

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

Date of Hearing : 16th November, 2010

Date of Decision : 3rd December, 2010

+ **RFA (OS) No.4/2004 & CM Nos.1235/2004 & 14848/2009**

SH.RAM CHANDER (deceased) through LRs. ...Appellants.
Through : Mr.P.D.Gupta with Mr.Kamal Gupta,
Advocates

Versus

SH. MOTI RAM ..Respondent.
Through : Mr.C.M.Oberoi, Advocate.

AND

FAO(OS) No.8/2004 & CM No.1337/2004

SH.RAM CHANDER (deceased) through LRs. ...Appellants.
Through : Mr.P.D.Gupta with Mr.Kamal Gupta,
Advocates

Versus

SH.LAL CHAND (deceased) through LRs. ...Respondents.
Through : Mr.C.M.Oberoi, Advocate.

AND

RFA (OS) No.2/2004 & CM No.519/2004

SH.RAM CHANDER (deceased) through LRs. ...Appellants.
Through : Mr.P.D.Gupta with Mr.Kamal Gupta,
Advocates

Versus

SH.LAL CHAND (deceased) through LRs. ...Respondents.
Through : Mr.C.M.Oberoi, Advocate.

CORAM:

* **HON'BLE MR. JUSTICE VIKRAMAJIT SEN**
HON'BLE MR. JUSTICE G.P.MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

G.P. MITTAL, J.

1. The Judgment dated 13.2.2003 passed by the learned Single Judge stands assailed before us. It disposed of Suit No.334/1979 filed by late Shri Lal Chand against his two other brothers; Suit No.721/1980 filed by late Shri Ram Chander against his brother Moti Ram; and Suit No.197-A/1979 filed by late Shri Ram Chander against both his brothers. The properties in dispute are Shop No.67-A, Khan Market, New Delhi, Shop No.45-B, Khan Market, New Delhi and House No.B-2/136, Safdarjung Enclave, New Delhi.

2. The learned Single Judge has returned the finding that the Safdarjung Enclave property belongs exclusively to Moti Ram who is the youngest of the three brothers. So far as the two Khan Market Shops are concerned, the conclusion in the

impugned judgment is that all three brothers namely late Shri Lal Chand, late Shri Ram Chander and late Shri Moti Ram were joint and equal co-owners. The operative part of the judgment is reproduced below so as to clarify the position:

“In terms of the aforesaid discussion, it is held that properties being Shop Nos.67-A, Khan Market, New Delhi and 45-B, Khan Market, New Delhi are joint family properties own by the three brothers having 1/3rd share each and the business carried on from the premises at 67-A, Khan Market is also the joint family business in which all the three brothers have 1/3rd share. It is also held that the business carried out from Shop No.45-B, Khan Market, New Delhi was being carried out separately and exclusively by Moti Ram whereas it is held that so far property No.B-2/136, Safdarjung Enclave, New Delhi is concerned, the same is the exclusive and individual property of Moti Ram. Accordingly, a preliminary decree is passed in terms of the aforesaid findings declaring the plaintiff as also defendants 1 to 2 as the joint owners of properties being Shop Nos.67-A and 45-B, both at Khan Market, New Delhi having 1/3rd share each. Accordingly, I appoint Sh.Jagjit Singh Advocate as the Local Commissioner to suggest the ways and means to divide the aforesaid two properties and the business carried out from 67-A, Khan Market amongst the three co-sharers having 1/3rd share in the said properties. The Local Commissioner shall visit the aforesaid premises, discuss with the respective parties and thereafter shall file a plan and report before this Court giving his suggestions, in terms of this judgment and order. His remuneration is fixed at Rs.15,000/- excluding the expenses to be incurred by him for the said purpose.

After submission of the report, the same shall be considered in accordance with law and thereafter a final decree shall be passed in the suit in respect of aforesaid two suit properties and the business carried on from 67-A, Khan Market, New Delhi.

So far property No.B-2/136, Safdarjung Enclave, New Delhi is concerned, the suit filed by Lal Chand (Suit No.334/79) for declaring the same as joint family property, is dismissed holding that Moti Ram is the exclusive owner and has title to the said property. A final decree is passed in respect of the said property and also in respect of the business carried out from Shop No.45-B, Khan Market. The parties are also left to bear their own cost.”

3. The Appellants herein are the Legal Representatives of Late Shri Ram Chander. They submit that they do not wish to press the present Appeal except for the impugned direction for the appointment of a Local Commissioner. All the parties concerned, except one namely Shri Surender Gupta, say that the two shops in question may be sold in auction since it is now evident to them that it is not possible for these two shops to be partitioned by metes and bounds. In these circumstances we see no reason or necessity for continued compliance with the direction given by the learned Single Judge for the appointment of a Local Commissioner in order to furnish a Report on this very question.

4. The only opposition is from Shri Surender Gupta one of the legal heirs of late Shri Lal Chand. Neither Shri Surender Gupta, nor late Shri Lal Chand have appealed against the said order/judgment. It is significant that the brothers of Surender Gupta namely Shri B.M.Gupta, Shri Ashok Gupta and Anand Prakash Gupta as well as sister Ms. Sushma Goyal concur in the sale of the property through auction. In other words, the impugned order would be given effect to.

5. We have considered the matter in all its complexities. In view of the overwhelming consensus between the members of the family that two Shops cannot be partitioned by metes and bounds, we think it just and proper that Shop No. 67-A and 45-B, Khan Market New Delhi should be sold through public auction. All the parties to these proceedings including their Legal Representatives shall be entitled to bid in the public auction.

6. The Appeal before us, for all practical purposes, is being withdrawn, which tantamounts to the passing of the Final Decree.

7. Proclamation regarding sale of the properties shall be pasted on the respective properties; shall be carried out by beat of drum and shall also be published in the Hindustan Times

and The Times of India possibly by 24th December, 2010. The publication and other charges shall be calculated by the Registry by 13st of December, 2010. Accordingly, we appoint Mr. D.S. Pawaria, Advocate, (Retired Additional District & Sessions Judge), 49, Tehsil Building, Tis Hazari Courts, Delhi, Phone 9999621110, 011-29553338 as Court Auctioneer. Fees of the Court Auctioneer is initially fixed at ₹1,00,000/-. Before issuing publication the Auctioneer shall inspect the Court Record including the documents regarding title/leasehold rights to the properties and shall make a mention thereof in the publication. It shall also be clarified that the charges for transfer of the lease hold rights and necessary formalities for transfer etc., if any, shall be borne by the auction purchaser/purchasers. Publication charges and the fee of Court Auctioneer etc. shall be deposited by the appellant, in the first instance, by 18th of December, 2010 which, of course, shall be equally borne by the three branches, i.e., by legal heirs of Ram Chander (Appellant herein), by Moti Ram (Respondent in Appeal No.4/2004 and Respondent No.2 in Appeal No.2/2004) and by legal heirs of late Shri Lal Chand (Respondent in Appeal No.8/2004).

8. Copy of this order be also sent to the Court Auctioneer for necessary information/compliance thereof.

9. The Appeals and all pending applications are disposed of in terms of the above order.

**(G.P. MITTAL)
JUDGE**

**(VIKRAMAJIT SEN)
JUDGE**

December 03, 2010
sa/dilip/vk