



2024:DHC:10036



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 03rd October, 2024**
Pronounced on: 24th December, 2024

+ **C.R.P. 42/2022 & CM APPL. 15366/2022**

CHANDER KANTA

W/o Late Ram Dutt Pahuja
R/o House No.3, 1st & 2nd Floor,
Dr. Mukherjee Nagar,
Delhi.

.....Petitioner

Through: Mr. Sanjiv Bahl and Mr. Sumit Ahuja,
Advocates.

versus

1. **SHAM LAL PAHUJA**
S/o Late Shri Topan dass Pahuja
R/o House No.3, Ground Floor,
Dr. Mukherjee Nagar,
Delhi.
2. **YOGESH DUTT PAHUJA (PROFORMA PARTY)**
S/o Late Ram Dutt Pahuja
3. **SUMESH DUTT PAHUJA (PROFORMA PARTY)**
S/o Late Ram Dutt Pahuja
4. **MS. SHEETAL (PROFORMA PARTY)**
D/o Late Ram Dutt Pahuja

All the above three: -

R/o House No.3,
1st & 2nd Floor, Dr. Mukherjee Nagar,
Delhi.

.....Respondents

Through: Mr. Raja Bahadur Singh Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



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J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Civil Revision Petition under Section 115 read with Section 151 of *Code of Civil Procedure, 1908* ('CPC' hereinafter) has been filed to challenge the Order dated 15.12.2021 *vide* which the Application under Order VII Rule 11 CPC, has been dismissed.
2. *The facts in brief* are that the *Respondent No. 1/Plaintiff* and his brother Late Shri Ram Dutt Pahuja, were jointly allotted the Suit Property bearing House No. 3, Dr. Mukherjee Nagar, Delhi admeasuring 160 square yards (hereinafter referred to as "*Suit property*") in Rehabilitation Scheme of Kingsway Camp area, by Municipal Corporation of Delhi ('MCD' hereinafter) on 28.02.1979. Both the brothers thus, became owners to the extent of 50% of the Suit property. According to the Respondent No.1/Plaintiff, he requested his brother many a times during his lifetime for partition, but he delayed the same on one pretext or the other. He died on 21.09.2000 and is survived by his wife, two sons and one daughter who have been impleaded as Defendant No.1 to 4 in the Suit.
3. *The Respondent No. 1/Plaintiff has claimed* that Revisionist/Defendant No.1 Chander Kanta had filed a *Civil Suit No.821/2013 for Permanent Injunction on the basis of false and fabricated documents*. She had propounded a *Will dated 19.04.2000* and also a fabricated *Memorandum of Oral Partition dated 14.04.1996*. However, the true facts are that neither was there any Oral Partition ever effected between the parties in the year 1995 nor Memorandum of Oral Partition prepared in 1996.



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4. The Revisionist/Defendant No.1 also filed another Civil Suit No.1095/2017 for *Mandatory and Permanent Injunction* with a prayer for directing the Defendant (Plaintiff/Respondent No. 1 herein) to cooperate with Defendant No.1 for getting the Conveyance Deed executed by DDA in accordance with their share, in the month of September, 2017.

5. The Plaintiff had further asserted that it is then that he came to know in the month of October, 2019 that Defendant No.1 is trying to grab the Second Floor and Terrace of the Suit property and that Defendants are trying to sell some part of the premises in question. The Plaintiff, therefore, filed the present *Suit for Declaration* that he is the owner of half share of the Suit property and *for Partition*. He also sought *consequential relief of Permanent Injunction* for restraining the Defendants from creating third party rights in the Suit property.

6. The Defendants in the present ***Suit CS SCJ No. 1296/19*** filed an Application under Order VII Rule 11 CPC for rejection of the Suit on the ground that the Plaintiff has *deliberately and intentionally concealed and suppressed the material and true facts*.

7. *Secondly*, it has been claimed that the Suit is *grossly barred by limitation*. The Suit property was orally partitioned on 15.07.1995 between the Plaintiff and his deceased brother by virtue of which the Respondent No.1/Plaintiff became the owner of entire Ground Floor, while the husband of Revisionist/Defendant No.1 became owner of the First floor, Second Floor, Terrace and Stairs in the said property. Late Shri Ram Dutt Pahuja brother of the Plaintiff, was co-owner of 50% share in the subject property. Sh. Ram Dutt Pahuja, Husband of Revisionist/Defendant No.1 executed a Will dated 19.04.2020 in respect of his portion of the Suit property in favour



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of his wife/Revisionist (Defendant No.1). After the demise of Late Shri Ram Dutt Pahuja brother of the Plaintiff, both Defendant No.1 and the Plaintiff jointly approached the MCD office for mutation of their respective portions which was duly carried out. The Ground Floor stands mutated in the name of Plaintiff, while first Floor, Second Floor and Terrace are mutated in the name of Defendant No.1.

8. *Thirdly*, the Suit No. 821/2013 was decreed in favour of Revisionist/Defendant No.1 *vide* Judgment dated 15.02.2016, which has not been challenged by the Plaintiff and has attained finality. The findings therein in regard to the title/ownership of the Suit property are binding on the principle of *res judicata*. The present Suit does not disclose any cause of action and the Suit is liable to be rejected.

9. The learned Civil Judge considered all the aforesaid three pleas of the Defendant No.1 and observed that they all were mixed question of fact and law and required evidence. Consequently, the Application under Order VII Rule 11 was dismissed.

10. *Aggrieved, by the said Order, present Revision Petition has been filed.*

11. The Respondent No. 1 in his Reply to the present Petition has submitted that the Revision Petition deserves to be dismissed outrightly as the Revisionist herein has approached this court with unclean hands; has concealed material facts and is based on frivolous grounds. It is further asserted that the impugned Order does not suffer from any infirmity.

12. **Submissions heard and record perused.**

13. It is an admitted case that the Suit property was allotted on 28.02.1979 in the joint name of the Plaintiff Sham Lal Pahuja and his brother Late Shri



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Ram Dutt Pahuja, whereby they both became joint owners in the Suit property. The Plaintiff/Respondent in his present *Suit for Partition and Injunction* asserted that the property has continued to be joint till date and thus, sought Partition and Injunction.

14. *The Defendant/Revisionist in her Written Statement* as well as in the Application under Order VII Rule 11 CPC claimed that the plaint does not disclose *any cause of action*. It was asserted that material facts have been suppressed about the earlier litigation and that the property got partitioned way back in 1995 pursuant to which the Revisionist as well as the Respondents, came into the physical possession of their respective portions. Not only this, the respective portions on the basis of Memorandum of Oral Agreement, even got mutated in the records of MCD in April, 1996 and that the parties have been respectively paying the House Tax for their respective shares.

15. The Respondent No.1/Plaintiff has himself mentioned about the Suit No.821/2013 which was filed by Revisionist/Defendant No.1 against him seeking Permanent Injunction to direct the Plaintiff herein to not interfere in her right to put a grill around the water tank installed by the Plaintiff herein on the roof of the rooms constructed by him on the Ground Floor.

16. In that Suit, the Defendant No.1 herein had specially averred that the two brothers had effected an Oral Partition of the Suit property by an Oral Agreement on 15.07.1995; and that a *written Memorandum* in respect of the oral partition was executed between the parties on 14.04.1996. It was further mentioned that pursuant to this oral Memorandum of Partition, the Ground Floor came to the share of the Plaintiff while the First Floor, Second Floor and the Terrace above went to the share of Ram Dutt Pahuja and by



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virtue of his Will got devolved upon Defendant No.1/Revisionist. This Suit No.821/2013 got decreed *vide* Judgment dated 15.02.2016, a copy of which has been placed on record. In the said judgment as well there is a mention of the Oral Partition of 1995, Memorandum of Partition of 1996 and about the mutation of the properties in their respective names in the Municipal records.

17. Though, it has been rightly agitated by the Plaintiff that the Suit No.821/2013 was merely for Injunction and was not in respect of the title and even if there was any mention of the title of the parties in the Suit, it was only incidental and for the purpose of considering whether the Plaintiff was entitled to injunction. There was no finding in respect of the title of the parties in the Suit premises and, therefore, the judgment dated 15.02.2016 cannot be *res judicata* in respect of the title or partition of the Suit premises.

18. However, it cannot be overlooked that while in the present Suit, Plaintiff has taken a specific plea that no oral partition was ever effected, but in the earlier Suit of 2013 he did not challenge the factum of oral partition or of Memorandum of Partition or about the First Floor, Second Floor, and Terrace-above having gone to the share of Revisionist/Defendant No.1 by virtue of the Will dated 19.04.2000 of Late Shri Ram Dutt Pahuja. It is pertinent to observe that the Will was executed by Ram Dutt Pahuja in respect of the property i.e. First Floor, Second Floor and Terrace which had come to his share by virtue of partition.

19. It is evident that the factum of oral partition and of the Memorandum of Partition came to the knowledge of the Plaintiff herein at least if not before in 2013. If he was challenging that there was no oral partition, then the Suit for Declaration should have been filed within three years from 2013.



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He is now estopped from denying these facts being in his knowledge. Once the facts which he seeks to challenge came to his knowledge in 2013, he should have filed the Suit seeking the Declaration of him being the rightful Owner of half-share in the property and that there was no partition ever effected of the Suit property within three years from 2013.

20. The Suit for Declaration could have been filed till 2016, but the present Suit has been filed on 02.11.2019 which is way beyond the period of 3 years and is patently barred by limitation.

21. It is no doubt true that a Suit for Partition is a continuing cause of action, but in the present case as per the admitted facts which are reflected from the pleadings and the earlier judgment which is a public document *per se* admissible in evidence that the property stood partitioned way back in 1995 and was even acted upon by the parties. The Plaintiff's Suit to seek a Declaration that there was no partition is on the face of it, barred by limitation.

22. Herein, it is also pertinent to mention that Plaintiff himself has admitted in his Complaint, that mere independent assessment of the floors in the name of Plaintiff and Defendant respectively would not create any presumption of there being a Partition. From the averments of the Plaintiff it is thus, evident that the Ground Floor stands mutated in the name of the Plaintiff while First Floor, Second Floor and Terrace stands mutated in the name of Revisionist/Defendant No.1.

23. Pertinently, *copy of the Rectification Order under Section 176 DMC Act dated 04.01.2001* has been placed on record, wherein the House Tax has been revised for the First Floor *w.e.f.* 01.04.1996. It is recorded in that Order that Shri Sham Lal Pahuja i.e. Plaintiff in this Suit, had approached



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the MCD on behalf of Defendant, St Chander kanta and had submitted that *vide* Memorandum of Oral Partition dated 14.04.1996, Ram Dutt Pahuja became owner of First Floor and Second Floor and he became the owner of the Ground Floor. He also stated that Ram Dutt Pahuja had expired and through his Will, Smt. Chander Kanta i.e. the Revisionist/Defendant No.1 has become the owner of First Floor and Second Floor. He requested for assessment in their individual name.

24. The copy of Will, Memorandum of Oral Partition etc. along with Indemnity Bond, Affidavit was filed by Sham Lal Pahuja before the Municipal Authority and he also requested for mutation/sub-division of their respective portions in their favour. Consequently, separate assessment of the Ground Floor was made in the name of Sham Lal Pahuja while First Floor and Second Floor were assessed in the name of Smt. Chander Kanta.

25. This Assessment Order also corroborates that Plaintiff was aware of the oral Partition which took place between the two brothers in 1995 and Memorandum of Oral Partition recorded in 1996. Not only did they have an oral partition, but pursuant thereto Plaintiff came in possession of the Ground Floor while Ram Dutt Pahuja along with his family took possession of the First Floor and the floor above.

26. The plaint read with the documents, clearly reflects that the property already stands partitioned in 1995 and the possession of respective portions have been taken by the parties. The Plaintiff in view of these documents, is now estopped from claiming that no Partition has taken place.

27. It may be observed that the property got partitioned in the manner stated above way back in 1995-96. It may be observed that as on date, the construction of the *floors above* has been permitted and because of this



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subsequent change in by-laws, it is understandable as to why the Plaintiff now intends to disturb the partition which got effected way back in 1995-96. With the change in *by-laws* and the economic development of the Society, there may have been inequitable expansion of the monetary value of the property, but that cannot be a ground to seek the rights which have got settled about 30 years back. Hard as it may be for the Plaintiff, but he cannot now seek to file a Suit on a cause of action which does not survive.

28. It is not on the principle of *res judicata* on the basis of the earlier judgment of 2016, but on the principle of estoppel and his admissions, that he is estopped from denying the facts which have been admitted by him. Also, because the facts were in his knowledge all through out and latest in 2013, the present Suit seeking Declaration was filed after the period of 3 years which is *patently barred by limitation*.

29. The learned Civil Judge fell in error in observing that the question of limitation is a question of mixed fact and law. It is a case where on the face of it, the Suit is barred on the principle of estoppel and limitation.

30. Consequently, the impugned Order is set aside and the Application under Order VII Rule 11 CPC is hereby allowed. The Suit of the Plaintiff is rejected for want of cause of action and as barred by limitation.

31. The Revision Petition is allowed and stands disposed of along with pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 24, 2024
RS