Dr. Kishore Chand Kapoor And Ors. vs Dharam Pal Kapoor And Ors. on 24 October, 1986

Equivalent citations: AIR1987SC66, 1986(2)SCALE684, (1986)4SCC505, 1987(1)UJ284(SC), AIR 1987 SUPREME COURT 66, 1987 RAJLR 9, 1987 BBCJ 9, 1987 SCFBRC 54, 1987 BLT (REP) 118, 1987 (1) UJ (SC) 284, (1986) 30 DLT 514, (1986) JT 788 (SC), 1986 (4) SCC 505, (1986) 4 SUPREME 132, (1987) 2 LANDLR 98, (1987) 2 ALL RENTCAS 241

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Bench: E.S. Venkataramiah, M.M. Dutt

JUDGMENT

M.M. Dutt, J.

1. The special leave has already been granted. As elaborate arguments were made at the hearing of the special leave petition, we proceed to dispose of the appeal on merits.

2. The appeal has been preferred by the two plaintiffs and the defendants Nos. 3 and 4 and is directed against the order of the Delhi High Court under Section 3(1) of the partition Act, 1893.

3. The preliminary decree was passed by a learned Single Judge of the High Court in terms of a compromise entered into between the parties. By the compromise decree the share of each party was declared as l/6th in the suit property comprising 200 sq yds. of land and a two-storeyed building standing thereon. The appellants Nos. 1 and 4, who were the plaintiffs, applied for passing a final decree under Order XX Rule 18 of the CPC. A Commissioner for Partition was appointed by the High Court. According to the report of the Commissioner, the building was incapable of being divided by metes and bounds. The finding of the Commissioner was accepted by all the parties in the suit. The plaintiff-appellants filed an application for sale of the property by public auction under Section 2 of the Partition Act. The respondent No. 2, Smt. Savitri Devi Behl, who was the defendant No. 2 in the suit, also made a similar application. Thus three of the parties in the suit, having in aggregate a 1/2 share in the property, applied for the sale of the property in question by public auction under Section 2 of the Partition Act. On the other hand, the respondent No. 1 and the appellant No. 2, who were respectively the defendants Nos. 1 and 3, made two separate applications praying for the purchase of the shares of the other parties at a valuation. On the said applications, the learned Single Judge of the High Court directed that the property should be sold by public auction and the highest bid in that auction would determine the true market value of the property. On an appeal by the defendant-respondent No. 1, the Division Bench of the High Court rightly set aside the said

order and directed that the shares of the plaintiff-appellants and the respondent No. 1 would be sold to either of the applicants, namely, the appellant No. 3 and the respondent No. 1. Being aggrieved by the said order of the Division Bench of the High Court, the appellants have preferred the instant appeal.

4. The position now is that the appellant No. 3, Smt. Ram Dulari Dhawan, who made an application under Section 3(1) of the Partition Acl, is no longer willing to purchase the property herself. Now it is only the respondent No 1, Shri Dharam Pal Kapoor, who is only willing to purchase the shares of the other parties so that the entire property may be allotted to him.

5. The Suit has been pending since 1973 and, with a view to expediting the partition of the property, this Court without deciding the : correctness or otherwise of the order of the Division Bench of the High Court, by its order dated April 13, 1986 appointed Shri O.P. Goel, a Government Valuer, to value the property in dispute and to submit his report on or before August 8, 1986. this Court, however, by its order dated August 4, 1986, rejected the report of the valuer since it related to the year 1978. By agreement of the parties, Col. R.K.. Kohli (Retd.) was appointed a valuer of the property. Col. Kohli was directed to value the property as on the date of the order after giving notice to the parties and to submit the report to this Court within four weeks from that date. Col. Kohli has since submitted his report of valuation. It is stated in the report that the present market value (September-1986) of the property is worked on "building and land method", that is, the depreciated value of the building plus the market value of the land as available to the owners in September, 1986. In the opinion of the valuer, this is the most appropriate method of valuation 2 in this case.

6. The property is situate at R/845, New Rajendra Nagar, New Delhi and, admittedly, the defendant-respondent No. 1, Shri Dharam Pal Kapoor, is in possession of the same. It appears that after taking into consideration the size, situation, location, emplacement and the utility, he came to the conclusion that the market value of the land should be at the rate of Rs. 2,250/- per sq. mtr. Accordingly, the total market value of the land at the above rate, as per the valuer, is Rs. 3,76,250/-, and the depreciated value of the building is Rs. 1,16,000/- The total market value of the property, therefore, as found by the valuer, is Rs. 4,92,250/-, say Rs. 4,92,000/-.

7. The learned Counsel for the respondent No. 1 has challenged the mode of valuation of the property. It is submitted by him that the valuer was wrong in valuing the land and building separately. According to the learned Counsel, the land and building should have been valued as one unit on the rental basis. Further, it is submitted by him that the value of the entire property in dispute could not have been more than Rs. 1,20,000/-. In support of the said contention, the learned Counsel has placed much reliance upon a decision of this Court in the State of Kerala v. P.P. Hassan Koya, AIR 1968 SC 1201, relating to determination of compensation under the Land Acquisition Act. In that case, it has been held by this Court that in determining compensation payable in respect of land with buildings, compensation cannot be determined by assessing the value of the land and the "break-up value" of the buildings separately; the land and the building constitute one unit and the value of the entire unit must be determined with all its advantages and its potentialities. The Trial Court in that case proceeded to capitalize the net annual rental having regard to the rate of return of 3.5 per cent from gilt-edged securities by multiplying it by 35 times

inasmuch as there was clear evidence about the rental of the building. this Court while approving the method adopted by the Trial Court in valuing the building observed that it cannot be laid down as a general rule applicable to all situations and circumstances that a multiple approximately equal to the return from gilt-edged securities prevailing at the relevant time forms an adequate basis for finding out the market value of the land. It cannot, therefore, be said that the method of capitalization of the rent actually received or which might reasonably be received from the land or the building is the only method that should be adopted in valuing land and building. In the instant case, the valuer has taken into consideration all relevant factors and has valued the property in question at Rs. 4,92,000/-. No objection seems to have taken by the respondent No. 1 before the valuer. It is difficult for us to accept the contention of the respondent No. I that the market value of the property in suit comprising a two-storeyed building and land measuring 167.22 sq. mtrs. cannot be more than Rs. 1,20,000/-. In this connection, it may be pointed out that the building had been renovated and new additions were made in 1967. This fact has also been noticed by the valuer.

8. It is next contended on behalf of the respondent No. 1 that, as prayed by the plaintiff appellants and respondent No. 2, the property should be put up for auction sale so that the highest bid in the auction may determine the market value of the property. This was exactly the order that was passed by the learned Single Judge of (he High Court, but the respondent No. 1 felt aggrieved by the said order and preferred an appeal to the Division Bench of the High Court. Such a contention is not only devoid of any merit, but also is not maintainable at the instance of the respondent No. 1, who has expressed his willingness by an application under Section 3(1) of the Partition Act to buy up the shares of the other parties at a valuation. The respondent No. I, therefore, cannot be allowed to blow hot and cold. The contention is, therefore, rejected.

9. There is also no merit in the contention of the respondent No. 1 that the plaintiff-appellants having prayed for the sale of the property by public auction under Section 2 of the Partition Act, cannot oppose . the prayer of the respondent No. 1 for such sale. It appears to us that the respondent No. 1 being in possession of the property wants to prolong the proceedings as much as possible.

10. It is submitted on behalf of the appellants that the valuation of the property, as made by the valuer, is low, but they will accept such valuation if the respondent No. 1 wants to purchase the shares of the other parties including the appellants on the basis of such valuation. It is submitted by the learned Counsel for the appellants that the market value of the property in dispute cannot be less than Rs. 6 lacs and in case the respondent No. 1 does not purchase the shares of the other parties on the basis of valuation made by the valuer, the appellants undertake to this Court to purchase the shares of the respondent No. 1 and of the respondent No. 2 on the basis of the valuation of the property at Rs. 6 lacs. In other words, the appellants offer to pay Rs. 1 lac to each of the respondents Nos. 1 and 2.

11. After considering the facts and circumstances of the case and the submissions made on behalf of the parties, we accept the valuation as made by Col. Kohli (Retd.) at Rs. 4,92,000/-. The respondent No. 1 will be entitled to purchase the shares of the appellants and the respondent No. 2 by paying to each of them a sum of Rs. 82,000/-, that is, in all a sum of Rs. 4,10,000/-. If the said sum of Rs. 4,10,000/- is deposited by the respondent No. 1 in the Delhi High Court within two months from

date, a final decree will be passed in the suit allotting the entire property to the respondent No. 1. The appellants and the respondent No. 2 will be entitled to withdraw their respective shares in the said sum of Rs. 4,10,000/- without furnishing any security. If, however, no such deposit is made within the period mentioned above, the respondent No. 1 will be debarred from purchasing the share of the other parties and, in that case, the appellants will be entitled to purchase the shares of the respondents Nos. 1 and 2 by paying to each of them a sum of Rs. 1 lac, that is, in all a sum of Rs. 2 laces as agreed to and undertaken by them. The said sum of Rs. 2 lacs shall be deposited by the appellants in the High Court within two months from the date of expiry of the period allowed to the respondent No. 1. If such deposit is made, the final decree will be passed allotting the entire property jointly to the appellants. The respondents Nos. 1 and 2 will be entitled to withdraw their respective shares in the said sum of Rs. 2 lacs, that is to say Rs. 1 lac each, without furnishing any security.

12. The impugned order of the Delhi High Court is set aside. The appeal is disposed of accordingly. There will, however, be no order as to costs.