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

+ **RSA 93/2022 & CM APPL. 55598/2022**

JAGDISH CHANDRAAppellant

Through: **Mr. Sunil Malhotra, Advocate.**

versus

BHAGWAN SINGH & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **13.12.2024**

1. The instant appeal is preferred by the appellant/plaintiff against the judgment dated 18.04.2022, in RCA No. 8832/16, passed by Principal District and Sessions Judge, South, Saket, New Delhi allowing the appeal against the judgment dated 22.08.2015, in suit no. 233/06, passed by Civil Judge (west), Delhi, whereby suit for recovery of possession was decreed.
2. Learned counsel for appellant/plaintiff submits that the first Appellate Court failed to appreciate that late Sh. Ram Mehar had an existing right of ownership and possession of the property which was being interfered with by the respondents/defendants.
3. He also contends that the property in question is ancestral and therefore, there arises no question of acquiring any right over the property on the basis of compromise. According to him, the compromise only re-affirms his one-third share over the disputed property. He, therefore, submits that the findings rendered by the first Appellate Court in paragraph nos. 9 to



12 are perverse. In addition, learned counsel submits that the Trial Court, on the basis of the material available on record, had rightly decreed the civil suit which has illegally been reversed by the first Appellate Court.

4. I have perused the findings rendered by the Trial Court with respect to the concerned controversy, which reads as under:-

Further, the father of the defendant no.1 i.e. defendant no.2 has got share of 1/3'd in the Khasra No.389 (4-4) and hence got 1400 sq. yds. out of the said oral partition and as it came to the share of defendant no.2 by way of family settlement, it still remained as co-parcenary property and was not his separate property as it did not devolve upon him by way of succession. Hence, it is clear that the property measuring 1400sq. Yds. situated in Khasra No.389 (4-4) which has come to the share of defendant no.2 by way of partition was co-parcenary property.

Further, even in the evidence affidavit of DW-2 it has been mentioned that Sh. Chajju Ram i.e. the grandfather of the defendant no.1, the DW-2 and Sh. Ram Mehar was the owner of the said Khasra No.389 (4:4) which was measuring 4200 sq. yds. and that the suit property was co-parcenary property and, hence, Sh. Ram Mehar being the grandson of Sh. Chajju Ram was a coparcener and became the co-owner in the same by birth and hence the defendant no.2, who was the father of Sh. Ram Mehar and defendant no. 1, cannot dispose off the suit property by way of sale deed to the defendant no.1 as Sh. Ram Mehar was also a coparcener in the said property situated in Khasra No.389 (4-4).

Moreover, Sh. Ram Mehar has also filed a suit for declaring the said sale deed as null and void and the same was later on compromised between the parties. Further, the defendant has also placed on record an order of the court of j"r Sh. R.C. Chopra, Ld. Sub Judge, Delhi with respect to the appeal Ext. DW-1/6 which shows that both the defendants have made a statement that they alongwith Sh. Ram Mehar will be owner of 1/3'd share each. It shows that they agreed to give 1/3'd share to Sh. Ram Mehar.

Moreover, in the said suit filed by Sh. Ram Mehar against the present defendants and two other defendants, the statement was given by Sh. Ram Mehar that he has settled the matter with the defendants and that he will get his share after the death of his father i.e. Sh. Shiv Lal or if the defendant no.1 sell his share and, hence, even otherwise it becomes clear that it was settled between the parties that Sh. Ram Mehar will get the share. But in the WS filed by the defendants and in the cross-examination of the defendant no.1, it has been denied by the defendant no.1 that Sh. Ram



Mehar was also having a share in the ancestral property and moreover in the cross-examination it has been alleged on behalf of defendant no.1 that he has given the share to Sh. Ram Mehar out of same other numbers, but neither the Khasra numbers nor actual land given to Sh. Ram Mehar has been mentioned. Nor the documents by way of which the said land was given to Sh. Ram Mehar has been mentioned.

Moreover, nothing regarding the same has been mentioned in the WS filed by the defendants or in the evidence affidavit filed by the defendants and moreover, the case of the defendants is that the defendant no.2 being the owner of the 1/3'd share has sold the same to the defendant no.1, but as discussed above even the defendants have agreed regarding the share of Sh. Ram Mehar and the same is clear from the documents and the court record filed by the defendants themselves.

Further, even otherwise as discussed above Sh. Ram Mehar was a coparcener in the suit property situated in Khasra No.389 (4-4). Hence, it can be said that Sh. Ram Mehar was also having a share in the suit property bearing Khasra No.389 (4-4) and the said sale deed does not create any right in favour of the defendant no.1 as the defendant no. 2 was not having any right to transfer the same and it is a settled principle of law that the seller cannot pass on a better title than he himself has and as the defendant no.2 transferred 1/3'd share out of Khasra No.389 (4-4) to the defendant no.1 without having any right, therefore, the said sale deed does not create any right in favour of the defendant no.1 and moreover as defendant no.1 and Sh. Ram Mehar were the sons of Sh. Shiv Lal and, hence, they are entitled for half of the share of Sh. Shiv Lal which was 1400sq. yds. out of Khasra No.389 (a-a) and accordingly Sh. Ram Mehar was entitled for 700 sq. yds. and as discussed above the land measuring 700 sq. yds. was sold by Sh. Ram Mehar to the deceased plaintiff i.e. Late sh. Aida] Singh by way of documents Ext. PW-1/4 to PW-1/8 and, hence, the plaintiff is entitled for the possession of the same being the owner.

5. The first Appellate Court, however, has unsettled the said findings and has made the following observations:-

9. A study of evidence on record and the judgment rendered by the trial court leads to one evident conclusion that -the parties and the court travelled much beyond the pleadings and the issues involved. A suit for recovery of possession has been turned into a suit for declaration of title of plaintiffs . vendor, without the vendor being a party in the suit. It is a case where the plaintiff is seeking possession from co-sharers of his vendor, alleging that he had been illegally dispossessed by the said co-sharers of the vendor. The only fact required to be proved by the plaintiff was that he



had been handed over physical possession of identified portion of the land purchased by him from his vendor, vide documents Ex.PW1/4 to Ex.PW1/8, executed on 13.07.1989. Instead of proving his possession and his title so acquired, plaintiff went on to get his vendor's co-parcenary adjudicated upon, in a simpliciter suit for possession. This court is of the view that the question which needs adjudication is Whether the plaintiff's vendor, namely, Ram Mehar possessed the suit land, before he sold it off to plaintiff on 13.07.1989 vide documents Ex.PW1/4 to Ex.PW1/8

10.1 Plaintiff has claimed his vendor Ram Mehar to have acquired ownership in the suit land on the basis of compromise arrived at between Ram Mehar and the present appellants in civil suit no. 343-4/80 vide statement dated 17.11.1982 Ex.PW1/2. The said agreement was entered into by plaintiff and Ram Mehar. To examine the title of the plaintiff's vendor Ram Mehar, let us examine the proceedings which took place in civil suit no. 343-A1 80 and other connected litigations between the parties. 10.2 Document relied upon by the plaintiff is the statement of Ram Mehar recorded on 17.11.1982 in civil suit no. 343-A1 80. For ready reference, the same is reproduced herein below:- "Statement of Sh. Ram Mehar (plaintiff)...

I have compromised with defendants according to the same, I am entitled to 1/3rd share in Khasra No. 389 (u), 498 (3-6) 499/1 (0-1s), s08/1 (3-18), s09/1 (s- 18) and 1/3rd share in Khasra No. 390 (A-H), 548 (0- 13) situated in Village Khanpur Revenue Estate, Delhi. The mutation to this effect may be carried out in the revenue record and for which the defendants share have no objection. I pass the portion to the suit will sell the above stated land. The plaintiff shall be entitled to the above mentioned share out of the same proceeds. The suit may be dismissed as compromise and withdrawn this suit. I shall be bound by my statement ..." (emphasis supplied)

10.3 Corresponding statement of defendants was recorded on 17.11.1982, which reads as under:-

"Joint statement of Sh. Shiv Lal and Sh. Bhagwan Sineh (defendants).. We have heard the statement of the plaintiff which is correct as the parties have compromised. I shall be bound by my statement. Parties shall bear their own cost. The plaintiff shall be entitled to his share as he has stated in his statements. Suit may be dismissed as withdrawn and as compromised."

10.4 On the basis of these statements, trial court presided over by Sh. R.S. Malha passed order on the same day, which reads as under: "In view of the statements of the parties recorded above the plaintiff shall be entitled to his share as mentioned in his statement in respect of the land stated and



mention in the statement of the plaintiff recorded today. The suit of the plaintiff is dismissed as compromised and as withdrawn. Parties shall bound by the statements. Parties are left to bear their own cost,. Suit file be consigned to record room!

(emphasis supplied)

11.1 The statement which is prior in time, relied upon by defendant is Ex.DW1/9, which is the statement of Ram Mehar recorded in suit tw.284/77 titled as Ram Mehar Yadav Vs. Shiv Lal t& On. Statement dated 2 I .0 I . 1978 when translated reads as under:-

'Statement of Ram Mehar, (defendant... My father has accepted my share in the suit land which I wiII get after the death of defendant no, 1 aad in case, he selb the land before his death, I wiII be entitled to my share. I do not want to proceed with the suit. The same may be dismissed.'" (emphasis supplied)

11.2 Another statement made between the parties is recorded in MCA No. 434182 arising out of order passed in civil suit no. 343AA/ 80. Statement Ex.DW1/6 dated, 29.12.1982 of Shiv Lal reads as under when translated:- .

"We have settled the matter among ourselves. We all will be equal owners to the extent of one-third each in the suit Land. Whenever the suit land shall be sold or partitioned, we 3 shall be entitled to one-third share each. TiII then, this land will remain in possession of Bhagwan Singh." (emphasis supplied)

11.2.1 The parties in the appeal were Shiv Lal yadav, Ram Mehar and Bhagwan Singh. A study of sratements Ex.DW1/6 and Ex.DW1/9 (whic)r is prior to the statement made by appellant on 17.11-1982)' reveals that compromise arrived at between the parties was that the entitlement of Ram Mehar to one-third share in-the suit prope\$y was recognised and accepted by the father and other brother, i-e' Bhagwan singh. However, it was agreed that the possession shall remain with Bhagrvan Singb and as and when the land is sold offor partitioned, each parry will get its share. It is on the basis of statement Ex.DW1/9 or the compromise as indicated therein that Ram Mehar had withdrawn his suit which was pending in the court of Sh. R.S. Malha. Statement Ex.DW1/6 further clarified the arrangement. 12. It may be uoticed that by way of statement dated 17.11.1982 Ex.PW1/2, Ram Mehar did not acquire any right, title or interest in the suit property. Ram Mehar had simply withdrawn the suit on the statsmert of parties stating that tle matter stood settled between his father and brother. It may be noticed that the compromise dated 17.11.1982 Ex.PW1/2, did not culminate into a compromise decree, as envisaged under Order)C(II Rule 3 CPC. The Ld. Trial Court of Sh. RS. Malha vide his order of the even date, permitted the plaintiff [Ram Mehar) to withdraw his suit and no decree was passed. Oa the other hand, Ex.DW1/6 and Ex.DW1/9 indicate



recognition of his right in the suit land to the extent of one-third share as and when the land was sold off or partitioned. Thus, in view of the interpretation of the aforesaid documents, this court is of the opinion that Ram Mehar's right in the suit land had to accrue only when the same was sold off or partitioned. In the absence of any partition or sale, Ram Mehar had acquired no right to sell the suit property. Statement Ex.DWL/6 specifically records that the possession was to remain with Bhagwan Singh. No partition having taken place, possession having not been transferred to Ram Mehar, he could not have offered into valid sale with the plaintiff. Therefore, this court is of the opinion that plaintiff failed to establish his vendor's title or possession in the suit property. The question so posed by this court in para - 9 above is decided against the plaintiff. Having so found issue no. 1 was wrongly decided by trial court in favour of plaintiff.

6. On perusal of the findings rendered by the Court, and on due consideration of the material available on record, the Court finds that the matter deserves to be admitted on the following substantive questions of law:-

- (i) *Whether the impugned judgment and decree of reversal passed by the first Appellate Court suffers with material illegality inasmuch as in not considering the fact that the appellant/plaintiff had an existing right of ownership and possession with respect to suit property.*
- (ii) *Whether the findings of reversal suffer with material illegality and impropriety in not considering the facts and circumstances in their true perspective.*

7. The interim order dated 21.12.2022 is made absolute.

8. Let the notice of the appeal be re-served on the respondents.

9. List this appeal on 17.07.2025.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 13, 2024

N/DP