



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27th February, 2024

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Pronounced on: 30th May, 2024

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CS(OS) 112/2016 & I.A.21959/2023

SHRI KAMALJIT SINGH PAHWA

S/o Late Shri Harbans Singh

R/o House No.H-115, Upper Ground Floor,

Vikas Puri, New Delhi.

..... Plaintiff

Through: Mr. Anil Sharma & Mr. Keshav
Kumar, Advocates with plaintiff in
person.

versus

1. **SHRI GURDEEP SINGH PAHWA**

S/o Late Shri Harbans Singh,

R/o House No.BL-55, L Block, First Floor,

Anand Vihar, Hari Nagar,

New Delhi

2. **SMT. HARJIT KAUR PAHWA**

W/o Late Shri Narinder Singh Pahwa,

R/o House No. BL-55, L Block, First Floor,

Anand Vihar, Hari Nagar,

New Delhi

..... Defendants

Through: Om Prakash Gupta, Advocate with
son of D-1 in person.

CORAM:

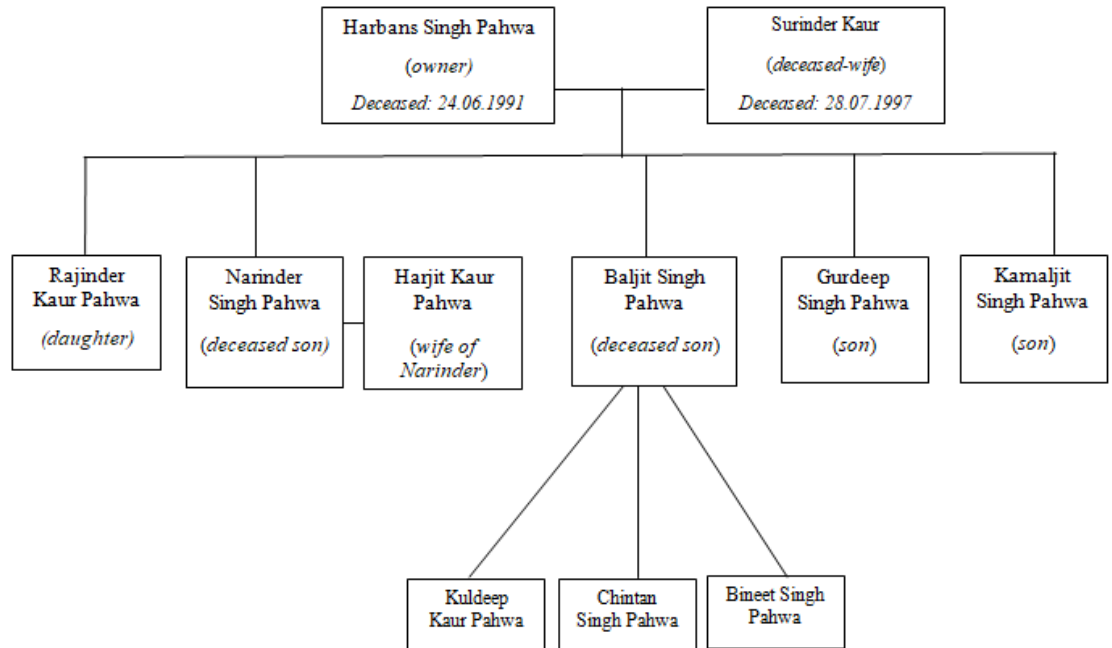
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. A suit for Declaration, Partition, Possession, Rendition of Account, Mandatory and Permanent Injunction has been filed on behalf of the plaintiff.
2. Briefly stated, Late Shri Harbans Singh Pahwa came to India at the time of partition of the country and started a Firm by the name of M/s Mehar Singh Harbans Singh. From his earned wealth, he purchased a property bearing No.BL-55, L Block, Anand Vihar, Hari Nagar, New Delhi, admeasuring 200 sq. yards vide registered Sale Deed dated 24.03.1972. The property comprised of Ground Floor and First Floor, each having four rooms and one temporary room on the roof of the First Floor.
3. Shri Harbans Singh Pahwa died intestate on 24.06.1991 and his wife Smt. Surinder Kaur Pahwa also died intestate on 28.07.1997. They were survived by one daughter Smt. Rajinder Kaur Jaggi and four sons namely Shri Narinder Singh Pahwa, Shri Baljit Singh Pahwa, Shri Gurdeep Singh Pahwa and Shri Kamaljit Singh Pahwa.
4. After the demise of the parents, all the five legal heirs became entitled to 1/5th share each in the assets of their deceased father. It is asserted that they all inherited the property as co-parceners and their shares remained joint and undivided in the suit property. One son Shri Narinder Singh Pahwa died on 01.07.2008 and is survived by his wife Smt. Harjit Kaur Pahwa and one son Shri Prabhjeet Singh Pahwa. The other son Shri Baljit Singh Pahwa also died on 29.11.1998 and is survived by his wife Smt. Kuldeep Kaur Pahwa and two sons Shri Chintan Singh Pahwa and Shri Bineet Singh Pahwa.
5. The family tree of the parties is as under:



6. The Ground Floor of the suit property has remained in the possession of defendant No.2 deceased Narinder Singh Pahwa who had been residing along with his family members. The First Floor has remained in possession of defendant No.1 Gurdeep Singh Pahwa, while the temporary room on the roof of the First Floor has in possession of Kamaljit Singh Pahwa, the plaintiff who has sought partition of the suit property by metes and bounds amongst the legal heirs of Late Shri Harbans Singh Pahwa, their father.

7. The plaintiff has asserted that an Oral family settlement was arrived at amongst the family members, whereby the daughter Smt. Rajinder Kaur Jaggi relinquished her share in favour of the four brothers. Likewise, Smt. Kuldeep Kaur, wife and two sons Chintan Singh and Bineet Singh of Late Shri Baljit Singh Pahwa have also relinquished their respective shares in the suit property in favour of the other family members by executing registered Relinquishment Deed dated 06.05.2015. The plaintiff Shri Kamaljit Singh



Pahwa and defendant No.1 Gurdeep Singh Pahwa and legal heirs of defendant No.2 Narinder Singh Pahwa have now become entitled to 1/3rd share in the suit property.

8. It is further submitted by the plaintiff that pursuant to the oral family settlement, both plaintiff and defendant No.2 gifted and transferred 8.33% of their undivided share in favour of defendant No.1, whereby plaintiff and defendant No.2 (through his legal heirs) have become entitled to 25% share each while defendant No.1 has become owner to the extent of 50% in the suit property.

9. Further, it has been agreed inter-se the parties that the suit property shall be sold in the open market or be reconstructed into four floors with lift and stilt parking. The defendant No.2 would get Upper Ground Floor while defendant No.1 would get the First Floor as well as the Second Floor. The plaintiff would become entitled to Third Floor in the re-constructed building.

10. It was also agreed that the two defendants i.e. defendant No.1 and defendant No.2 shall vacate the suit property within one month of the execution of the Gift Deed of 8.33% share of defendant No.2 and plaintiff in favour of defendant No.1. The Gift Deeds were accordingly executed by the plaintiff and defendant No.2 despite which both the defendants have failed to vacate the suit property and have been delaying it on one pretext or the other. They have also not agreed to sale of suit property in the open market.

11. A Legal Notice dated 14.09.2015 was thus, served by the plaintiff on the defendants seeking partition of the suit property, but they have declined for the same in their frivolous and vague reply dated 30.09.2015.

12. The plaintiff has claimed that he has come to know from reliable sources that the defendants are meeting with property dealers/real estate



agents in the area with the intent to sell the property without giving 1/4th share in the suit property, to the plaintiff. When he approached the defendants, he was threatened and told not to visit the suit property.

13. Hence, the present suit has been filed for Partition, Rendition of Accounts and Permanent and Mandatory Injunction.

14. **The defendant No.1 in his Written Statement** has taken a preliminary objection that the plaintiff has suppressed the material fact that a Partition Deed dated 23.03.2015 was duly executed between the parties which was duly witnessed by Shri Amandeep Singh Pahwa and Mrs. Prabhjit Singh Pahwa, wherein it was mutually agreed that the plaintiff shall construct the Third Floor on his own expenses without causing any damage to the suit property. However, prior to the registration of the Partition Deed, plaintiff resiled from all the terms and conditions and refused to get the Partition Deed registered and thereafter, has filed the present suit.

15. **On merits**, it is admitted that the plaintiff and defendant No.2 have 25% share each in the suit property, while defendant No.1 is entitled to 50% share. It is denied that there was any oral family settlement ever entered into between the parties.

16. ***The defendant No.2 failed to file the Written Statement and his right was closed vide Order dated 11.08.2016.***

17. The *issues* on the pleadings were framed on 15.09.2017 as under:

(i) *Whether a partition deed dated 23rd March, 2015 was executed between the parties to the suit whereby it was mutually agreed that the plaintiff shall construct third floor on the suit property at his own expense without causing any damages to the portions where the defendants were residing? (OPD-1)*

(ii.) *Whether the suit is liable to be dismissed for no*



cause of action? (OPD-1)

(iii.) *Whether the suit is liable to be dismissed for inadequate Court fees? (OPD-1)*

(iv.) *Whether the plaintiff is entitled to a decree of partition and possession and if so to what extent? (OPP)*

(v.) *Whether the plaintiff is entitled to rendition of accounts as prayed for in prayer clause 'c' ? (OPP)*

(vi.) *Whether the plaintiff is entitled to a decree of permanent injunction as prayed for in prayer clause 'd'? (OPP)*

(vii.) *Relief.*

18. The **plaintiff** in support of it case appeared as **PW1** and submitted his affidavit of evidence as Ex.PW1/A.

19. The **defendant No.1 Shri Kamaljit Singh** appeared as DW1 and tendered his affidavit of evidence Ex.DW1/A.

20. **DW2 Shri Amandeep Singh Pahwa**, the attesting witness to the Partition Deed dated 23.03.2015 deposed that the Partition Deed had been executed between the parties in his presence.

21. The detailed testimonies of the witnesses shall be considered subsequently.

22. *Submissions heard and evidence and the record perused.*

The **issue wise findings** are as under:

Issue No.2: Whether the suit is liable to be dismissed for no cause of action? (OPD-1)

23. The defendant No.1 has taken an objection that the suit does not disclose any cause of action as the suit property already stands divided by metes and bounds by virtue of the Partition Deed Ex.DW1/1. However, this Partition Deed by virtue of which the partition had agreed to divide the property in the manner stated therein, was admittedly, not registered.



24. The plaintiff while admitting the execution of the Partition Deed has explained that the defendant No.1 and 2 failed to vacate the suit premises for the purpose of reconstruction and for the parties to take the respective floors as has been agreed in the Settlement. The plaintiff has also explained that he was being asked to pay 60 lakhs as cost of construction when in fact his share in the entire property was only 25%.

25. It is evident from the testimony of the plaintiff and defendant No.1 that though they had agreed to partition the property after reconstructing it by virtue of the Partition Deed dated 23.03.2015 Ex.DW1/1, but because of the differences which arose between the parties, the said Partition Deed could not be registered. *Section 17 of the Registration Act* provides that a right in the immovable property of more than Rs.100/- value can be created or extinguished only by a registered document. In the present case, the Partition Deed being not registered, cannot be read as a Deed of partition; the question of partition of the suit property remains for adjudication. *Therefore, it cannot be said that the plaint does not disclose any cause of action.*

26. The issue is decided against the defendants.

Issue No.3: Whether the suit is liable to be dismissed for inadequate Court fees? (OPD-1)

27. In the present case, the plaintiff has sought a relief of Declaration, Partition, Possession, Rendition of Accounts and Permanent Injunction. He has claimed his 1/4th share in the Suit property and valued the suit at Rs. 2,83,45,416/- for the relief of Partition and paid a Court fee of Rs. 20/- thereon. Being one of the Co-owners he has asserted that he has 1/4th share



in the Suit Property. It is pertinent to determine whether the plaintiff had to pay Fixed Court Fee or *ad valorem* Court Fee.

28. It was held by this court in *Prakash Wati vs Dayawanti*, (1990) 42 DLT 421, that it is a settled principle of law that in the case of co-owners, the possession of one is in law the possession of all unless ouster or exclusion is proved. Referring to the decision of the Apex Court in *Neelavathi v. N. Natarajan*, AIR 1980 SC 691, it was held that when the plaintiff asserts shared possession of the property for which partition is requested, whether actual or constructive, the plaintiff is only required to pay a fixed court charge in accordance with Article 17(vi) Schedule II of the Court Fees Act, 1870.

29. Thus, *ad valorem* court fee under Section 7(iv) (b) of the Court Fees Act, 1870 can be applied only when the plaintiff has been ousted from its enjoyment of the suit property and seeks restoration of the joint possession by way of a suit as was held in *Asa Ram Vs. Jagan Nath and others*, AIR 1934 Lahore 563.

30. From the aforesaid judgements, it is clear that a party claiming partition of the property is liable to pay *ad valorem* court fee only in those circumstances where the plaintiff has been ousted from its enjoyment of the suit property. To constitute ouster, there must be evidence an open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other.

31. In the facts of the present case, there is no plea of ouster being made by either the defendants or the plaintiff and it is observed that the plaintiff is in legal possession of the Suit properties as a co-owner. Thus, a fixed Court Fee was payable. The plaintiff has valued the suit at Rs. 2,83,45,416/- for



the relief of partition and paid fixed Court Fee amounting to Rs.20/- thereon. There is no deficiency in the Court Fee.

32. The issue No.3 is decided, accordingly.

Issue No.1: Whether a partition deed dated 23rd March, 2015 was executed between the parties to the suit whereby it was mutually agreed that the plaintiff shall construct third floor on the suit property at his own expense without causing any damages to the portions where the defendants were residing? (OPD-1);

Issue No. 4: Whether the plaintiff is entitled to a decree of partition and possession and if so to what extent? (OPP)

33. As discussed in Issue No.2, though the Partition Deed dated 23.03.2015 Ex.DW1/1 was executed between the parties, but it could not be registered as the parties had a fall out. The defendant No.1 in his affidavit of evidence Ex.DW1/A has deposed that the Partition Deed dated 23.03.2015 Ex.DW1/1 was executed wherein the parties had mutually agreed that the Third Floor shall be constructed by the plaintiff at his own expenses without hampering or causing any damage to the remaining property. However, the defendant No.1 in his cross-examination has explained that while initially the parties had agreed to the construction of the Third Floor by the plaintiff at his own expense, but subsequently, they arrived at the Settlement of reconstruction of the property which got incorporated in the Partition Deed dated 23.03.2015. The Partition Deed talks about reconstruction and redistribution of the floors between three brothers by virtue of which the Top Floor with Terrace would have gone to the plaintiff, the First and Second Floor to defendant No.1 and the Upper Ground Floor to defendant



No.2.

34. It is evident from the testimonies of the parties that though there was a proposal for construction of the Third Floor, but it never materialized. The parties then agreed for reconstruction of the property, but that also did not fructify. While admittedly the plaintiff, he and defendant No.2 relinquished their relinquished their 8.33% of the respective share of the suit property in favour of defendant No.1 by virtue of the Gift Deeds dated 15.05.2015 Ex.PW1/3, but subsequently, the remaining covenants of the Partition Deed did not get fructified into a binding Agreement and it never got registered.

35. It is, therefore, proved that the suit property continues to be a joint property in which defendant No.2 and plaintiff have 25% share while defendant No.1 holds 50% of the undivided share.

36. *The issues are accordingly decided in favour of the plaintiff.*

Issue No.5: Whether the plaintiff is entitled to rendition of accounts as prayed for in prayer clause 'c'? (OPP)

37. The plaintiff has asserted that the property in possession of defendant No.2 and 1 can fetch a rent of about Rs.50,000/- per month. The Ground Floor and the First Floor are in the possession of defendant No.2 and 1 respectively and the plaintiff has been deprived of the enjoyment of the these two floors. However, it is an admitted fact that defendant No.2 and 1 along with their respective families are residing on the two floors. While plaintiff being a co-owner is entitled to a share in the undivided property, but there is no monetary benefit which is being derived by defendant No.1 and 2. Since they are living in the suit property, therefore, there are no accounts to be rendered by defendant No.1 and 2.

38. *The Issue No.5 is decided against the plaintiff.*



Issue No. 6 : Whether the plaintiff is entitled to a decree of permanent injunction as prayed for in prayer clause 'd'? (OPP)

39. The plaintiff has sought permanent injunction to restrain the defendants from creating third party rights or parting with possession or changing the nature of the suit property. Since, it has been held that plaintiff is entitled to 25% share in the suit property, the defendants are hereby restrained from alienating or creating third party rights in respect of 25% undivided share of the plaintiff in the suit property.

40. *The issue is decided in favour of the plaintiff.*

Relief:

41. In view of the findings on the aforesaid issues, it is hereby held that the plaintiff and defendant No.2 are entitled to 25% share each while the defendant No.1 is held entitled to 50% share in the suit property. A Preliminary Decree is accordingly passed.

42. The defendants are also restrained from creating third party rights or parting with the possession in respect of 1/3rd undivided share of the plaintiff.

43. List for consideration of partition of suit property by metes and bounds and for passing of Final Decree on 7.8.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 30, 2024

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