

Om Prakash and ors Vs. Jai Singh and ors

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Court : Delhi

Decided On : May-13-2011

Judge : V.K. Jain, J.

Appeal No. : CS(OS) No. 1423/2010

Appellant : Om Prakash and ors

Respondent : Jai Singh and ors

Advocate for Pet/Ap. : Mr Bhuvan Gugnani, Adv.

Judgement :

1. This is a suit for partition of property comprised in Khasra No. 798/505 min. situated in Abadi Deh, Municipal No. 153-A, Shahpur Jat, New Delhi. Late Shri Risal Singh, late Shri Chhatar Singh and late Shri Nyaddar Singh were brothers, being sons of late Shri Surjan Singh. The case of the plaintiff is that the suit land was jointly purchased by late Shri Risal Singh, late Shri Chhatar Singh and late Shri Nyaddar Singh. Late Shri Risal Singh was survived by three sons Jai Singh (defendant No. 1), Sher Singh (defendant No. 2) and Inder Singh. Shri Inder Singh has died and is survived by his widow Raj Bala, who is defendant No. 3 in the suit and two sons Manish and Vikas who are defendant No. 4 and 5 respectively in the suit. Late Shri Nyaddar Singh was survived by five sons, namely, plaintiff No. 1 Om Prakash, plaintiff No. 2 Kuldeep Singh, plaintiff No. 3 Braham Prakash, plaintiff No. 4 Surinder Singh and late Shri Ved Prakash and two daughters, plaintiff No. 1

Satyawati and plaintiff No. 10 Lajwanti. Late Shri Ved Prakash was survived by his widow Chandrakala (plaintiff No. 8), son Lalit Kumar (plaintiff No. 5) and two daughters Rekha and Deepti, who are plaintiff Nos. 7 and 6 respectively.

2. The case of the plaintiff is that though initially late Shri Risal Singh, late Shri Chhattar Singh and late Shri Nyaddar Singh owned equal shares in the suit land in an oral family settlement amongst them in the year 1960, late Shri Chhattar Singh was given property No. 348, measuring 200 sq. yards and his share to the suit land came to late Shri Risal Singh. Thus, late Shri Risal Singh became the owner of 2/3rd share, whereas late Shri Nyaddar Singh became the owner of 1/3rd share in the suit land.

3. It is also alleged in the plaint that since some disputes arose amongst the sons of late Shri Risal Singh, a suit for permanent injunction bearing No.470/1991 was filed by defendant No. 1 Jai Singh against defendant No. 2 Sher Singh and late Shri Risal Singh. During the pendency of the suit, late Shri Risal Singh died and therefore all his legal heirs were impleaded as parties to the suit. A Memorandum of Settlement dated 08th September, 1993 was entered into between the parties to the suit which included all the surviving legal heirs of late Shri Risal Singh. In the MoU, it was, inter alia, agreed that 2/3 rd share of late Shri Risal Singh in the suit land shall devolve on defendant No. 1 Jai Singh, defendant No. 2 Sher Singh and late Shri Inder Singh, all sons of late Shri Risal Singh, in the ratio of 1/3rd each.

4. The plaintiffs are now seeking partition of the aforesaid land and have also claimed that the suit property is in the joint possession of the parties.

5. Defendant No.1 Jai Singh, filed an affidavit admitting the averments made in the plaint and stated that he has no objection if the suit for partition is allowed. Defendant Nos. 2 to 5 were proceeded ex parte on vide order dated 21st April, 2010.

6. Plaintiff No. 1 Om Prakash, plaintiff No. 2 Kuldeep Singh, plaintiff No.3 Braham Prakash, plaintiff No. 4 Surinder Singh, plaintiff No. 5 Lalit Kumar, plaintiff No. 6 Deepti, plaintiff No. 7 Rekha, plaintiff No. 8 Chandrakala, plaintiff No. 9 Satyawati and plaintiff No. 10 Lajwanti have filed affidavits, stating on oath the averments

made in the plaint. All of them have stated that the suit land admeasuring 17 Biswa, comprised in Khasra No. 798/508 min, situated in Abadi Deh, Municipal No. 153-A, Shahpur Jat, New Delhi was purchased by late Shri Risal Singh, late Shri Chhatar Singh and late Shri Nyaddar Singh with equal shares and in an oral family settlement in the year 1960, late Shri Chhatar Singh had agreed to take property No. 348, Shahpur Jat, New Delhi which was owned by late Shri Risal Singh and give his share in the suit land to Shri Risal Singh. They have also stated that that the aforesaid family settlement was acted upon and possession of the share of late Shri Chhatar Singh in the suit land went to late Shri Risal Singh, whereas the share of late Shri Risal Singh in property bearing No. 348 was given to late Shri Chhatar Singh. They have also stated that all the parties are now in joint possession of the property which comprises an open area and four rooms.

7. Ex.PW-1/6 is the copy of Khasra Girdawari of the year 1995-99 which shows that land comprised in 798/505 min., measuring 0-15 acre was entered in the name of Shri Risal Singh, Shri Chhatar Singh and Shri Nyaddar Singh in the revenue record. Ex.PW-1/84 is the Memorandum of Family Settlement recorded on 08th September, 1993 between Shri Jai Singh, Shri Sher Singh, Shri Inder Singh, Smt. Barfo Devi, W/o Shri Attar Singh, Smt. Kailash Wati, W/o C.S. Verma, Smt. Ramo Devi, W/o Shri Abhey Ram, Smt. Saravati Devi, W/o late Shri Risal Singh. A perusal of this document would show that the parties to the family settlement had agreed that only the sons of Shri Risal Singh would inherit his estate and Smt. Barfo Devi, Smt. Kailash Wati, Smt. Ramo Devi and Smt. Saravati would not take anything from that estate. It was further agreed that Shri Jai Singh, Shri Sher Singh and Shri Inder Singh would have 1/3rd share each in 2/3rd share in the land measuring 800 sq. yards situated in Khasra No. 718/58, Shahpur Jat.

8. I see no reason to disbelieve the unrebutted testimony of the plaintiffs when examined along with the documents filed by them. The ownership of late Shri Risal Singh, late Shri Chhatar Singh and late Shri Nyaddar Singh is evident from the revenue record. In the oral family settlement of the year 1960, the share of late Shri Chhatar Singh came to late Shri Risal Singh, thereby making him owner of 2/3rd share in the suit land, whereas the remaining 1/3rd share remained with late Shri Nyaddar Singh. In view of the MoU dated 08th September, 1993, defendant

No. 1 Jai Singh and defendant No. 2, Sher Singh are entitled to 1/3rd of the share of late Shri Risal Singh in the suit land, whereas defendant No. 3 Raj Bala, defendant No. 4 Manish and defendant No. 5 Vikas are collectively entitled to the remaining share of late Shri Risal Singh in this land. Plaintiff No. 1 Om Prakash, plaintiff No. 2 Kuldeep Singh, plaintiff No. 3 Braham Prakash, plaintiff No. 4 Surinder Singh, plaintiff No. 9 Satyawati and plaintiff No.10 Lajwanti are entitled to 1/7th share each of the share which was owned by late Shri Nyaddar Singh in the suit land. Plaintiff No. 8 Chandrakala, plaintiff No. 5 Lalit Kumar, plaintiff No. 7 Rekha and plaintiff No. 6 Deepti are collectively entitled to 1/7th of the share of late Shri Nyaddar Singh in the suit land. Therefore, the share of the parties to the suit in the land subject matter of this suit comes as under:-

Defendant No. 1 Jai Singh 2/9 Defendant No. 2 Sher Singh 2/9 Defendant No. 3 Raj Bala 2/27 Defendant No. 4 Manish 2/27 Defendant No. 5 Vikas 2/27 Plaintiff No. 1 Om Prakash 1/21 Plaintiff No. 2 Kuldeep Singh 1/21 Plaintiff No. 3 Braham Prakash 1/21 Plaintiff No. 4 Surinder Singh 1/21 Plaintiff No. 9 Satyawati 1/21 Plaintiff No. 10 Lajwanti 1/21 Plaintiff No. 8 Chandrakala 1/84 Plaintiff No. 5 Lalit Kumar 1/84 Plaintiff No. 7 Rekha 1/84 Plaintiff No. 6 Deepti 1/84

9. A preliminary decree of partition is hereby passed, declaring the parties to the suit to be the owner of the suit land in the aforesaid ratio. Shri K.K. Nagia, Joint Registrar of this Court is appointed as Local Commissioner to suggest the mode of partition of the suit land by metes and bounds. The fee of the Local Commissioner is fixed at Rs 20,000/- which shall be paid by the plaintiff, but will be borne by the parties to the suit in the ration of their share in the suit land.

Decree sheet be drawn accordingly.

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