

Harish Chander Sharma and ors. Vs. Deep Chand Ram Dass and Sons and ors.

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Court : Delhi

Decided On : Nov-24-2008

Reported in : 155(2008)DLT153; (2009)153PLR23

Judge : Pradeep Nandrajog and; J.R. Midha, JJ.

Appeal No. : RFA 321/1991

Appellant : Harish Chander Sharma and ors.

Respondent : Deep Chand Ram Dass and Sons and ors.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Ravi Gupta, Adv

Judgement :

Pradeep Nandrajog, J.

1. Vide impugned Judgment and decree dated 16.03.1991, suit filed by the appellant seeking partition of property bearing Municipal No. 147-148, Chandni Chowk, Delhi has been dismissed, being held as not maintainable, in as much as the Learned Trial Judge has held that the suit sought partial partition of a joint property.

2. The case of the appellants was that Hadi Ali Khan, defendant No. 2, was the owner of the 11.68% share in property bearing Municipal No. 135 to 148, Chandni Chowk, Delhi and that vide sale deed dated 18.10.1995, Ex-P-1, he sold 8.76% share in said properties to the appellants, thus, appellants became the joint owners of the property bearing Municipal No. 135 to 148, Chandni Chowk, Delhi with their undivided share being 8.76%.

3. It was pleaded that later on, the other co-owners sold their 82.84% undivided share in property No. 147-148 to defendant No. 1, vide a sale deed dated 20.03.1979. Defendant No. 1 was already a tenant in the said premises No. 147-148.

4. That on the aforesaid facts, the plaintiff filed the suit for partition claiming partition of property bearing No. 147-148, Chandni Chowk, Delhi.

5. During the pendency of the suit, the defendant No. 1 sold its share in the property No. 147-148 to the defendant Nos. 5 and 6 vide the registered sale deed dated 12.08.1980, leading to their impleadment.

6. The facts as disclosed above would show that the appellants along with defendant Nos. 2 to 4 and defendant Nos. 5 and 6 became the co-owners of the property No. 147-148, Chandni Chowk in the following ratio; Appellants 8.76% Defendant Nos. 2 to 4 8.40% Defendant Nos. 5 and 6 82.84%

7. It may be noted here that as per the averments in the plaint, defendant Nos. 5 and 6 have 82.84% share only in the property Municipal bearing No. 147- 148, Chandni Chowk, New Delhi and none in any other property.

8. Holding that a suit for partial partition was not maintainable and that the appellants were obliged to sue for partition of all properties i.e. 135 to 148, Chandni Chowk, Delhi, the suit has been dismissed.

9. Learned Counsel for the appellant has urged before us that the Learned Trial Judge has erred in ignoring Ex-PX-1 i.e. the sale deed dated 12.08.1980 under which defendant No. 1 sold its 82.84% share only in property No. 147-148, Chandni Chowk to defendant Nos. 5 and 6 and the law that as an exception to the

normal rule that a suit for partition must embrace the entire properties held jointly, a suit for partial partition lies when strangers need to be joined in a suit for partition or to put a differently, when the property is held jointly with strangers who cannot be joined as a party in the suit seeking partition.

10. We need not note the plethora of authorities as to when can a suit be filed for partial partition save and except the latest pronouncement being the decision of a Learned Single Judge of the Calcutta High Court dated 24.2.2006 disposing of Civil Suit No. 45/1986 Sunil Baran Chowdhury v. Anath Bandhu Chowdhury and Ors. which authority has been reported as 2006 (2) CHN 294 as also in Manupatra, citation being which lists 5 exceptions to the General Rule of a suit seeking partition requiring to embrace all the properties. The same are as under:

(1) When different portions of family property are situated in different districts, separate suits for partition for lands of each district may be brought; (2) it may be allowed when portion of joint property at the time of the suit for partition is incapable of partition; (3) when the property left out from its very nature impartible; (4) when the property is held jointly with strangers who cannot be joined as parties to a general suit for partition the same may be left out; or (5) when the co-owners by mutual agreement decide to make partition of the joint family property leaving some portion in common.

11. Unfortunately, in the instant case, the Ld. Trial Judge had failed to appreciate the aforesaid exception to the General Rule relating to partition of immovable property; has failed to consider Ex-PX-1, also exhibited as AW-1/1. The net result is the non appreciation of a very vital fact being that defendant Nos. 5 and 6 had no concern with properties bearing Municipal No. 135 to 146.

12. Noting that no other issue which was settled has been decided by the Learned Trial Judge, we allow the appeal and set aside the impugned Judgment and decree dated 16.03.1991. The issue framed and decided vide the impugned Judgment and decree is held in favour of the plaintiffs. We hold that the suit seeking partition was maintainable.

13. Since other issues need to be decided by the Learned Trial Judge we restore the suit with a direction that the Learned Trial Judge would decide the remaining issue as per law.

14. No costs.

15. TCR be returned forthwith.

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