

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR PARTITION

Judgment reserved on : November 18, 2008

Judgment delivered on : December 03, 2008

RFA 01/1995

SHRI RAJBIR and ORS.

..... Appellants

Through: Mr. Harish Malhotra, Sr. Adv.
with Mr.A.P.S.Gambhir, Adv.

VERSUS

SMT.PADMA DEVI and ORS.

..... Respondents

Through: Mr.J.K.Jain, Adv. for R-1 to R-6.
Mr.K.R.Chawla, Adv. for
Mr.Charan Singh (Respondent).

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog
Hon'ble Mr.Justice J.R. Midha

PRADEEP NANDRAJOG, J.

1. The ancestry of the litigating parties may be noted. The pedigree table is as under:-

NARBHA

NANAK RAM DUTT (died issueless)
CHAJJU RAM

Jawahar Singh Ghasi Jit Singh
(defendants 1 to 4 (defendants 5 to 8 (plaintiffs
are the sons of are the sons of Ghasi) are the wife,
Jawahar Singh) sons and
daughter of Jit Singh)

2. Jit Singh filed a suit for partition of a plot of land admeasuring 1200 sq.yds. assigned No.1572 in village Magholpur Kalan stating that the village was commonly known as Mangolpur Kalan and that their ancestors were the proprietors of vast land in said village and were biswedars i.e. co- sharers of the abadi land in the village, on which they had a house and gher/ghitwar. The ancestry was stated to be as per the afore-noted pedigree table. It was stated that during the settlement of the abadi, effected in the village in the year 1880, the afore-noted plot number was assigned to the land in possession of their ancestors. Alleging that the holding was joint, partition thereof was sought. Right of Ghasi, Jawahar Singh and Jit Singh was pleaded to be 1/3rd each.

3. On the death of Jit Singh his wife, sons and daughter were substituted as the plaintiffs being his legal heirs.

4. The children of Ghasi opposed the claim alleging that they were the exclusive owners of the land and that the children of Chajju had separated long before they, i.e. children of Ghasi attained majority.

5. No written statement was filed by the legal heirs of Jawahar Singh who were impleaded as defendants No.5 to 8.

6. Needless to state, on the pleadings of the parties, the only material issue which arose for consideration was whether a separation had taken place amongst the children of Chajju as alleged in the written statement.

7. Vide impugned judgment and decree dated 25.11.1994, a finding has been returned against defendants No.1 to 4 holding that said defendants have

failed to prove a partition amongst the children of Chajju; resulting in a preliminary decree being passed declaring the share of plaintiffs to be 1/3rd (jointly); that of defendants No.1 to 4 being 1/3rd (jointly); and that of defendants No.5 to 8 being 1/3rd (jointly).

8. At the trial, which commenced during the life-time of Jit Singh, he examined himself as PW-1, and in his deposition reiterated the facts pleaded in the plaint.

9. Relevant would it be to note that during cross-examination he was questioned as to what happened to the agricultural lands owned by the family, to which he replied that the same were acquired. No suggestion was put to the witness that the respective family members were assessed separately for compensation in respect of the acquired lands.

10. One Pyare was examined as PW-2, who deposed that he was a resident of the village and that no separation took place amongst the children of Chajju.

11. PW-3, Sagan Kumar Saini, a draftsman by profession, proved the site-plan of the land, stating that he had prepared the same i.e. Ex.PW-3/1.

12. Relevant would it be to note that PW-3 was not cross-examined with respect to the site-plan. He was only questioned with respect to his qualifications of being a draftsman. He informed that he had a diploma in the relevant subject.

13. PW-4, Pawan Kumar Seth, a clerk from the Record Room (Judicial) Revenue, Tis Hazari produced the record pertaining to ejection proceedings initiated by the Gaon Sabha of Village Mangolpur Kalan against Ghasi and Jawahar Singh.

14. PW-5, Chaudhary Risal Singh, Advocate, proved Ex.PW-5/1, being a complaint dated 28.11.1968 made to the Revenue Assistant by the Panchayat Secretary on behalf of Gaon Sabha Mangolpur Kalan alleging that Ghasi and Jawahar Singh, sons of Chajju had illegally trespassed upon the land of the Gaon Sabha.

15. After examining PW-1 to PW-5, counsel for the plaintiffs tendered in evidence the certified copy of the order dated 30.3.1970, Ex.P-2, passed by

the Revenue Assistant dismissing the complaint of the Gaon Sabha (Ex.PW-5/1) holding that the disputed land did not belong to the Gaon Sabha, and that the record of settlement effected in 1880 revealed that the land recorded in the revenue record, vide serial entry No.1572, was to the effect that the said land was within the lal dora and that on the promulgation of the Delhi Land Reforms Act 1954, vide Section 8 thereof, the land was treated as held by the proprietors thereof i.e. the persons in possession of the land. He also tendered Ex.P-3, being the notice issued by the Revenue Assistant when he received the complaint Ex.PW-5/1.

16. The contesting defendants examined Rajbir i.e. son of Ghasi as DW-1 who reiterated that a separation had taken place amongst the children of Chajju.

17. Relevant would it be to note that the date or the year in which the alleged partition took place was not stated by him.

18. DW-2, Ram Naraiian, a villager residing in the same village also deposed about a partition being effected, but did not state the date or the month or the year when the same happened.

19. Two witnesses were examined, both were shown to be DW-3. The first witness examined as DW-3, Budh Ram, stated that the disputed land was in possession of the sons of Ghasi and that neither Jit Singh nor Jawahar Singh were ever in possession thereof. The second witness examined as DW-3, Jai Kishan, a co-villager deposed that the name of their village was Mangolpur Kalan.

20. After the trial was over and before arguments commenced, with the consent of the contesting parties certain documents, filed by the contesting defendants were taken on record and were assigned exhibit marks D-1 to D-6. It may be noted that two documents were assigned the same exhibit mark i.e. D-5 being a certified copy of LR-5 i.e. a revenue entry to the effect that the lands detailed therein comprised in Khasra No.17/1/1, 17/2, 31/7, 31/14, 31/17 and 31/24 were entered in the revenue record as in the cultivatory possession of Ghasi and a certified copy of a khatauni evidencing the same i.e. what was recorded in LR-5.

21. Case projected by the contesting defendants before the learned Trial Judge was on Ex.D-1 to D-6 (wrongly referred to in the impugned decision

as Ex.D-1 to D-7; the probable reason being that two documents were assigned the same exhibit number i.e. D-5). It was urged that the same show Ghasi to be the recorded owner of the lands detailed in LR-5 from which an inference of partition was sought to be drawn. The second contention urged was that the dispute between the Gaon Sabha and Ghasi evidenced by Ex.P-2, P-3 and Ex.PW-5/1 revealed that only Ghasi was in possession of the disputed land, where from an inference was sought to be drawn of a partition being effected. A third contention was urged that the plaintiffs were not even sure whether the disputed land was comprised in village Magholpur Kalan or Mangolpur Kalan. As against that, the plaintiffs urged that partition has to be proved by cogent evidence and that there was none.

22. Learned Trial Judge has held in favour of the appellants. The principal reasoning is that there is no evidence to prove partition. Exhibits D-1 to D-6 were held to be irrelevant evidence as the same did not pertain to the land in dispute. Learned Trial Judge has held that no witness of the plaintiffs was examined on the issue of the name of the village and hence concluded that the identity of the land was not in dispute.

23. At the hearing of the appeal, the very same contentions which were urged before the learned Trial Judge were pressed. One additional submission was urged, being that, Jawahar Singh had filed another suit for partition which was directed to be clubbed with the instant suit and that the learned Trial Judge has erred in deciding the instant suit without deciding the suit filed by Jawahar Singh. It was urged that a contradictory finding may result if suit filed by Jawahar Singh is decided by holding that a partition took place.

24. Pertaining to the name of the village, suffice would it be to state that in para 3 of the plaint, the plaintiffs clearly pleaded that the name of the village was Magholpur Kalan and that it was commonly known as Mangolpur Kalan. There is no evidence on record that in Delhi there exist two villages, one called Magholpur Kalan and the other called Mangolpur Kalan. Thus, we concur with the findings recorded by the learned Trial Judge that the contesting defendants were trying to confuse the issue.

25. The contention of the contesting defendants with reference to Ex.P-2, P-3 and PW-5/1 may be dealt with.

26. The same pertain to a claim by the Gaon Sabha that the land in question belonged to the Gaon Sabha and that Ghasi and Jawahar Singh had illegally trespassed upon the same and hence were liable to be ejected under Section 86-A of the Delhi Land Reforms Act 1954. In said proceedings, the defence taken was that in the settlement effected in the year 1880 the land in question was, vide serial No.1572, shown as belonging to and in possession of the ancestors of Ghasi and Jawahar Singh and that it was within the abadi of the village and that with the promulgation of the Delhi Land Reforms Act 1954, vide Section 8 thereof, was treated as abadi land with proprietary right vested in the occupants of the land. The issue of partition was not in the forefront in said proceedings. Needless to state, the defence succeeded by proving that the ancestors of Ghasi and Jawahar Singh were the proprietors of the land in question. No finding was returned that after the original settlement which took place in the year 1880, by and under a partition effected amongst the children of Chajju, Ghasi and/or Jawahar Singh came into the possession of the land in dispute.

27. Ex.D-1 to D-7 are certainly relevant, but not conclusive of the proof of partition. The relevance of the documents is that they show Ghasi as the bhumidar of agricultural land comprised in Khasra No.17/1/1, 17/2, 31/7, 31/14, 31/17 and 31/24 in the revenue estate of village Mangolpur Kalan. It could be urged there from that the exclusive bhumidari rights in favour of Ghasi establish a partition. But this contention ignores the fact that to urge so, it has to be proved that the brothers of Ghasi were likewise recorded as exclusive bhumidars of some other lands which were ancestral.

28. Ghasi could have independently acquired title to certain agricultural lands in the village. It would be impermissible to draw conclusions by assuming the existence of a fact which has not been proved. In addition to this we may note that PW-1, Jit Singh stated in his examination in chief that all agricultural land belonging to the family was acquired by the government in the year 1954. The same went uncontested in the cross examination.

29. Law is clear that possession by one co-sharer, in the eyes of law, is possession of all and a mere occupation of a large portion or even of an entire joint property necessarily does not amount to an ouster or a proof of partition. In the decision reported as AIR 1961 Punjab 528 Sant Ram Nagina Ram vs. Daya Ram Nagina Ram it was held as under:- (1) A co-owner has an interest in the whole property and also in every parcel of it. (2) Possession of joint property by one co-owner is in the eye of law, possession of all, even

if all but one are actually out of possession. (3) A mere occupation of a larger portion, or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all. (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other. (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster of abandonment. (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners. (7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.?

30. The contention that the learned Trial Judge ought to have decided both suits i.e. the instant suit as also the suit filed by Jawahar Singh which is now being prosecuted by his sons, as noted above was urged in appeal and not before the learned Trial Judge.

31. No prejudice has been caused to either party and the question of any contradictory decisions does not arise. The reason is obvious. Jawahar Singh who was not originally impleaded as a defendant in the suit filed by the plaintiffs was subsequently impleaded as a defendant and his legal heirs were brought on record on his death. The children of Jawahar Singh would be bound by the impugned judgment and decree. We may note that the necessity of the second suit arose because Jawahar Singh was not impleaded as a defendant in the instant suit and he rightly thought as to how would he protect his interest. In any case, the instant decree would operate as res judicata in the second suit.

32. The appeal is dismissed with costs in favour of the contesting respondents.

33. Trial Court Record be returned forthwith.

Sd/-
PRADEEP NANDRAJOG, J.

Sd/-
J.R. MIDHA, J.