

Sarabjit Singh Bedi vs Jasbir Kaur Bedi & Ors on 14 January, 2021

Author: Manmohan

Bench: Manmohan, Asha Menon

\$~Suppl.-35 & 36

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA (OS) 32/2020, CM APPLs.20707/2020 & 20709/2020

SARABJIT SINGH BEDIAppellant
Through: Mr. Parveen K Sharma with
Mr. Sahil Nagpal, Advocates and
Sarabjit Singh Bedi (appellant).

versus

JASBIR KAUR BEDI & ORS.Respondents
Through: Mr. Rajat Aneja with
Mrs. Vandna Aneja and Ms.
Bhawana Pandey, Advocates.

AND

+ RFA (OS) 33/2020, CM APPLs.20710/2020, 20712/2020,
26727/2020 & 33326/2020

SARABJIT SINGH BEDIAppellant
Through: Mr. Parveen K Sharma with
Mr. Sahil Nagpal, Advocates and
Sarabjit Singh Bedi (appellant).

Versus

JASBIR KAUR BEDI & ORS.Respondents
Through: Mr. Rajat Aneja with
Mrs. Vandna Aneja and Ms.
Bhawana Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 14.01.2021 The appeals have been heard by way of video conferencing. Present appeals have been filed by appellant-plaintiff challenging the judgment/orders dated 31st January, 2020 (preliminary decree) and 26th February, 2020 (final decree) passed by learned Single Judge in CS(OS) 307/2019. Appellant prays that the present matters be remanded back for fresh adjudication after amendment

of plaint with respect to the Will.

Learned counsel for the appellant submits that the Ld. Single Judge erred in passing the impugned final order and in not allowing the appellant-plaintiff to amend the plaint on account of the newly surfaced Will dated 10th December, 2016 of the predecessor of the parties.

He submits that the Ld. Single Judge ought to have adjourned the matter and recalled the preliminary decree. He further submits that the genuineness of a Will can be decided only in proceedings under the Indian Succession Act, 1925.

Per contra, learned counsel for the respondents states that though the alleged Will of the father of the appellant is dated 10th December, 2016, yet it takes into account sale of the Basement of the property bearing no.J-13/55, Rajouri Garden, New Delhi in the year 2018! A perusal of the paper book reveals that the appellant/plaintiff had filed the suit for partition on the premise that there was no Will of his father, that means, predecessor-in-interest of the parties.

Yesterday, this Court had directed the appellant/plaintiff to be personally present in Court as it wanted to draw the attention of the appellant/plaintiff to Section 467 IPC. The said Section reads as under:-

"467 : Forgery of valuable security, will etc. - Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

However, the appellant insists that he would like to pursue the present appeal as well as his Test Cas. 21/2020.

It is clarified that in the event the Will produced by the appellant/plaintiff is found to be forged, he would be liable for punishment under Section 467 IPC.

At this stage, learned counsel for the appellant prays for status quo with regard to the property J-12/11, Rajouri Garden. However, the order dated 31st May, 2019 passed by the learned Single Judge reads as under:-

"5. It is the admitted case of the plaintiff that property No.J-12/11 Rajouri Garden, New Delhi is in the name of the mother of the plaintiff who is impleaded as defendant No.1.

6. The counsel for the plaintiff, being unable to satisfy as to the right of the plaintiff to a share in property No. J-12/11, Rajouri Garden, New Delhi belonging to the mother, gives up the claim for partition of the said property.

7. To avoid the defendants from making averments with respect to the said property, claim with respect where to has been given up, it is deemed necessary that the plaintiff, today itself files an amended complaint, confining the claim therein to partition of property No. J-13/55, Rajouri Garden, New Delhi."

(emphasis supplied) Subsequently on 08th August, 2019 another order was passed wherein it was once again recorded by the learned Single Judge that the counsel for the appellant/plaintiff had stated that property J-12/11, Rajouri Garden had been inadvertently mentioned in the amended complaint and reference to the said property was deleted under the signature of the learned counsel for the appellant/plaintiff. The relevant portion of the said order reads as under:-

"1. The counsel for the plaintiff states that though in compliance of the order dated 31st May, 2019, on the same date an amended complaint dated 31st May, 2019 was filed but in the prayer paragraph thereof, inadvertently property no. J-12/11, Rajouri Garden, New Delhi which, vide order dated 31st May, 2019 was deleted, has also been mentioned.

2. The counsel for the plaintiff is permitted to, under his signatures, in the Court, delete the reference to property no. J-12/11, Rajouri Garden, New Delhi in prayer paragraph (a) of the complaint dated 31st May, 2019."

In view of the aforesaid orders, this Court is of the view that no relief with regard to J-12/11, Rajouri Garden can be granted. In fact, it is settled law that concessions recorded before the Single Judge cannot be challenged in appeal. What is recorded in High Court orders is correct and cannot be contradicted. [See: State of Maharashtra vs. Ramdas Shrinivas Nayak, (1982) 2 SCC 463].

Consequently, this Court is of the opinion that prayer for status quo with regard to J-12/11, Rajouri Garden, is contrary to the aforesaid orders and prima facie constitutes perjury.

However, keeping in view the close relationship between the parties, the Court at this stage, refrains from taking further legal action.

The parties are given liberty to move an application for expeditious disposal of the probate case.

The present appeals are adjourned to await judgment and order in Test Cas. 21/2020.

List on 19th July, 2021.

CM NO. 32950/2020 in RFA(OS) 33/2020 The admitted position is that till the date of filing of the suit, the respondent no. 1 was receiving entire rent from the ground floor tenant at J-13/55, Rajouri

Garden, New Delhi.

Learned Single Judge has passed the preliminary decree declaring the share of the appellant/plaintiff as 1/5th in J-13/55, Rajouri Garden, New Delhi and on the admission of other children of the deceased predecessor-in-interest, respondent no. 1's share has been declared to be 4/5th. Since rent is stated to be the sole source of income for respondent no. 1-mother, this Court directs that till further orders the tenant shall pay 4/5th share of the outstanding and future rent to respondent no. 1 and similarly 1/5th share of the rent shall be paid to the appellant/plaintiff.

With the aforesaid directions, present application stands disposed of.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J ASHA MENON, J JANUARY 14, 2021 AS