

S.B. Sinha, J.

1. Leave granted.

2. Interpretation of a Will executed by one Shri Murari Lal Gupta, predecessor-in-interest of the parties herein falls for consideration in this appeal which arises out of a judgment and order dated 20th December, 2007 passed by a Division Bench of the Delhi High Court in F.A.O. (OS) No.268/2006.

3. Murari Lal Gupta and Girdhari Lal Gupta were brothers. A property bearing No.C-11, Green Park Extension, New Delhi stood in the name of Murari Lal Gupta (the testator). A double storeyed building and a barsati were constructed thereon. The said property was the subject matter of the Will.

Appellant herein is one of the heirs and legal representatives of the testator. He filed a suit for partition in the original side of the Delhi High Court. The said suit was, in view of the issues involved, namely, interpretation of the will, taken up for hearing on the basis of pleadings of the parties. A preliminary decree was passed, directing :

- "(i) The plaintiffs together will get 1/4th of the half share of the branch of Late Murari Lal Gupta;
- (ii) The defendants Nos. 1 (a) and 1(b) shall together get 1/4th out of the half share of Late Murari Lal Gupta;
- (iii) The defendants 2 & 3 shall each get 1/4th of the half share of Late Murari Lal Gupta;
- (iv) The defendant Nos. 5 and 6 will each get 1/3rd of the half share of Late Girdhari Lal Gupta; and
- (v) The defendant Nos. 7 (a to f) together get 1/3rd of the half share of Late Girdhari Lal Gupta."

4. The aforementioned order was passed on the following premise:

"Considering the contents of paragraph 3 as also the contents of paragraph 5, I am of the opinion that the tenor of the will suggests that the property should be divided equitably. The testator has attempted to divide it equitably and to put such division beyond the pale of controversy. However, for some odd reason, the division of the Second Floor (Barsati Floor) has not been made out in clear terms and this has resulted in the present dispute."

5. An intra court appeal was preferred thereagainst. It was dismissed in limine. However, a special leave petition was filed before this Court which was marked as Special Leave Petition (C) No.12350 of 2006. Upon hearing the parties, the appeal was allowed and the matter was remitted by this Court by an order dated 27.04.2007, directing :

"The Division Bench of the High Court, in our opinion has not dealt with the matter fully and in particular the construction of the Will executed by Shri Murari Lal Gupta which in our opinion, deserved serious consideration. We, therefore, set aside the impugned Judgment and remit the matter back to the High Court. We would request the Division Bench of the High Court to consider the desirability of disposing the appeal, keeping in view the nature of the dispute between the parties, as expeditiously as possible and preferably within a period of three months from the date of communication of this order."

6. By reason of the impugned Judgment, the High Court has dismissed the said appeal.

7. Mr. Chinnasamy, learned senior counsel appearing on behalf of the appellant, would submit :

- (i) Both the learned Single Judge as also the Division Bench of the High Court committed a serious error in passing the impugned judgment in so far as they failed to notice the distinction between a 'declaration' and 'bequest' parts in the Will in mind. Whereas paragraph 3 of the Will contains a declaration on the part of the testator in regard to the right of the parties, the actual 'bequeath' of the house has been made in terms of para 4 thereof.
- (ii) The property in question being the self-acquired property of the testator, the concept of family arrangement was not applicable.
- (iii) Right, title and interest in the property as well as the possession thereof having remained in the testator throughout and the bequest having been made only in respect of the first floor of the said property, the learned Single Judge as also the Division Bench committed a serious error in constructing the said will by putting itself in the purported 'arm chair' of the testator, as the said doctrine was not applicable in this case.

8. Mr. Dalip Kumar Malhotra, learned Counsel appearing on behalf of respondent No. 6 supported the contention of the learned counsel.

9. Mr. K.S. Rana, learned counsel appearing on behalf of respondent Nos. 4 and 5, Mr. S.N. Bhatt, learned counsel appearing on behalf of respondent Nos. 7 to 14 and Dr. Kailash Chand, learned counsel appearing on behalf of respondent Nos. 1 to 3, on the other hand, would contend :

- (1) Both the brothers having contributed equally for acquisition of the land as also for the construction of the house thereupon were entitled to equal share thereof.
- (2) In a case of this nature the High Court having put fair interpretation of the will, no interference therewith by this court is warranted particularly in view of the

stand taken by both the brothers before the Revenue Officer as also the affidavits affirmed by them.

(3) 'Family settlement' by reason of the said will having not been questioned, appellant is estopped and precluded from raising the said contention before this court for the first time.

10. From the materials on record, it appears that the property belonged to two brothers. The land might have been acquired in the name of the testator but from the declaration made in the will as also the other documents brought on record by the parties, it is evident that both the brothers contributed equally thereto.

11. Before, however, we consider the questions relating to interpretation of the said will, we may notice the relevant part thereof.

"That at present I am absolute legal owner of immovable property consisting of a residential house C-11, Green Park Ext. New Delhi.16 which was got constructed by me on a plot of land purchased by me out of my own income and sources.

I further declare that half of the cost of the plot in this land was paid to me by my deceased younger brother Sh. Girdhari Lal Gupta. The construction of the building on the ground floor and the 1st floor and the barasati thereon was got done by me out of my own income and sources.

However, the half of the cost of construction was paid to me by my deceased younger brother. As a family settlement it has been agreed that the ownership of the ground floor of this house shall vest in my four sons and they shall have its complete possession for their use and similarly the ownership of the 1st floor of this building shall vest in the members of the family of my deceased younger brother Mr. Girdhari Lal Gupta.

This arrangement has been agreed to by both the families and shall not be changed by any one of us except when necessary by mutual consent in writing by all concerned.

As regards share of my four sons in my aforesaid house I declare that they shall have equal shares of ownership of this property and therefore all the four sons shall have equal rights for its use and its possession for all times.

I have also cash deposited in my saving A/c in the State Bank of India, Green Park, New Delhi and I declare that all my four sons share the amount equally."

12. A will is required to be construed like any other instrument. Where however, a doubt arises in regard to the intention of the testator, recourse to the arm chair rule is invoked. It is neither in doubt nor in dispute that for the said purpose the conduct of the testator in regard to dealing with the property in question would be admissible. The fact that the property in question stood in the name of the testator is not in dispute. It, however, stands accepted that both the brothers contributed equally not only for acquisition of the said property but also raising constructions thereupon.

13. To the Revenue Authority for the purpose of mutation in respect of the premises in question, the testator issued a letter which reads as under :

"I, Murari Lal Gupta S/o Late Sri Ganga Ram hereby informed that I and late Girdhari Lal Gupta are real brothers from late Shri Ganga Ram, House No. C-11, Green Park Extension, New Delhi-110016 is owned jointly by myself and my aforesaid brother Late Sri Girdhari Lal Gupta. My share in the aforesaid house is one half i.e. ground floor and the other one half share i.e. Ist floor and Barsati Floor belongs to my brother late Sh. Girdhari Lal Gupta. The completion plan of the house showing the details is enclosed herewith. The share belonging to me has been shown in red whereas the share belonging to my brother Late Shri Girdhari Lal Gupta has been shown in green.

It is requested that the division of property be made in my name & in the name of my brother's wife Smt. Subz Kali since my brother has expired. The house tax bill of the property be sent separately in future."

14. An application for mutation was also filed. The said application was affirmed by an affidavit of the testator which reads as:

"I, Murari Lal Gupta son of late Shri Ganga Ram, aged about 66 years, r/o C-11, Green park Extension, New Delhi, do hereby solemnly declare and affirm as under:

1. That I and Shri Girdhari Lal Gupta are real brothers from the late Shri Ganga Ram.
2. That House No. C-11, Green Park Extension, New Delhi, is owned jointly by myself and my aforesaid brother, Shri Girdhari Lal Gupta.
3. That my share in the aforesaid house is one half and the other one half share belongs to my said brother, Shri Girdhari Lal Gupta."

To the same effect is the affidavit of the other brother namely Shri Girdhari Lal Gupta:

15. It is, therefore, evident that a declaration had been made by the testator himself that for all intent and purport, Girdhari Lal Gupta had half share in the property and he was entitled thereto. As a declaration in derogation of his title has been made in the said Will by the testator, the same would be a relevant factor for the purpose of construction of the Will. A declaration was specifically made in the will in regard to contribution by both the brothers in equal proportion not only in respect of Ground Floor and the First floor but also barsati thereof.

17. Although when a property is a self-acquired one, the doctrine of family settlement stricto sensu may not be applicable but in a case of this nature where both the brothers declare each other to be owners of the property having equal share therein, an arrangement between them by way of a family settlement is permissible

in law. Such a family settlement was not only in relation to the title of the property but also in relation to the use and possession thereof. By reason of the said 'Will', therefore, whereas ownership of the ground floor vested in the four sons of the testator, the ownership of the first floor vested in the members of the family of Girdhari Lal Gupta. Barsati portion of the said house does not figure in the vesting part of the said will.

Paragraph 5 of the said will refers to the use and possession so far as the share of the sons of the testator is concerned meaning thereby the same would confine to the ground floor portion only.

18. We may place on record that the learned senior counsel appearing on behalf of the appellant very fairly stated that so far as the title of the sons of Girdhari Lal Gupta in the first floor of the building is concerned, the same is not disputed. A family settlement, therefore, in our opinion, in a situation of this nature was permissible. The Will should be given a broad construction keeping in view the special equity principle.

In Hari Shankar Singhania and Others v. Gaur Hari Singhania and Others [2006 (4) SCC 658], this court has stated :

"Another fact that assumes importance at this stage is that a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family."

19. When there is a family settlement, evidently, technicalities in the matter of construction should not be insisted upon.

The effect of a family settlement fell for consideration in Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel and Others [2006 (8) SCC 726], wherein it was categorically held :

"The MoU, for the purpose of these appeals, may be treated to be a family settlement. It is, however, well known that the intention of the parties to an instrument must be gathered from the terms thereof examined in the light of the surrounding circumstances (See Sohan Lal Naraindar v. Laxmidas Rahgunath).

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We may proceed on the basis that the MoU answers the principles of family settlement having regard to the fact that the same was actuated by a desire to resolve the disputes and the courts would not easily disturb them as has been held in s. Shanmugam Pillai v. K. Shanmugam Pillai, Kale v. Dy. Director of Consolidation and Hari Shankar Singhania v. Gaur Hari Singhania."

Thus, if family settlement in relation to the property in question was possible, in our opinion, the doctrine of 'arm chair' rule of construction was applicable.

In Anil Kak v. Kumari Sharada Raje & Ors. [(2008) 7 SCC 695], this Court held :

37. The testator's intention is collected from a consideration of the whole will and not from a part of it. If two parts of the same will are wholly irreconcilable, the court of law would not be in a position to come to a finding that the will dated 4-11-1992 could be given effect to irrespective of the appendices. In construing a will, no doubt all possible contingencies are required to be taken into consideration. Even if a part is invalid, the entire document need not be invalidated, only if it forms a severable part. (See Bajrang Factory Ltd. v. University of Calcutta.)

In Narendra Gopal Vidyarthi v. Rajat Vidyarthi [2008 (16) SCALE 122], this Court held :

"29. The very fact that the testator categorically stated that the extent of title in the property will depend upon the amount of additional contribution required to be made from the fund of Vidyarthi and Sons itself is an indication to show that his wish was that title should vest in the beneficiaries to the extent of the property which represented the amount of Rs.30,000/- out of the total amount of consideration required to acquire the same. There cannot be any doubt whatsoever that his intention also was that the entire cash may not be paid to Chandramukhi as she was of gullible character. She could be made to part therewith by any other person by sweet words. A precaution was, therefore, required to be taken. The amount was required to be spent wisely. The amount which was required for their maintenance and education of appellant whether derived from the interest or from the rental only was to be handed over. It is only for the aforementioned limited purpose, the trust was created. The sole beneficiary of the trust, in our opinion, was merely the appellant and his mother. It may be true that the property was purchased in the name of the testator himself. The High Court commented that the same could have been done in the name of the appellant and his mother or at least the purchase could have been a joint one. But the Will is required to be construed on the basis of the terms used therein and not otherwise."

Principles of construction of a Will, inter alia, are laid down in Sections 74 and 82 of the Indian Succession Act. It is well settled that the Will should be read as a whole and the surrounding circumstances may be given effect to for the purpose of ascertaining the intention of the testator from the words used and the surrounding circumstances wherefor the Court will put itself in the armchair of the testator. We, therefore, do not find any legal infirmity in the impugned judgment.

20. For the reasons aforementioned, there is no merit in the case.

Accordingly, the appeal is dismissed with costs. Counsel's fee assessed at Rs.25,000/- (Rupees twenty five thousand only).

.....J.

[S.B. SINHA]

.....J.
[V.S. SIRPURKAR]

New Delhi;
February 25, 2009