

**IN THE COURT OF SH. UMED SINGH GREWAL
ADDITIONAL DISTRICT JUDGE-02 (WEST)
TIS HAZARI COURTS, DELHI**

**Civ DJ No. 608608/16
CNR No. DLWT0-000130-2011**

Shri Rattan Prakash Bhalla
(deceased through his legal heir)
Smt. Veena Bhalla
W/o Late Sh. Rattan Prakash Bhalla,
R/o 6, Priory Gardens,
Ealing, London W51DX England
(substitution was allowed vide order dated 23.11.2015)

.... Plaintiff

Versus

1. Shri Jaswant Rai Bhalla
(deceased through his legal heir):-
 - (A). Smt. Aruna Bhalla
Widow of late Sh. Jaswant Rai Bhalla
 - (B). Shri Anit Bhalla
S/o late Sh. Jaswant Rai Bhalla
 - (C). Smt. Pooja Bhalla
D/o late Sh. Jaswant Rai Bhalla

All R/o House no. 1, Road No. 5,
Punjab Bagh, New Delhi-110026.
 - (D). Smt. Vandana Dang
D/o late Sh. Jaswant Rai Bhalla
R/o A-1/44, Panchsheel Enclave,
New Delhi-110017.

- 2(a). Sh. Anup Kundra
S/o Late Smt. Santosh Kundra
R/o B-169, Greater Kailash-1,
New Delhi-110048.
- 2(b). Sh. Pradeep Kundra
S/o Late Smt. Santosh Kundra
R/o M-8 AB, Jangpura Extension,
New Delhi-110014.
(Deceased through his legal heir)
(Substitution allowed vide order dated 02.05.2017)
- (1). Mr. Prateek Kundra
S/o Late Sh. Pradeep Kundra
R/o M-8 AB, Jangpura Extension,
New Delhi-110014.
- (2). Ms. Avantika Kundra
D/o Late Sh. Pradeep Kundra
R/o M-8 AB, Jangpura Extension,
New Delhi-110014.
- 2(c). Smt. Shashi Dutt
D/o late Smt. Santosh Kundra
144, Central Avenue, Houselow West,
Middx., U.K. TW32RJ.
3. Smt. Preeti Arora
D/o Smt. Avinash Trehan
R/o WZ-137, 138,
Vipin Garden Extension, Gali No. 12,
Near Dwarka More, Uttam Nagar,
New Delhi-110059.
(Deceased through his legal heir).
- 3(a). Sh. Jagdish Arora
S/o Late Sh. Devi Dayal Arora,

R/o Plot no. 99, Sanik Vihar Part-I,
Mohan Garden, Uttam Nagar,
New Delhi-110059.

3(b). Sh. Manish Arora
S/o Late Sh. Jagdish Arora
R/o Plot no. 99, Sanik Vihar Part-I,
Mohan Garden, Uttam Nagar,
New Delhi-110059.

3(c). Sh. Kapil Arora
S/o Late Sh. Jagdish Arora
R/o Plot no. 99, Sanik Vihar Part-I,
Mohan Garden, Uttam Nagar,
New Delhi-110059.

3(d). Ms. Divya Rawal @ Divya Arora
W/o Sh. Ashish Rawal and
D/o Sh. Jagdish Arora
R/o 8/311, 312, Khichadi Pur,
Delhi-110091.
(Substitution allowed vide order dated 26.02.2013)

... Defendants

Date of reservation of Order: 26.02.2022
Date of pronouncement of Order: 11.03.2022

ORDER

1. This order shall decide an application of the plaintiff under order XII Rule 6 read with section 151 CPC.

2. The plaint is to the effect that plaintiff's father Sh. Agia Ram Bhalla was allotted plot no. 1, Road No. 5, measuring 354.93 sq. yds. in Punjabi Bagh, New Delhi which was registered in the

office of Sub-Registrar as document no. 4936 in additional book no.1, Vol. no. 746 on pages 43 to 48 on 10.05.1962. The property was purchased from his own funds and hence, he was absolute owner thereof. Unfortunately, he expired on 13.01.1970 and his wife Smt. Lajwanti Bhalla also expired on 19.01.1979 leaving behind following legal heirs and successors:-

- (1). Rattan Prakash Bhalla : Son
- (2). Jaswant Rai Bhalla : Son
- (3). Smt. Santosh Kundra : Daughter
- (4). Smt. Avinash Trehan : Daughter

Smt. Santosh Kundra expired on 29.05.2009. Smt. Avinash Trehan went missing in 1986, presumed dead in 1993, leaving behind a daughter and two sons. Both sons have expired and only the daughter Ms. Preeti Arora is surviving. So, the branches of plaintiff and every defendant became co-owner of the suit property to the extent of undivided 1/4th share each.

It is further mentioned that the defendant no. 1 persuaded plaintiff several times to allow him to construct shops in the suit property, but he did not budge. Later, he came to know that the defendant no. 1 had illegally constructed number of shops there without the knowledge and consent of the co-owners. Also, he had sold those shops in 2008 for his self monetary and financial advantage. Against that act, he had sent a letter dated 14.05.2008 to the Deputy Commissioner (MCD), Vishal Enclave, New Delhi-110027

requesting him not to mutate the property or any part thereof in the name of anybody without written the consent of all co-owners. The defendant no. 1 had written him a letter on 06.07.2000 to quote the price of 1/2 share of the suit property as per market value, but he did not quote any as four persons were the co-owners and not the two. In 2006, the defendant no. 1 again wrote him a letter to the effect that he had got a relinquishment deed and power of attorney prepared and asked him and their sister Smt. Santosh Kundra to sign the same. The defendant no. 1 contacted Smt. Santosh Kundra in 2008 to relinquish her share, but she did not agree. The plaintiff sought relief of partition and mandatory and permanent injunction.

3. Written statement of defendant no. 1 is to the effect that his parents Sh. Agia Ram Bhalla and Smt. Lajwanti Bhalla left following legal heirs and successors:

- | | | | |
|------|-----------------------|---|------------------------------------|
| (1). | Rattan Prakash Bhalla | : | elder son |
| (2). | Jaswant Rai Bhalla | : | younger son |
| (3). | Smt. Santosh Kundra | : | Daughter-expired
on 29.05.2009) |
| (4). | Smt. Avinash Trehan | : | Daughter |

Para no. 4 of the plaint has been admitted upto the extent of death of Sh. Agia Ram Bhalla and his daughters and survival of legal heirs.

It is next mentioned that the plaintiff was unwilling till 1999 to construct shops in the suit property. He had no connection with the property as he was residing in foreign. The property had

turned into inhabitable condition and hence, a huge money was required for renovation and that is why, he suggested plaintiff for construction of shops and to renovate the property from the sale consideration of those shops. The plaintiff was reluctant initially, but finally he agreed. He visited India after construction and selling out of the shops and he received his share from the sale consideration. At that time, he never objected to construction and selling of the shops.

4. After filing of written statement, defendant nos. 1 & 3 filed preliminary submissions which were allowed to be taken on record by Hon'ble Delhi High Court vide order dated 13.09.2013.

Preliminary submissions are that the suit property was purchased by his father on 10.05.1962 in Rs. 498.90/-. He did not have the funds to construct the house and hence, the father took a loan of Rs. 8000/- from Delhi Administration and the same was disbursed in three installments repayable in 25 years with annual EMI of Rs. 550.44/-. The original title deed was pledged with Delhi Administration Loan Department. The father repaid the loan from 1965 to 1969, but expired on 13.01.1970 and thereafter, the loan was paid by defendant no. 1 and now only Rs. 2000/- are outstanding. The decree of partition cannot be passed unless the title deed was cleared by Delhi Administration Loan Department. Further preliminary submissions are that none of the successors of his father contributed towards the repayment of the loan, for regular repair,

upkeep, renovation and maintenance of the house and hence, he is entitled to adjust the amount incurred on those heads by defendant no. 1 alongwith interest @ 9% per annum.

None of the successor in interest provided any financial help to the mother. The plaintiff did not attend even her last rites in 1979. The defendant no. 1, in 1974, constructed a shop of 20/10 ft. on one side of the property and started running a general store to support his mother. But it was closed after the death of the mother in 1979. He incurred expenses of more than Rs. 3 lacs in the repair and renovation of the suit property which was constructed in 1964 and hence, with the consent and knowledge of other legal heirs, the earlier constructed shop was converted into two shops measuring 10 x 10 and were leased out to Sh. Ajay Gupta and Sh. Krishan Kumar at a monthly rent of Rs. 250/- and they are still the tenants. He is entitled to adjustment of Rs. 3 lacs alongwith interest from the suit property.

Further submissions are that he constructed two other shops in 1988 and 2000 to meet the expenses for maintenance of the suit property. One shop was sold to Smt. Madhubala on 25.09.1998 in Rs. 20,000/- and another shop was sold in Rs. 50,000/- to Sh. Rajender Prasad Gupta on 10.05.2001 with the consent of co-owners.

Lastly, it is mentioned that if his expenses were settled, he shall have no objection in partition of the suit property provided that the purchasers of the shops be also impleaded.

5. In joint written statement of defendant no. 2(a) and 2(b), the contents of para no. 4 of the plaint have been admitted saying that they and defendant no. 2(c) had inherited the share of their mother Smt. Santosh Kundra. It is further mentioned that the suit property was owned by their predecessor in interest Sh. Agia Ram Bhalla in which the defendant no. 1 had no absolute right and could not sell any portion thereof without effecting partition. Despite it, he, illegally and unauthorizedly, constructed shops without their permission and sold the same which is patently illegal. Their mother did not want to relinquish her share either in favour of plaintiff or defendant no. 1. She wanted to have her share and had demanded the same from her both brothers. After her death, they asked their maternal uncles to give their due share, but to no avail.

6. Defendant no. 2(c) filed written statement almost admitting the case of plaintiff and simultaneously, mentioning that she would not create any hurdle if the property was partitioned as per law.

7. To the same effect is the written statement of defendant no. 3.

8. Ld. counsel for plaintiff argued that it has been admitted by all the defendants in the written statement that the suit property was purchased by their predecessor in interest Sh. Agia Ram Bhalla who died intestate in 1970 and his wife also died intestate in 1979.

It has also been admitted by all the defendants that Sh. Agia Ram Bhalla had two sons and two daughters and that there was no class-1 heir other than them. So, they have admitted that the branches of plaintiff and defendants are entitled to 1/4th share in the suit property.

9. Ld. counsel for defendant no. 1 argued that the plot was purchased by their father in 1962, but he did not have money to construct the house and hence, he had taken loan from the Loan Department of Delhi Government, repayable in 25 years with annual EMI of Rs. 550.44/-. Sh. Agia Ram Bhalla paid loan only upto 1969 and after his death in 1970, it was only his client who repaid the loan and hence, he is entitled to set off that loan.

Next argument is that the plaintiff and defendant nos. 2 & 3 had no concern with the suit property and they did not contribute a single penny for the preservation of the same. The defendant no. 1 had incurred a sum of Rs. 3 lacs on the maintenance of the suit property and he is entitled to set off that amount.

It is next submitted that four shops were constructed by the defendant no. 1 in the suit property with the consent and knowledge of all the stakeholders and some of the sale amount was used for preservation of the suit property and remaining amount was paid to them as per their share.

Last argument is that for decision on all above pleas, trial of the case is required and hence, the application u/o XII Rule 6 CPC

be dismissed.

10. Ld. counsel for plaintiff replied that the defendant no. 1 has taken a blind plea. He did not place on record any document to the effect that Sh. Agia Ram Bhalla had taken loan from Loan Department Delhi Government which was paid by defendant no. 1. He has taken a false plea of spending Rs. 3 lacs on up-keeping of the property. Without partition, defendant no. 1 constructed four shops in the suit property and sold without the consent of other co-sharers. He further submitted that the plea of set off can be taken only in the suit for recovery of money and for that purpose, the court fee is required to be paid which has not been paid by the plaintiff. Moreover, the claim of set off should be for ascertained sum of money, but the plaintiff has not specified loan amount paid by him.

11. In, *Earthtech Enterprises Ltd. vs. Kuljit Singh Butalia*, RFA No. 184/2012, decided by Hon'ble Delhi High Court on 6th February 2013, following was propounded regarding moonshine defence:-

“11. In P.P.A. Impex (supra), the decree of possession passed by the Single Judge, on an application under Order 12 Rule 6 of the Code, has been upheld by the Division Bench of this Court. In the said case, defendant had claimed an independent right in the suit property pursuant to an agreement to sell. As per the defendant his defence could have been substantiated only during the trial and no decree on admission could have been passed. Division Bench found the defence of defendant to be moonshine. Division Bench observed thus “the courts are

already groaning under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to trial”.

In ***Uttam Singh Duggal & Company Ltd. vs. United Bank of India & Ors., AIR 2000 SCC 2740***, the Hon'ble Supreme Court held:-

“The object of the rule is to enable the party to obtain a speedy judgment atleast to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of Rule under Order 12 Rule 6 CPC as the object is to enable a party to obtain speedy judgment...”

In ***Surjit Sachdeva vs. Kazakhstan Investment Services Pvt. Ltd. & Ors., 66 (1997) DLT 54 D.B.***, Hon'ble Delhi High Court held that the admission need not be made expressly in the pleadings. Even on constructive admission, the court can proceed to pass a decree in plaintiff's favour.

In ***Praveen Saini vs. Rita Kapoor & Ors., RFA No. 21/18 decided on 08.01.2018***, Hon'ble High Court of Delhi held that existence of a counter-claim is not a bar to the allowing of application under order 12 Rule 6 CPC.

12. Order 8 Rule 6 CPC makes it patently clear that the claim of set off can be launched only if the suit was for recovery of money.

After discussing Rules 6 & 6F of Order 8 and Rule 19 of Order 20 CPC, the Hon'ble Patna High Court in, ***Jaswant Singh Vs.***

Smt. Darshan Kaur & Ors., AIR 1983 Pat 132, held in following words that such claim can be launched only if the suit was for recovery of money:

“11. Learned counsel appearing for the petitioner has also drawn our attention to new Rule 6-F of Order 8 and the amended Rule 19 of Order 20 in support of his contention that the right of the defendant to raise a counter-claim has limited by the Code only in cases where the dispute is in respect of a money claim. Rule 6-F of Order 8 is as follows:

"6-F. Relief to defendant where counter-claim succeeds:-- Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance."

From Rule 6-F it is apparent that counter-claim must relate to a monetary claim because Court has been vested with power to pass a judgment even in respect of any balance found due to the defendant. Rule 19(1) of Order 20 is as follows:

"19(1). Where the defendant has been allowed set-off (or counter-claim) against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party."

In view of the amended Rule 19(1), which is a provision regarding preparation of the decree in respect of suits where a counter-claim has been allowed by the Court, it is clear that in the decree what amount is due to the defendant has to be stated. In my opinion, the contention

of the learned counsel for the petitioner that counter-claim under the rules aforesaid can be made only in such suits in which there is dispute in respect of money claim, has to be accepted. In the instant case the suit which was filed on behalf of the plaintiff was for declaration that he was the licensee of the premises in question and has a right to remain in possession thereof for the period mentioned in the plaint. In my view it was not open to the defendant to make a prayer for eviction of the plaintiff by way of a counter-claim. As such, the order amounts to an exercise of jurisdiction illegally and with material irregularity and calls for an interference by this Court. Accordingly, this application is allowed and the impugned order is set aside...”

The present case is for partition, possession and injunction and not a suit for recovery of money and so, the claim of set off, as per above citation, is not available to the defendants.

13. It is crystal clearly mentioned in Order 8 Rule 6(1) CPC that the claim of set off should be for ascertained sum of money legally recoverable by the defendants from the plaintiff.

Contention of defendant no. 1 is that except him, no other son or daughter of his father contributed in repayment of the loan taken by their father for construction of the house. But he did not mention the amount he had repaid. So, he is claiming set off of unascertained amount which is said to have been paid from 1970 onwards. It is pertinent to mention that the loan was repayable in 25 years from 1965. So, there is a doubt whether the said amount is legally recoverable from the plaintiff or not.

14. It is the admitted case of the parties that no court fee has been paid for set off. Following was the observation of Hon'ble Delhi High Court in *Krishan Kumar Wadhwa & Ors. vs. Arjun Som Dutt & Ors.*, CS (OS) 3316/2015, decided on 22nd February 2018:-

“15. The fact that the defendants have made a claim for set off would make no difference as no Court fees has been paid on the amount claimed as set off. A Coordinate Bench in Ashoka Estate Pvt. Ltd. & Ors., 2009 (113) DRJ 193 has held that an absence of Court fees there is no valid set off. The relevant portion of the said judgment is as under:-

“Though the defendants have made claims of over Rs. 20 crores against the plaintiffs and have used the words of set off/adjustment/claims therein but neither any counter claim has been preferred nor any court fees on set off paid. In the absence thereof, there is no such plea of the defendants for consideration before this Court.”

In the case in hand also, the court fee has not been paid on the set off and hence, this court is not feeling any hesitation to say that there is no plea of the defendants for set off.

15. Next objection is that co-sharers had given consent for construction and sale of four shops in the suit property, so that the expenses of maintenance of the suit property may be met. The shops were constructed and sold and remaining amount was paid to the plaintiff. The purchasers of the shops are also necessary parties and they may also be impleaded.

It is mentioned in the sale deed executed by defendant no.1 that his father Sh. Agia Ram Bhalla died on 13.01.1970 and after his death, his son Jaswant Rai Bhalla/defendant no. 1 inherited a share in that property and became co-owner. It is next mentioned that for his bonafide needs and requirements, he was selling shops out of his own share.

Above contents of the sale deeds show that the defendant no. 1 sold shops out of his own share and not from the shares of the co-owners. The defendant no. 1 is already there to take care of a case against him regarding shops. So, the persons, who had purchased shops from the share of defendant no. 1, are not required to be impleaded. It is nowhere mentioned in the sale deeds that the defendant no. 1 had sold shops for the maintenance of the suit property. Rather, it is mentioned that he sold them for his needs and requirements. There is no document on the file which may suggest that the defendant no. 1 had taken permission of co-owners for constructing and selling the shops. There is no document like bank statement on the file which may suggest that after selling the shops, the defendant no. 1 had given some portion of the consideration to the plaintiff. Infact, as the shops were sold out of the share of the defendant no. 1 himself and hence, it cannot be said that he would give part of sale consideration arising from his share to plaintiff.

16. Now the net position is that all the defendants have admitted that their predecessor in interest Sh. Agia Ram Bhalla had

purchased the suit property and he died intestate on 13.01.1970. His wife Smt. Lajwanti Bhalla also expired on 19.01.1979 intestate leaving behind two sons and two daughters. It has been admitted by all the defendants that except two sons and two daughters, Sh. Agia Ram Bhalla did not have any class-I heir. In view of that admission, the application under section XII Rule 6 CPC is allowed by holding that the branches of two sons and two daughters of Sh. Agia Ram Bhalla are entitled to 1/4th share each in the suit property.

Preliminary decree to that effect be prepared accordingly.

**Announced in the open court
Today on 11th March 2022**

**(Umed Singh Grewal)
Addl. District Judge-02 (West)
Tis Hazari Courts, Delhi**