

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).6813/2009

(From the judgement and order dated 09/01/2009 in
The HIGH COURT OF DELHI AT N. DELHI)

RFA No. 2/2005 of

MAHA SINGH

Petitioner(s)

VERSUS

ANAND SINGH MANN & ANR.

Respondent(s)

(With appln(s) for permission to place addl. documents on record
and with prayer for interim relief)

Date: 19/04/2011

This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s)

Mr. Jaideep Gupta, Sr. Adv.
Mr. Brijender Chahar, Sr. Adv.
Mr. Ajay Sharma, Adv.

For Respondent(s)

Mr. Surya Kant, Adv.
Ms. Poornima, Adv.
Mr. Pranav Vyas, Adv.
Mr. Ashwani Kumar, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

(DEEPAK MANSUKHANI)
Court Master

(RENU DIWAN)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3410 OF 2011
(Arising out of SLP(Civil) Nos. 6813 of 2009)

MAHA SINGH

Appellant(s)

VERSUS

ANAND SINGH MANN & ANR.

Respondent(s)

O R D E R

Leave granted.

This appeal is directed against the order dated 9th January, 2009 passed by the Division Bench of the Delhi High Court in RFA (OS) No. 2 of 2005 affirming the order passed by the learned Single Judge dated 6th December, 2004 whereby the learned Single Judge has dismissed the suit of the appellant herein as time barred. The property in question with regard to which a partition suit has been filed by the appellant is 30, Central Market, Community Centre, Ashok Vihar, Delhi. The suit is filed by the appellant herein claiming a decree of partition as against respondent no. 1 who is his younger brother.

The aforesaid suit was contested by the respondent no. 1 by filing written statement and on the basis thereof, certain issues were also framed, one of which is with regard to plea that the suit is barred by limitation. During the course of recording of evidence of the witnesses, the learned Single Judge decided to take up the issue regarding the suit being barred by limitation as a preliminary issue and heard the learned counsel appearing for the parties on that issue and held thereafter that the suit is barred by limitation. The appellant being aggrieved by the aforesaid judgment and order passed by the learned Single Judge preferred an appeal before the Division Bench which affirmed the order of the learned Single Judge by passing the impugned judgment and order. Being aggrieved by the aforesaid judgment and order, the present appeal is filed on which we have heard the learned counsel appearing for the parties.

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The pleading in the suit filed by the appellant is that the suit property is a Joint Hindu Family property and that such property is required to be partitioned and divided between the two brothers. The aforesaid contention of the appellant for partition of the suit property is sought to be denied by the respondent contending, inter alia, that the respondent has been realising rent from the said property since 1973 and, therefore, it is exclusive property of the respondent. The appellant, however, relies on certain letters which were allegedly written by the respondent on 25.5.1976 and 4.8.1976 to establish his claim that even in the said letters, the respondent wrote to the appellant asking for the partition for the first time. Whether or not those letters could be given weightage as sought to be given by the respondent are matters relating to facts. The question of limitation could also be an issue involving both facts and law.

In our considered opinion, it is one of such cases where facts are also involved to decide the aforesaid issue. Considering the facts and circumstances of this case, we are of the considered opinion that the aforesaid issue with regard to limitation should be decided by the High Court in the suit only after allowing the parties to adduce all their evidence and on the basis of evidence adduced, the court should proceed to decide the aforesaid issue with regard to the limitation as well while deciding the other issues.

In that view of the matter, we set aside the order of the Division Bench and also of the learned Single Judge without expressing any views or comments on the merits of the respective claims of the parties including the issue of limitation. It is needless to state that now the learned Single Judge shall take up the issue at the stage of recording the evidence of the parties and will allow the parties to lead their further evidence and thereafter would decide the suit on the basis of the issues framed. We also request the High Court to decide the suit as expeditiously as possible since the suit pertains to a decree for partition of alleged Joint Hindu family property.

However, since the dispute is between the real brothers, we also feel that a settlement could be possible if an effort is made to resolve the dispute between the parties through process of mediation. The Delhi High Court has a good Mediation Centre of its own and, therefore, we believe that an effort should be made by the learned Judge for resolving the suit through the process of mediation, if possible. If no settlement is arrived at, in that event, the Court may proceed to decide the suit as expeditiously as possible.

The appeal is allowed to the aforesaid extent leaving the parties to bear their own costs.

.....J.
(DR. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

NEW DELHI
APRIL 19, 2011.