the plaintiff for possession was decree against the defendants with costs. It was also decreed against defendant No. 1 for mesne profits @ Rs. 200/- per month from 5 July 1977, i.e., the date of filing of the suit till delivery of possession. For

convenience we will refer to the appellants as defendants and the respondents as plaintiff. The property in question is House No. A/ E-7, Tagore Garden, New Delhi, built on a plot held on perpetual leasehold basis by the plaintiff from the Delhi Development Authority (for short 'D.D.A.'), an authority constituted under the Delhi Development Act, 1957. The claim of the plaintiff in suit in brief was that he was owner of this property and the defendants were in unauthorised occupation of the same and the plaintiff also claimed pendente lite and future mesne profits. The defendants numbering eight were the mother, brothers and sisters of the plaintiff.

2. The plaintiff purchased the perpetual leasehold rights of the plot in public auction from D.D.A. on 10 November, 1963 at a premium of Rs. 9,100/-, the plot measuring 200 sq. yds. At the time of the bid the plaintiff paid a sum of Rs. 2,275/- being 1/4th of the bid amount at the fall of the hammer. There is no dispute that this amount was paid by the plaintiff from his own sources. The plaintiff said that the balance amount he deposited on 12 March, 1964 when D.D.A. executed perpetual lease deed in his favor on 22 January, 1965 which was registered before the Sub Registrar, Delhi. The plaintiff then got possession of the plot and thereafter got plans sanctioned on 23 April, 1965 for building a residential house. He said he built a single storey residential house. He took a loan of Rs. 10,000/- from the Delhi Administration under Low Income Group Housing Scheme and mortgaged the plot in favor of the Delhi Administration and the President of India and also executed a surety bond for the refund of the loan amount. Construction of the house was completed in 1967. In department of the government and local bodies like Municipal Corporation of Delhi, D.D.A., it is the plaintiff who had been shown as an owner of the house. Plaintiff says he has been paying lease money annually at the rate of Rs. 227,50 to the D.D.A. in respect of the plot, and on the date of the filing of the suit he had returned a sum of Rs. 7,762.32 to the Delhi Administration in liquidation of the loan amount. Plaintiff also said he had got the house insured against risk of fire and earthquake, etc. since 1967. He said he had allowed his brothers to live in the house as licensees and earlier they were messing together but after few months they had also started their kitchen separately. Then he refers particularly to first defendant Krishan Dev Sharma and his wife Chanderkanta Sharma whom he blamed to have contacted a second bigamous marriage with the first defendant. He then said that defendants 2 to 7

were abetting defendants 1 and 8 and they all were advancing their claim in the house saying that it was Joint Hindu Family property and each one of them had right, title and interest in the same. Plaintiff said he was exclusive owner of the property and he called upon the defendants to vacate and on their refusal, he filed the present suit and also claimed damages for use and occupation.

3. The defendants contested the suit. Written statement was filed by defendants 1 to 3 and 5 to 8. They said it was a Joint Hindu Family property and it was owned by H.U.F. (Hindu Undivided Family) of late Shri Kundan Lal. Plaintiff and defendants 1 to 6 are the children of Kundan Lal, and defendant No. 7 is his widow, and defendant No. 8 is wife of the first defendant. Defendants also said that plaintiff was not in a position to buy the plot and the house and it was purchased on behalf of the H.U.F. and that all contributed various amount in the purchase of the leasehold rights of the plot and construction of the house. The plaintiff in his replication denied all these allegations.

4. On the pleadings of the parties, the Trial Court framed the following issues:--

1. Whether the suit is properly valued for purposes of Court fee and jurisdiction?
2. Whether the suit is bad for mis-joinder of parties?
3. Whether the suit for declaration is within time?
4. Whether the property is owned by HUF of late Shri Kundan Lal? If so, to what effect?
5. To what amount, if any, and from whom plaintiff is entitled as compensation for use and occupation and water and electricity charges?
6. Whether the plaintiff is entitled to possession of the property in dispute?
7. Relief.

5. We may also note that earlier the plaintiff had prayed for the relief of declaration and mandatory injunction, and subsequently he amended the plaint and claimed relief of possession of the suit property.

6. Before us there is no challenge to issues 1, 2 and 3. Issues 4,5 and 6 are relevant and the most important being issue No. 4. All these three issues have been held in favor of the plaintiff and decree passed as aforesaid. It was for the defendants to prove that the suit property was a Joint Hindu Family property owned by HUF of late Shri Kundan Lal.

7. During pendency of the suit Shanti Devi, mother of the parties, died and since her legal heirs were already on record her name was deleted.

8. On issue No. 5, the Trial Court held that the plaintiff was entitled to mesne profits from 5 November, 1977 and also held that admittedly the premises in dispute could fetch a rent of more than Rs. 200/- per month as was pleaded by the plaintiff and further that the first defendant was in occupation of the premises and as such the suit for mesne profits at the rate of Rs. 200/- per month was decreed against defendant No. 1 from 5, October, 1977 till delivery of possession by the defendants to the plaintiff. When this appeal was filed, by order dated 14 March, 1983 the Court, while staying the decree for possession, directed that the decree would be executable to the extent of 50% respecting the mesne profits and decree for possession was also stayed subject to payment of Rs. 100/- per months as mesne profits during pendency of the appeal. A condition was put on the defendants that they would not transfer the possession of the premises to any other person without obtaining the orders of the Court and that future mesne profits should be paid to the plaintiff every three months by money order. The defendants, however, defaulted and did not make any payment to the plaintiff in terms of the aforesaid order and on an application filed by the plaintiff the defendant Krishan Dev handed over to him a pay order in the sum of Rs. 6,587/- towards 50% of the mesne profits as per the decree. On a subsequent date also an amount of Rs. 1,591 /- being 50% of the cost awarded in the decree was paid by the first defendant to the plaintiff. The record, however, does not show if the defendants had continued to pay Rs. 1100/- per month to the plaintiff during pendency of the appeal.

9. No argument addressed on this issue No. 5 fixing the rate of mesne profits and the date from which it was payable and by whom. Finding on issue No. 5 is,

therefore, confirmed.

10. The principal issue remains issue No. 4 as to whether the property is owned by HUF of late Shri Kundan Lal, father of the parties. Kundan Lal was a teacher and was getting a salary of Rs. 180/- per month when he died. He had built a house in his village Pamal, District Ludhiana, consisting of four rooms two of which were pucca and two were kucha rooms. This was his self acquired property. His family consisted of his wife and five sons and two daughters. He had, thus, a large family to support and could hardly save anything from his salary. Ram Rattan (DW-10) who claimed to be tenant of this house from 1961 to 1970 at the rate of Rs. 20/- per month as rent, stated that this house fell down in 1970 and he vacated the same. Kundan Lal was Ram Rattan's father's son (father's elder brother's son). Ram Rattan said that after the death of Kundan Lal plaintiff brought the family to Delhi and thereafter he had taken the house in the village Pamal in rent. He said the family remained joint and no partition ever took place and that the plaintiff was looking after the whole family. Ram Rattan also stated that, while living in village Pamal, Shanti Devi was dependent upon the plaintiff and that she also spent some amount out of the provident fund of her late husband. Maternal uncle of the parties also used to help her as Shanti Devi had no source of income. Sat Dev (DW-13), maternal uncle of the parties, stated that the house in village Pamal was the ancestral house but did not clarify as to what he meant by an ancestral house. It is not disputed before us that the house was the self acquired property of Kundan Lal. Sulekh Chand (DW-14), another maternal uncle of the parties, said that Shanti Devi, after the death of Kundan Lal, deposited the amount of the provident fund received on account of the death of Kundan Lal with the firm Sulekh Chand and Sat Dev of which Sulekh Chand and Sat Dev (DW-13) were the partners. Sulekh Chand said that amount so deposited with the firm was less than Rs. 3,000/- and that the firm was paying interest at the rate of 9% per annum on that amount. The amount of interest, he said, was used to be credited in the khata every year in the name of Shanti Devi. Once it is clear that the family of Kundan Lal did not hold any coparcenary property, the house owned by him in village Pamal held in equal shares by his widow and sons and daughters, they all being the relatives specified in Class I of the Schedule to the Hindu Succession Act, 1956 (Sections 8 and 10). Under Section 19 of this Act, if two or more heirs succeed together to the property

of an intestate they shall take the property per capita and not per stripes and a tenants-in-common and not as joint tenants. In the written statement, the defendants have pleaded that the suit property is owned by HUF of late Kundal Lal. They say that after the death of Kundal Lal, Shanti Devi, their mother, was having the estate of her late husband and lived for some time in Punjab and the HUF family shifted to Delhi in the year 1958-59. Contention of the plaintiff that Shanti Devi, their mother, lived with him was denied and it was stated that it was the plaintiff and his family who had been residing with Shanti Devi who was the head of the family after the death of Kundan Lal. Defendants also pleaded that the plot on which the house was built was purchased in the name of the plaintiff as Karta of HUF out of the money arranged by HUF. Defendants have examined as many as 19 witnesses including most of them appearing as their own witnesses. But we do not find any evidence that there was any HUF of the parties of which either Shanti Devi was the Manager or the plaintiff was the Karta. The evidence, however, does show that after the death of Kundan Lal all the family members did live together as one unit and the plaintiff being the eldest son and earning member was looking after the interest of the family, and so also the first defendant to an extent and other sons as and when they started earning though at the time of death of Kundal Lal they were studying. All this, however, does not make the family members as members of the HUF, as alleged by the defendants. Simply because after the death of their father, children were living together and were sharing common kitchen did not mean that there was any HUF which owned the property. There is no such presumption. Mere multiplicity of witnesses does not prove the point in issue. We may even believe the evidence of the defendants that all the brothers and even perhaps their mother, contributed their might in buying the leasehold rights of the plot and constructing the house thereon by the plaintiff. But that again will not make the house and the plot a HUF property. By contributing various amounts in the construction of the house in the name of the plaintiff, the defendants do not get any right, title or interest in that property. They can at best say that the property was purchased and built benami by them in the name of the plaintiff, but then this plea would admittedly be barred by Benami Transactions (Prohibition) Act, 1988, and on that account Mr. Makhija, learned Counsel for the defendants, rightly did not advance any claim on Benami

transaction. His stress was that the plaintiff in whose name the property was held was a coparcener in a Hindu Undivided Family and that the property was held for the benefit of the coparceners in the family (see Sub-section (3) of Section 4 of the Act). But then we have seen above that there is no Hindu Undivided Family of which the plaintiff and the defendants could be the members. The learned Additional District Judge had considered all the relevant evidence on this issue No. 4 and he rightly came to the conclusion that in view of the established facts that the plaintiff gave bid of the plot; that perpetual lease deed was executed in his name; that the plaintiff took loan in his personal name from the Government for construction of the house and got the plans sanctioned for construction of the house and also raised several amounts for the construction of the house himself and coupled with the facts that the defendants had themselves acquired properties in their own names and had also motor vehicles and on that account there was no allegation that those properties were also Joint Hindu Family properties; it had to be held that it was the plaintiff who was the owner of the property. He also observed that it appeared that plaintiff took certain loans from the defendants which he did not pay and as such the defendants and other common relations came forward to depose against the plaintiff due to his dishonest intention is not paying those amounts, nevertheless he held that would not make the property a HUF property and held issue No. 4 against the defendants.

11. We may now have a look at the evidence led by the parties, both oral and documentary.

12. Plaintiff in support of his case has proved the plans of the house (Ext. P-1); lease deed (Ext. P-2) plan of the plot (Ext. P-3); mortgage deed (Ext. P-4) under which the plot was mortgaged and the plaintiff took loan of Rs. 10,000/- from the Delhi Administration to construct the house; plan of the plot filed along with the mortgage deed (Ext. P-5); receipt showing payment of the amount of premium of the plot by the plaintiff (Ext. P-6); copy of the sanctioned plan (Ext. P-7); receipts showing payment of the lease money (Exts. to to P-14); water bills (Ext. P-15 to P-23); receipts for payment of water bills (Ext. P-24 to P-31); notices of property tax (Ext. P-32 to P-37); property tax bills (Ext. P-38 to P-45); notice for the property tax (Ext. P-47); receipts of property tax paid (Ext. P-47 to P-50); electricity bills (Ext. P-

59 to P-96), all in the name of the plaintiff. A suggestion was put to the plaintiff that house was constructed with the joint funds of whole of the family which he denied. M. Lal (PW 3), an officer from the Delhi Development Authority, had brought the record regarding AE/7, Tagore Garden, the house in question. He said the plot was auctioned on 10 November, 1963 in the name of the plaintiff and that lease deed was executed on 22 January, 1965 in his name. He also brought on record some correspondence exchanged between the DDA and the plaintiff. S.N. Rohilla (PW 4) is U.D.C from the office of the Housing Commissioner (Loan), Delhi Administration. On the basis of the record he said that the plaintiff had taken a loan for construction of his house AE/7, Tagore Garden, and the loan amount was Rs. 10,000/- which was sanctioned on 29 December, 1968. The witness said the property was mortgaged by the plaintiff for securing the loan and that the repayment of the loan was being made by the plaintiff. Dina Nath Grover, Record Clerk, Oriental Fire & General Insurance Co., Ltd., (PW -5) said that it was the plaintiff who had taken the Insurance Policy regarding the house in question from his Insurance Company. Plaintiff also produced, Naresh Chand (PW 2), L.D.C. from the office of D.D.A. Lease Branch, who stated that Plot No. C-710, Budhela Residential Scheme, Delhi, was allotted to the first defendant and that that plot was allotted to him on 3 May, 1976 and lease deed was executed on 17 May, 1977. Naresh Chand said that possession of the plot was given to Krishan Dev, first defendant, on 30 September, 1976. He also filed copies of affidavits (Ext. PW2/1 to PW2/3) filed by the first defendant with the D.D.A. which first defendant admitted being given. In his affidavit Ext. PW2/1, Krishan Dev said that he did not own either in full or in part, on leasehold or freehold basis, any residential plot of land or house in Delhi nor did his wife or any of this dependent relations including unmarried children own either in full or in part, on leasehold or freehold basis, any residential plot of land or house in Delhi on the date of the application for allotment. of a residential plot. This affidavit is dated 25 June, 1976 wherein he said that he and his wife and unmarried children held as on 21 August, 1986 plot bearing No. C-710, Bodela, from the D.D.A. Krishan Dev, defendant No. 1, appeared as a witness as DW 1. He said accounts regarding construction of the suit house were being maintained and during course of his statement a sealed cover of documents was opened which had been relied by the defendants. That

statement was exhibited as DW1/1. Krishan Dev said members of the family remained joint up to 30 June, 1976. He said that the sale deed of the plot in dispute was in the name of the plaintiff as Karta of HUF. This could not be correct as the perpetual lease deed is in the name of the plaintiff and there could not be any dispute on that. About the statement of account (Ext. DW1/1), in cross-examination he said that it was prepared after filing of the suit and that the plaintiff was not consulted when this document was prepared and further that it was prepared by the witness and his brother Dev Dutt who had some figures with him. First he said a draft was prepared and then got typed, and thereafter he, their mother and his brother signed the document. We do not think such a document can have any evidentiary value as it is a self serving document prepared after filing of the suit. It can at best be part of the oral statement of the witness narrating those items which he contributed but of other persons would be in the nature of hearsay evidence, In any case, we cannot attach any value to such a document. Statement of this witness was recorded on 3 August, 1979 and as regards Pamal house he said it was still there and that Ram Rattan was in possession of that house as a tenant at the rent of Rs.20/- per month from some time in 1963. He said for the last about one year Ram Rattan was not in possession of that house and that he did not know the reason why he left its possession. He admitted that the house needed repairs as the house was in dilapidated condition. According to the witness his mother and her five sons were members of the HUF. We have seen above the statement of Ram Rattan. He said he left the house in 1970 as it fell down. When asked as to how much money was paid by him to the plaintiff and when, the witness said that he could not say without consulting his records. He also said he did not know as to how much money was paid by his brothers to the plaintiff and when. He said his mother had no source of income from 1957 to 1959 but that she was being maintained by the witness, but he corrected that the estate left by his father was lying with his maternal uncle and his mother was earning interest from that. We have also seen the statement of Sulekh Chand, maternal uncle of the plaintiff, who said that interest was being paid and was credited in the account of Shanti Devi. The witness admitted that his, maternal uncle and all concerned were supporting Shanti Devi. He said he did not know as to what Shanti Devi was earning as interest and that there were about Rs.3,000/- which had been

deposited with his maternal uncle. According to the witness from 1957 to 1959 his mother lived on the income of interest and contribution made by the witness. He said the plaintiff never contributed anything to her, though at the time plaintiff's wife, his children and defendants Dev Dutt and Dilraj Kumar were living with Shanti Devi in village Pamal. The statement of Krishan Dev does not inspire much confidence. When it comes to his affairs he had tried to conceal the same. He said, he was insured for Rs. 2,000/- and then said it was Rs. 22,000/-. It was put to him specifically that he was insured to Rs. 50,000/- and that he was suppressing the truth and then he admitted that he was in fact insured to Rs. 50,000/-. All these questions as to the amount of premium paid by him etc. were asked to show that he had perhaps no means to contribute towards construction of the house. Then he was specifically asked that when he made an application in 1973 to the DDA for allotment of a plot, he had stated that he did not own any house or land in Delhi. To this he replied, he did not recollect. He also said that he did not recollect if he gave any affidavit about that to the D.D. A. or 'not'. When it was put to him that it was on the basis of his affidavit that he was allotted a plot in Bodela Residential Scheme, again his answer was that he did not recollect. We have seen the affidavits given by Krishan Dev, first defendant, above wherein he did say that he did not own either in full or in part of any property either on leasehold or freehold basis. Plaintiff then said that first defendant was also a member of a cooperative society owning land in Chandigarh, Anand Prakash, defendant, owned a plot in Chandigarh, Dev Dutt had a plot in Ludhiana on which he raised a house and his wife applied for allotment of a plot in Chandigarh in 1972. Defendant Dilraj had purchased a plot in Panchkula in Haryana. Plaintiff admitted that he had taken a loan of Rs. 3,000/- from his maternal uncle Sulekh Chand which he said he returned. If we refer to the statement of Sulekh Chand he said that the amount of Rs. 3,000/- which he sent by bank draft to the plaintiff in 1964 was from the account of Shanti Devi. It was put to him that this amount was sent by him to the plaintiff in his own capacity and not from the account of Shanti Devi which he denied. He said after payment of Rs. 3,000/- was sent the account of Shanti Devi was closed. He was unable to produce the account of Shanti Devi. He admitted that in 1972 the plaintiff sent a draft of Rs. 3,000/- but said that it was sent to him personally and that this amount was credited in the name of the plaintiff in the firm.

This led credence to the statement of the plaintiff that he did take loan of Rs. 3,000/- from his maternal uncle Sulekh Chand which he repaid. As to from which account Sulekh Chand sent the amount and how he credited the amount sent by the plaintiff could certainly be no concern of the plaintiff. Evidence has been led to show that mother of Shanti Devi gave Rs. 4,000/- to her for construction of the house which she passed on to the plaintiff. There is no document to support this payment and we are unable to accept any oral testimony. Then there was evidence that mother of the plaintiff came to Delhi and she brought with her certain gold which were sold for Rs. 1,000/- or so and that amount was contributed towards purchase of the plot. We are unable to subscribe to such a piece of evidence. As we have said above, unless it is proved that there was HUF nucleus no amount of evidence that any money was advanced to the plaintiff or contributed for construction of the house would make the house a HUF property. The evidence produced by the defendants consisted of defendant No. 1 Krishan Dev (DW-1); D.K, Sharma, defendant No.4 (DW-2); Dev Dutt, defendant No.3 (DW-3); Anand Prakash, defendant No.2 (DW-4); Shanti Devi, defendant No.7 (DW-5); Chander Kanta, defendant No.8 (DW-6); Gopal Dass (DW-7) plaintiffs and his wife are sisters; Tarwanti (DW-8) mother-in-law of Dev Dutt (defendant No. 3); Dhani Ram (DW-9) a distant relative; Ram Rattan (DW-10) also a relative and tenant of Pamal house; Vidya Sagar (DW-11) maternal uncle of mother's sister's son; Sat Dev (DW-13) maternal uncle; Sulekh Chand (DW-14) maternal uncle; Ved Parkash (DW-15) plaintiff is son of his maternal uncle; Ram Swarup Kaushal (DW-17) plaintiff is his wife's brother; D.P. Sharma (DW-18) plaintiff is his wife's brother; and Shiv Narain (DW-19) younger brother of Pitamber Dutt (DW-17) . All this evidence in brief is that parties were living together and contributed to the purchase of the plot and the construction of the house. In fact, it was a joint effort, they say.

13. Documentary evidence produced by defendants consisted of correspondence which we find has no bearing on the issues involved in the present suit. It was stated by some witnesses that a document was in fact written wherein plaintiff admitted that house was an HUF property, but that document was not forthcoming and then it was stated by the first defendant that it was stolen by the plaintiff. No basis had been laid for such a proposition. Even such a writing if existed would not

make the house and HUF property as we find no HUF ever existed consisting of Shanti Devi and her five sons. Issue No. 4 has rightly been held in favor of the plaintiff and so also issue No. 6.

14. This appeal was filed on 13 December, 1982. An application (CM. No. 299/94) under Order 1 Rule 10 and Section 151 of the Code of Civil Procedure was filed on 10 February, 1994 by widow of the late son of the plaintiff for self and on behalf of her minor children seeking permission to intervene in the matter or to be impleaded as a respondent. We do not find any merit in this application. It is dismissed.

15. We, thus, agree with the findings arrived at by the learned Additional District Judge and uphold his judgment and decree.

Accordingly, the appeal is dismissed, but there will be no order as to costs.

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