



2025:DHC:6504



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 29th July, 2025**

+ RFA 39/2021

INDER SINGH

.....Appellant

Through: Mr. Mohit Kumar and Mr. D. K.
Panchal, Advocates
Mob: 9873624008
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versus

MEERA KUMARI & ORS.

.....Respondents

Through: Ms. Vishakha and Mr. Jitender Singh,
Advocates for Respondent nos. 1 to 3
Email: jitumukesh@yahoo.in
Mob: 7838888619
Ms. Meenakshi Midha, Advocate for
MCD
Mob: 9810288545

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL):**

1. The present appeal has been filed seeking to set aside the impugned judgment and preliminary decree of partition dated 14th May, 2019 and final decree dated 24th December, 2019 passed by the Court of Additional District Judge-01, South-West District, Dwarka Courts, New Delhi in *Civil Suit No. 20/2012 (516704/2016)*.
2. A suit for partition, permanent and mandatory injunction had been filed by the respondents herein in District Court, Dwarka *qua* property bearing No. RZ-26-P/111, Part of Khasra No. 305, Indira Park, West



Sagarpur, New Delhi-110046, measuring 62 sq. yds. Respondent no.1, who was plaintiff no.1 in the suit, is the wife of Late Bhura Singh @ Bhairo Singh, who was the younger brother of the appellant, i.e., Inder Singh. The suit was filed on the premise that Late Bhura Singh @ Bhairo Singh, husband of respondent no.1, had half share in the suit property along with Inder Singh, the appellant herein.

3. Issues were framed in the suit *vide* order dated 07th February, 2013, in the following manner:

“xxx xxx xxx

Issues

1. *Whether the plaintiffs do not have any right, title or interest in the suit property, as they were given possession of another property bearing no. RZ-26-P/192, Indira Park, West Sagarpur, New Delhi? OPD*

2. *Whether the plaintiff is entitled to the decree of partition, as prayed for? OPP*

3. *Whether the plaintiff is entitled to the decree of permanent injunction, as prayed for? OPP*

4. *Whether the plaintiff is entitled to the decree of mandatory injunction, as prayed for? OPP*

5. *Relief.*

xxx xxx xxx”

4. Additional issues were framed in the suit *vide* order dated 09th March, 2015, in the following manner:

“xxx xxx xxx

1. *Whether the suit is barred U/s 477/478 of the D.M.C. Act? OPD-2*

2. *Whether the suit is not maintainable qua prayer ‘c’, in view of the preliminary objection no. 4 of the written statement? OPD-2*

3. *Relief.*

xxx xxx xxx”



5. By way of the impugned judgment and decree dated 14th May, 2019, preliminary decree was passed in the following manner:

“xxx xxx xxx

(a) Preliminary decree of partition is passed whereby plaintiff and defendant are entitled to half share each in the suit property i.e. property i.e. RZ-26-P/111, Part of khasra No. 305, Indira Park, West Sagarpur, New Delhi 110046, measuring 62 sq. yards,

(b) Decree of permanent injunction with respect to half share in the suit property i.e. property i.e. RZ26-P/111, Part of khasra No. 305, Indira Park, West Sagarpur, New Delhi 110046, measuring 62 sq. yards, is passed in favour of the plaintiff

(c) Decree of mandatory injunction to half share of the suit property i.e. property i.e. RZ-26-P/111, Part of khasra No. 305, Indira Park, West Sagarpur, New Delhi 110046, measuring 62 sq. yards, is passed in favour of the plaintiff.

(d) Plaintiff is also entitled to cost.

xxx xxx xxx”

6. Subsequently, final decree of partition was passed vide order dated 24th December, 2019, as follows:

“xxx xxx xxx

Plaintiff has filed the present suit seeking partition, possession and permanent injunction of the suit property bearing no. RZ-26-P/111, Part of khasra No. 305, Indira Park, West Sagarpur, New Delhi 110046, measuring 62 sq. yards, (hereinafter referred to as the suit property).

Preliminary decree was passed in the matter, whereby, plaintiff and defendant are entitled to half share each in the suit property. Parties were directed to suggest ways and means as to how the final decree of partition in the matter could be passed. However, till date despite opportunities parties have not suggested the ways of partition by metes and bounds.

A Local Commissioner in the matter was appointed by this court to suggest partition of the suit property by metes and bounds, however, it was suggested that the suit property could not be partitioned by metes and bounds.

I have gone through the record and the only option left is to sell the suit property by way of auction (in terms of judgment titled as **Indu Singh & Anr. v. Prem Chaudhary, 2018 SCC Online Del. 8951**) and the sale proceeds so received could be divided among the plaintiff and



defendant as per the preliminary decree.

In this view of the matter a final decree of partition in respect of the suit property is passed, and after auction sale, the sale proceeds be disbursed to the parties as per allocation of their share in the preliminary decree.

In case any of the party do not come forward to accept the same, the amount may be deposited in court.

Decree sheet be prepared accordingly.

File be consigned to record room.

xxx xxx xxx”

7. Thus, against the aforesaid preliminary and final decree, the present appeal came to be filed.

8. On behalf of the appellant, it is contended that the respondents had filed the suit for partition without claiming the relief of possession or without having any right, title and interest in the suit property. Therefore, the said suit filed by the respondents was not maintainable. It is further contended that the documents produced by the respondents as *Exhibit PW-1/A* to *Exhibit PW-1/E*, dated 08th April, 1982, did not pertain to the suit property. It is submitted that while the suit property measured 62 sq. yds., the documents produced in evidence by the respondents pertained to property measuring 50 sq. yds. Thus, the description of the property given in the documents produced by the respondents, did not match the description of the suit property. Further, it is the case of the appellant that the documents submitted by the respondents were of the year 06th January, 1994, and not 08th April, 1982, as noted by the learned Trial Court in the impugned judgment.

9. It is averred by the appellant that the suit property was purchased by the appellant from his own funds. Since his younger brother, i.e., Late husband of respondent no.1, was residing in the suit property along with the



respondents, the suit property was purchased by appellant from his own funds in the name of the Late husband of respondent no.1, as a *benami* transaction. The suit property is in possession of the appellant since 1982 and the respondents have no right in the suit property. Further, it is averred that there was no cause of action in favour of the respondents, as no construction was being carried out by the appellant, on the basis of which, the suit was filed.

10. *Per contra*, learned counsel appearing for the respondent nos. 1 to 3 submits that the appellant himself produced the various documents related to the property, which showed that Late Bhura Singh @ Bhairo Singh, husband of respondent no.1, who was also the younger brother of the appellant, had an equal share in the suit property. Thus, the rights of the respondents were established. It is further submitted that the appellant himself had admitted to the half share of the deceased husband of respondent no.1, which the appellant sought to justify as a *benami* transaction, which is against law.

11. Having heard learned counsel appearing for the parties, at the outset, this Court takes note of the various documents produced during evidence by the appellant himself, *viz.* General Power of Attorney, Agreement to sell and Will, all of which are dated 08th April, 1982, exhibited as *Exhibit DIWI/PX*, on 22nd February, 2018.

12. Perusal of the aforesaid documents, exhibited by the appellant himself as defendant no.1 in the suit, clearly show that Late Bhura Singh @ Bhairo Singh, younger brother of the appellant, had equal share in the suit property, which was purchased by the two brothers jointly by way of the aforesaid documents. Therefore, the documents produced by the appellant himself established the right, title and interest of Late Bhura Singh @ Bhairo Singh



to the extent of half share in the suit property. Therefore, the respondent nos. 1 to 3 herein, being legal heirs of Late Bhura Singh @ Bhairo Singh, are entitled to the said half share of Late Bhura Singh @ Bhairo Singh in the suit property.

13. The appellant herein was duly cross-examined on 22nd February, 2018, as defendant no.1 in the suit, wherein, he brought the original documents as aforesaid, with respect to the suit property, that were seen and returned. The cross-examination of Inder Singh on 22nd February, 2018, the appellant herein, as defendant no.1 in the suit, is reproduced as under:

“xxx xxx xxx

I have brought the original documents with respect to the suit property in terms of directions given by the Court dated 10.05.2016. Copy of GPA, Agreement and Will are collectively exhibited as DIW1/PX. (Original seen and returned). Apart from these three documents, I do not have any other document, pertaining to the suit property.

xxx xxx xxx”

(Emphasis Supplied)

14. Perusal of the aforesaid clearly shows that the documents pertaining to the suit property were produced in original by the appellant during this cross-examination on 22nd February, 2018, which were duly seen and returned. As recorded above, the said documents pertaining to the title of the suit property were duly exhibited as *Exhibit-DIW1/PX (Colly.)*. These documents clearly show that the suit property was purchased jointly by the appellant and deceased husband of respondent no.1. Therefore, the share of the respondents herein, as legal heir of the deceased, is proved beyond doubt on the basis of the documents produced by the appellant himself, the original of which, were duly perused by the learned Trial Court.

15. The contention of the appellant that the respondents merely filed suit for partition and not a suit for declaration of title or possession, has no merit.



The title and share of the respondent nos. 1 to 3 in the suit property, was clearly established by the evidence on record. Therefore, the said respondents being lawful shareholders in the suit property were entitled to pray for partition of the said property. Further, a party need not be in actual physical possession for praying partition of a property, when the shareholding of the said party in the property in question, is established. Thus, the Madras High Court in the case of *S. Ekambaram Versus Nallathambi*, *MANU/TN/1099/2024*, has held as follows:

“xxx xxx xxx

*16. Even with regard to the contention regarding valuation and improper Court fee being paid, I am in agreement with the submission of the learned Senior Counsel appearing for the appellant. In a suit for partition, the plaintiff shall be entitled to pay the fixed Court fee under Section 37 (2) of the Tamil Nadu Court fees and Suits Valuation Act, 1955 only if he is in joint possession of the property. **It is settled law that the such a plaintiff need not be in actual physical possession and as long as his share in the suit property is definite and subsisting, he is deemed to be in constructive possession of the suit property, jointly along with other co-owners who may be actually in physical possession of the suit property.** Even in such cases, the plaintiff who seeks partition can take advantage of the fixed Court fee payable under Sub Section (2) of Section 37 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. However, here admittedly the property has been sold even by the father of the plaintiff in the year 1997 and right from that date, the defendant has been in physical possession of the entire suit property to the exclusion of any of the family members of the plaintiff. Therefore, in such a case, the plaintiff cannot claim to be in joint possession and he ought to have valued the suit under Section 37 (1) and not under Section 37(2) of the Tamil Nadu Court Fees and Valuation Act, 1965. Even viewed from this angle the suit for partition is liable to fail.*

xxx xxx xxx”

(Emphasis Supplied)

16. This Court has perused the evidence before this Court. There is nothing on record to establish that the sale consideration of the suit property was exclusively paid by the appellant herein, as contended on behalf of the



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appellant. Therefore, this Court finds no error in the finding of the Trial Court that the suit property was not purchased by the appellant herein from his exclusive funds.

17. Accordingly, on the basis of the documents and evidence on record, the case of the respondents with regard to their half share in the suit property was established in categorical terms. Thus, this Court finds no error in the impugned judgment and decree dated 14th May, 2019 and 24th December, 2019, passed by the learned Trial Court.

18. No merit is found in the present appeal. The same is accordingly, dismissed.

MINI PUSHKARNA, J

JULY 29, 2025/SK/KR