

Jugal Kishore Khanna (D) Thr. Lrs. & Anr.

v.

Sudhir Khanna & Ors.

(Civil Appeal No. 1591-1592 of 2020)

19 March 2024

[Vikram Nath and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Whether the High Court erred in finding without any evidence that the amount alleged to have been paid as the value of share in Joint Hindu Family property is not so but for some other purpose.

Headnotes

Partition Suit – Predecessors of Appellants and Respondents

- the elder (“RKK”) and younger (“ACK”) brother respectively – two properties purchased by RKK – (i) Kamla Nagar property in the name of his father (ii) Malcha Marg property in the name of ACK’s wife and constructed house out of Joint Hindu Family Business, Regal Cinema - After RKK’s death ACK raised claim in Kamla Nagar property – Oral Settlement between Appellants and ACK and value of latter’s share fixed at Rs. 55,000/- (Fifty-five thousand only) – The same was paid – Suit filed by Respondents to partition properties in Kamla Nagar and Shimla- Appellants raised partial partition in respect of Malcha Marg property – Trial Court partly decreed the suit by only allowing the respondents’ claim in Malcha Marg property – Both parties approached High Court with separate Appeals – Both Appeals decided in favour of respondents – Thus, the two instant Appeals.

Held: With respect to the Malcha Marg property, the concurrent findings of the Trial Court and High Court that it belonged exclusively to the Respondents was upheld, for lack of evidence to prove that the same was purchased out of joint family funds – Whereas, in regard to the Kamla Nagar property, both Trial Court and High Court, from the evidence on record, found that there was a payment of Rs. 55,000/- (Rupees fifty-five thousand only) by appellants to the predecessor of respondents – It can

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also be seen from the evidence that the appellants exclusively enjoyed the property from the date of its purchase, It is also true that the property was let out and rent was collected entirely by appellants – Wealth Tax Returns of ACK from 1964-1967 shows valuation of Kamla Nagar property to be Rs. 38,000/- (Thirty-eight thousand only) – In year 1979, the value ought to have increased to Rs.1,10,000/- (One lakh ten thousand only) – As contended by the appellants, there was nothing on record to indicate that the payment of a hefty sum of Rs. 55,000/- in the year 1979, was for the upkeep of the HUF or on some other account or to fulfil some other purpose but towards value of the half right held by ACK in the property. [Paras 18, 19-21]

List of Acts

The Registration Act, 1908.

List of Keywords

Partial partition; Oral settlement.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1591 of 2020

From the Judgment and Order dated 06.12.2013 of the High Court of Delhi at New Delhi in R.F.A. No.439 of 2008

With

Civil Appeal No.1592 of 2020

Appearances for Parties

Akshay Makhija, Sr. Adv., Arjav Jain, Adarsh Chamoli, Shashank Shekhar, Ronak Baid, Chander Shekhar Ashri, Advs. for the Appellants.

S. C. Singhal, Vibhav Mishra, Ms. Megha Gaur, Parmanand Gaur, Tushar Bakshi, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Heard learned counsel for the parties.

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2. The challenge in the present appeals is to the common Judgment and Order dated 06.12.2013 (hereinafter referred to as the “Impugned Judgment”)¹ passed by a learned Single Judge of the High Court of Delhi (hereinafter referred to as the “High Court”), wherein the appeal filed by the respondent no.1 in respect of the Kamla Nagar property², i.e., RFA No.439 of 2008, has been allowed and the appeal filed by the appellants in respect of the Malcha Marg property³, i.e., RFA No.483 of 2008, has been dismissed.

FACTS IN BRIEF:

3. The parties are common descendants of Late Shri Tek Chand Khanna (hereinafter referred to as “TCK”), who had two sons, Shri Roop Kishore Khanna (hereinafter referred to as “RKK”) and Shri Attar Chand Khanna (hereinafter referred to as “ACK”). The appellants are descendants of RKK whereas the respondents are the successors of ACK. In the year 1941, RKK purchased a piece of land admeasuring 344 square yards and bearing No.15-D, Kamla Nagar, Delhi - 110007 (hereinafter referred to as the “Kamla Nagar property”) in the name of his father TCK and a residential house was constructed thereupon in 1950. Another property admeasuring 375 square yards bearing No.D-56, Malcha Marg, Chanakyapuri, New Delhi - 110021 (hereinafter referred to as the “Malcha Marg property”) was also acquired by RKK and constructed by the family in the name of Smt. Shyama Khanna, wife of ACK. The claim of the appellants is that the purchase and construction of the Malcha Marg property was out of the funds provided by RKK and the income of the family generated from Regal Cinema Business. RKK died in the year 1978 and after that ACK claimed share in the Kamla Nagar property claiming it to be joint family property. The appellants claim that in 1979, in terms of an oral settlement between the parties a sum of Rs.55,000/- (Rupees Fifty-Five Thousand) was paid through cheques by the LRs of RKK in favour of ACK for the purchase of the share of ACK in the Kamla Nagar property. In 1983, upon ACK having expired, his LRs filed two suits. One claiming partition of the properties at Shimla and another claiming partition of the Kamla Nagar

1 2013 : DHC : 6299 | 2013 SCC OnLine Del 4916.

2 Defined *infra*.

3 Defined *infra*.

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property. The Trial Court by order dated 28.07.2008 dismissed the suit of the Respondent No.1 with regard to the claim over the Kamla Nagar property. However, insofar as the Malcha Marg property is concerned, the Trial Court decided the issue of the suit being bad on account of partial partition against the appellants, on the ground that circumstances given by the appellants are not sufficient to prove that the Malcha Marg property was purchased out of joint family funds. The Respondent No.1 challenged the Trial Court order, so far as the same pertained to the Kamla Nagar property, by filing RFA No.439 of 2008 before the High Court whereas the appellants challenged the decision of the Trial Court pertaining to the Malcha Marg property by preferring RFA No.483 of 2008.

4. By the common Impugned Judgement dated 06.12.2013, the High Court allowed the appeal filed by the Respondent No.1 [RFA No.439 of 2008] and dismissed the appeal filed by the appellants [RFA No.483 of 2008]. The instant Civil Appeals emanate therefrom.

SUBMISSIONS BY THE APPELLANTS:

Re Kamla Nagar:

5. Learned senior counsel for the appellants submitted that the judgment of the Trial Court [the Additional District Judge, Karkardooma Courts, Delhi] dated 28.07.2008 held that Kamla Nagar property belongs solely to the appellants on very cogent grounds i.e., the same was originally joint/ancestral property between RKK and ACK having been bought in the name of TCK and later the 50% share of ACK being bought by the appellants in a family settlement. It was pointed out that when suggestion was put to DW1 and DW2 being Defendant No.2 and LRs of deceased Defendant No.1 respectively, in cross-examination, payment of Rs. 55,000/- (Rupees Fifty-Five Thousand) for betterment of Hindu Undivided Family (hereinafter referred to as "HUF") was admitted. Further, the Trial Court had noted in its judgment that the plaintiff (Respondent No.1) in his cross-examination had admitted that the Kamla Nagar property was the only joint family property.
6. Learned counsel submitted that the appellants, who were defendants in the suit pertaining to the Kamla Nagar property, had proved that there was an oral settlement in the year 1979 after the demise of RKK and in terms thereof, the LRs of RKK being Defendants No.1, 2 and 3, being sons of RKK, as also Ms. Lakshmi Khanna, wife of late RKK,

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had by 6 cheques paid an amount of Rs. 55,000/- (Rupees Fifty-Five Thousand) towards the share of ACK in the Kamla Nagar property.

7. Thus, it was contended that rightly the Trial Court had held in favour of the appellants that the the Kamla Nagar property no more remained joint family property, as the 50% share of the ACK branch was already bought by paying Rs. 55,000/- (Rupees Fifty-Five Thousand) to the LRs. In support of his contention, learned counsel further submitted that ACK in his Wealth Tax Return of the year 1965-1967 had shown the value of the Kamla Nagar property at around Rs.38,000/- (Rupees Thirty-Eight Thousand) and thus, in the year 1979, the value being Rs.1,10,000/- (Rupees One Lakh and Ten Thousand) was most reasonable and 50% of their share being Rs.55,000/- (Rupees Fifty-Five Thousand) having been paid, the entire property belonged to the share of the LRs of RKK.
8. However, it was contended that even the Trial Court has held that in family settlements, it is normal for the value to be slightly on the upper or the lower side.
9. Learned counsel submitted that though ACK has filed his Wealth Tax Returns for the years 1964-1965, 1965-66 and 1966-67, his Wealth Tax Returns from 1979 till his demise in 1983 were not brought before any forum or Court nor any witness was called from the Income-Tax Department to show the same, which is another indicator that ACK had not claimed any part of the Kamla Nagar property to be his so as to require disclosure in his Wealth Tax Returns from 1979 till his death in 1983, which also proves the fact with regard to the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) as per the family settlement for buying the 50% share of ACK in the Kamla Nagar property by the appellants, who were LRs of RKK.
10. Learned counsel submitted that the High Court in the Impugned Judgment in RFA No.439 of 2008 has taken a view that the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) was "*on some other account*" and not towards any claim against the Kamla Nagar property. It was held by the High Court that the LRs of ACK had 50% share in the same and further the aspect of *benami* was specifically not pressed at the time the RFA was heard by the High Court, as noted in Paragraph 12 of the Impugned Judgment. Even the finding that the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) was "*on some other account*" is totally erroneous and presumptuous since

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it is based only on surmises without there being any discussion to show as to what was the other purpose and in the absence of such “*other account*”, there was no material to prove its authenticity and genuineness.

11. Learned counsel submitted that right from 1979 till his demise in 1983, ACK never raised any claim with respect to the Kamla Nagar property which was in the exclusive possession of the appellants.
12. Learned counsel also contended that the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) was received by ACK in his personal account and not his business account, which would clearly show that it was in terms of the family settlement and not for some other account/purpose.

Re Malcha Marg:

13. On the Malcha Marg property, learned counsel submitted that though both the Courts below have given concurrent findings that it was not joint family property, the appellants who were Defendants had only taken a preliminary objection in the Written Statement to the suit being bad for partial partition as the Malcha Marg property was not part of the said suit. However, no serious effort was made to claim partition/ownership of full or part of the Malcha Marg property.

SUBMISSIONS BY THE RESPONDENTS:

14. *Per contra*, learned counsel for the respondents submitted that the Trial Court had rightly decided the issue *qua* the Malcha Marg property being exclusively that of the respondents but had erred in accepting the story of family settlement and payment of Rs.55,000/- (Rupees Fifty-Five Thousand) for the share of the respondents in the Kamla Nagar property and the wrong has rightly been corrected by the High Court *vide* the Impugned Judgment. It was submitted that the Trial Court findings *re* the Malcha Marg property was rightly upheld.
15. Learned counsel drew the attention of the Court to the cross-examination of DW1, in which he has stated that no valuation was done from any valuer and there were no documents to show that Rs.55,000/- (Rupees Fifty-Five Thousand) paid to ACK was towards a full and final settlement of his share in the Kamla Nagar property. Thus, it was submitted that in the absence of there being any proof of either settlement or payment in lieu of the share of the respondents,

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rightly the High Court has held that the appellants have only 50% share in the property.

16. On the legal aspect, it was submitted that Section 17 of the Registration Act, 1908⁴ provides that any document or transfer or assigning any

4 '17. *Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been examined on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—*

- (a) instruments of gift of immovable property;
 - (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
 - (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
 - (d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
 - (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:
- Provided that the State Government may, by order published in the Official Gazette, exempt, from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.*

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

- (i) any composition-deed; or
- (ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) any document other than the documents specified in sub-section (1-A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- (vii) any grant of immovable property by the Government; or
- (viii) any instrument of partition made by a Revenue Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or
- (x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or
- (x-a) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments of divesting any such Treasurer of any property; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of

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right or extinguishing any right regarding title and interest in an immovable property valued at more than Rs.100/- (One Hundred) has to be done through a document which requires registration and the same not having been done, the presumption in law would be that no such settlement existed between the appellants' side and the respondents' side.

17. On the aspect of the Malcha Marg property, it was submitted that both the Courts below have concurrently held in favour of the respondents and thus, there being absolutely no evidence whatsoever to show the same to have been bought by joint family funds, no interference was required with such finding(s).

ANALYSIS, REASONING AND CONCLUSION:

18. Having considered the matter, the Court finds that the Impugned Judgment of the High Court needs interference. As far as the Malcha Marg property is concerned, the Court has no hesitation to uphold the concurrent findings of the Trial Court and the High Court that there is nothing, even remotely, to indicate that the said property was bought out of joint family funds, and thus, rightly it has been held to be the exclusive property of the respondents. As such, it has to rightly devolve on the LRs of ACK exclusively.
19. Moving on to the Kamla Nagar property, the Court finds that the findings, unearthed during trial indicate that Rs.55,000/- (Rupees Fifty-Five Thousand) was paid by the appellants' side to the respondents' side. There is nothing on record to indicate that it was paid for the upkeep of the HUF or on some other account or to fulfil some other purpose.
20. The plea of the respondents that the said amount was for the upkeep of the HUF does not stand to reason for it is the admitted position that the respondents or their ancestors were never living

*the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.*

Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.'

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in the Kamla Nagar property. Hence, there was no occasion for the appellants to contribute a heavy amount of Rs.55,000/- (Rupees Fifty-Five Thousand) in the year 1979 for the upkeep and/or maintenance of the said property to the respondents, when the same was exclusively being enjoyed by the appellants, who alone would be liable for its maintenance. Moreover, there being disclosure by ACK in his Wealth Tax Returns of the years 1964-1967 showing the valuation of the property to be around Rs.38,000/- (Rupees Thirty-Eight Thousand) and payment having been made in 1979 of Rs.55,000/- (Rupees Fifty-Five Thousand) does not indicate that it was undervalued as there has been a marked increase in the valuation from Rs.38,000/- (Rupees Thirty-Eight Thousand) to Rs.1,10,000/- (Rupees One Lakh Ten Thousand) and payment made of 50% i.e., Rs.55,000/- (Rupees Fifty Five Thousand), in 1979, that too in a family settlement between ACK and RKK cannot be labelled a totally sham consideration.

21. Further, the appellants having enjoyed possession right from the time the property was purchased and even letting out the premises to tenants and collecting/taking rent from the tenants without any claim raised at any point of time, would also support the claim that ACK had not claimed any right or title over any portion of the Kamla Nagar property during his lifetime. Had that been the case, there was no occasion for him not to take or lay a claim to a 50% share in the rent given by the tenants, which is clear from the finding recorded by the High Court that there were tenants also in the Kamla Nagar property; but the respondents never claimed any share in such proceeds/ rent from the tenants. The issue was agitated for the very first time only by filing the suit before the Trial Court in 1983.
22. Thus, on an overall circumspection of the facts and circumstances and upon going through the records and submissions with the aid of learned counsel appearing for the respective parties, the Impugned Judgment inasmuch as it relates to the Kamla Nagar property *viz.* RFA No.439 of 2008 stands set aside and the Judgment and Decree passed by the Additional District Judge, Karkardooma Courts, Delhi in Suit No.70/06/83 dated 28.07.2008 relating to the Kamla Nagar property stands restored. It is further held that the appellants are the exclusive owners of the Kamla Nagar property described hereinbefore. The Impugned Judgment insofar as it relates to RFA No.483 of 2008 is upheld. Accordingly, Civil Appeal No.1591 of 2020

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is allowed and Civil Appeal No.1592 of 2020 is dismissed. Interim order(s) of *status quo* stand vacated. Registry to draw up the Decree Sheet accordingly.

23. The parties are left to bear their own costs.
24. IA No.59678 of 2023 for Early Hearing preferred by the appellants in Civil Appeal No.1591 of 2020 does not subsist for consideration in view of the aforesaid and is dismissed as infructuous.

Headnotes prepared by:

Swathi H. Prasad, Hon'y. Associate Editor
(Verified by: Liz Mathew, Sr. Advocate)

Result of the case:

Civil Appeal No.1591 of 2020
allowed and Civil Appeal No.1592
of 2020 dismissed.