IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

CIVIL APPEAL NO. 609 OF 2005

Lalchand Manakchand Mehta ... Appellant

Versus

Neelamchand Harakchand Mehta and others ... Respondents

With

CIVIL APPEAL NO.610 OF 2005

Neelamchand Harakchand Mehta ... Appellant

Versus

Lalchand Manakchand Mehta and others ... Respondents

O R D E R

1. These appeals are directed against judgment dated 24.4.2003 of the learned Single Judge of the Bombay High Court, Aurangabad Bench whereby he partly allowed the first appeal filed by appellant-Lalchand Manakchand Mehta against the final decree passed by Civil Judge, Senior Division, Jalgaon (hereinafter referred to as, "the trial Court") in Special Civil Suit No.66 of 1980.

2. For the sake of convenience, the parties are being referred to

by the description given to them in Civil Appeal No.609 of 2005. Appellant-Lalchand and respondent Nos.1 and 2 are real brothers. The appellant was given in adoption to Manakchand. Thereafter, he started using the name of the adoptive father along with his name. The appellant and respondent Nos. 1 and 2 were partners of firm-M/s. Rajmal Nandlal and Company, Bhuswal which was dissolved on 2.3.1977. Respondent Nos.1 and 2 filed suit for partition and

separate possession of half share in the properties of the firm including the following:

(a) Land measuring 91,155 square feet.

(b) Residential building namely ‘Panna house’.

(c) Plant i.e. Press building, gin building etc.

(d) Other civil works etc. godowns, garages.

(e) Machinery.

3. The trial Court decreed the suit on 31.10.1984 and declared that respondent Nos. 1 and 2 are entitled to one half share in the suit property except the land situated at Edalabad. The trial Court appointed Shri A.K. Pradhan as Commissioner for the purpose of effecting the partition of the suit property except the land situated at Edalabad. The Commissioner inspected the site and prepared inventory of the land and machinery belonging to the firm. He engaged Shri H.T. Ranade, Civil Engineer for the purpose of valuation of the property. After receiving the valuation report, the Commissioner submitted report dated 24.3.1999 wherein he indicated that value of the land was Rs.40 per square feet. The

appellant filed objections against the Commissioner’s report but the trial Court rejected his objections and passed final decree.

4. The appellant challenged the final decree in First Appeal No.186 of 2002. He also applied for stay. By an order dated 25.4.2002, the High Court stayed the judgment and decree of the trial Court subject to the condition that the appellant shall deposit Rs.23 lakhs. That order was modified by this Court in Civil Appeal No.7148 of 2002 and it was ordered that instead of depositing Rs. 23 lakhs, the appellant shall furnish bank guarantee of that amount.

5. After disposal of the appeal filed against the interlocutory order, the learned Single Judge passed the impugned judgment whereby he partly allowed the first appeal. The learned Single

Judge adverted to the Commissioner's report, referred to the judgment of the Privy Council in Chandan Mull Indra Kumar v. Chiman Lal Girdhar Das Parekh AIR 1940 Privy Council 3 and held:

> ".....Taking into consideration the large size of the land situated in the city, its potentiality for the purpose of residential colony, that can be developed with free roads required to be constructed therein, the method adopted appears to the just and proper. The said valuation is objected by the appellant on the ground that the said report is of the year 1991, whereas the final decree is passed in the year 1999 and, therefore, according to him, the said valuation report should not be accepted. In this regard, it is to be noted that both the parties i.e. original plaintiffs and defendant no.1 have equal share i.e. half share in the suit property and, therefore, if the valuation is made at Rs.40/- per sq.ft. or more, for e.g. Rs.Fifty or sixty per sq.ft., proportion of value of both shares does not change,
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> therefore, there appears no substance in the said objection raised on behalf of the appellant. The same principle is also applicable to the valuation of the building and the other structures. It is to be noted that the valuer made the valuation of each structure. He was not knowing as to which structure will be allotted on whose share. Therefore, his integrity cannot be doubted, his carefulness cannot be questioned. Applying the principle in the case of Chandan Mull vs. Chiman Lal, AIR 1940 Privy Council 3, referred to above, I do not find any reason to interfere with the result of long and careful execution of the task by the valuer. The valuation of the immovable property made by the valuer as per the valuation report submitted before the Civil Court is to the tune of Rs.45,96,000/- (i.e. land valuation Rs.33,60,000/-, Panna Building with appertaining land Rs.8,29,000/- and valuer of Civil Engineering Work and other building as described above Rs.4,07,000/-). Thus, valuation of half share of the appellant comes to the extent of Rs.22,98,000/- and that of the share of respondent nos.1 and 2 to the same extent."

The learned Single Judge then considered the appellant's objection to the valuation of machinery and observed:

> ".....However, it appears that by that time most of the machinery and its parts were disposed of and, therefore, the Commissioner, in his report Exh.207 stated that there was no machinery available for making valuation of the same. It appears, therefore, that the valuer made valuation of the machinery on the basis of the current market rate to the extent of Rs.23 lacs. The matter regarding unauthorised removal of machinery or its parts can be dealt with separately and it appears that the proceedings for breach of injunction against the present appellant are pending before the trial court. However, despite of these circumstances, the fact remains, whether the valuation made by the valuer to the extent of Rs.23 lacs in respect of the old machinery should be accepted by the Court. As already stated, the machinery was not available for the purpose of valuation. The machinery appears to be pretty old. When the inventory was prepared by the Commissioner in the year

1980 vide Exh.43, there is a reference of Press Machine of Horjed Make of the year 1882, and that of the Boiler of Marshal Sons and Co. Ltd. England No.82975 of the year 1927. In short, there cannot be any doubt that the machinery was pretty old and it was very difficult to work out the valuation of the said machinery even on the basis of the inventory prepared when the machinery was in

existence. In this regard, it would be just and proper to note down the valuation of the machinery disclosed by the plaintiffs at the time of filing the suit. Suit was filed on 11.8.1980. Alongwith the suit, original plaintiffs had submitted Schedule "A" in which the value of Press Machine and the Gin Machine is shown to the extent of Rs.6.25 Lacs. In the plaint, plaintiff has mentioned at para 8 that the said valuation is made on the basis of the market value. The said valuation has not come to be disputed by the defendant no.1 who is the present appellant in his written statement and as such what is not disputed shall be deemed to have been admitted and therefore, there appears a good ground to valuer the machinery at Rs.6.25 Lacs and as such the ½ share of the plaintiffs comes to the extent of Rs.3,12,500/-. It is clear from the Commissioner's report Exh. 150 as well as from the reply Exh. 159 submitted by defendants to the said report that the appellant was running Ginning and Pressing Machine till 1985 i.e. for five years from the date of institution of the suit. It has come in evidence that prior to institution of the suit, the original plaintiff had leased out their share in the said Ginning and Pressing Factory to the defendant No.1 for running the same on the yearly lease of Rs.55,000/- since the year 1977-78. The appellant is his deposition has admitted that he is in possession of entire property since 1979. His evidence is recorded on 20.10.1984. He categorically stated in the cross-examination that he is in possession of the property not as a co-sharer which indicates that he was using the same as if the entire property belongs to him. The same tenor is disclosed by him in the sale-deed Exh.D placed on record of the appeal, executed by the appellant in favour of one Shashikant Jethalal Mehta stating therein that though as per the decision of the court, a Commissioner has been appointed for effecting the partition, he is in possession of the entire property. The sale-deed is dated 13.11.1990. Being a co-sharer, the appellant is liable to account for the income of the property, but he has not disclosed the income. However, from the admitted facts it can be gathered that half share of the respondents could fetch income to the extent of Rs.55,000/- per year. As discussed above, the respondent nos.1 and 2 are entitled to get the income of Ginning and Pressing Machine till the time it was in working condition i.e. from the year 1980 till 1985 i.e. for five years which comes to Rs.2,75,000/-. Due to the disposal of the machinery, thus the original plaintiffs are put to loss to the extent of Rs.3,12,500/- i.e. the value of share of the machinery and loss of income of five years caused to plaintiff comes to Rs.5,87,500/-. Thus, the share of the original plaintiffs in the

machinery and its income comes to the extent of Rs.5,87,500/-. This amount deserves to be adjusted from the half share of the appellant at the time of final decree. Ordinarily, interest would have been calculated on this amount so as to fix the valuer of the claim in this regard at the time of passing of final decree which

came to be passed in the year 1999, however, as the said claim deserves to be adjusted towards the land value from the share of the appellant and since the valuation of the land is based on the report of valuation prepared in the year 1991, there appears no need to give any more weightage like interest in respect of such claim."

As regards the immovable property, the learned Single Judge opined that both the parties were entitled to equal share of Rs.22,98,000/- but ordered deduction of Rs.7,12,900/- from the appellant's share by observing that he was responsible for the loss caused to the property of the firm. This is evident from paragraph 16 of the impugned judgment, the relevant portion of which is extracted below:

"16. .....The loss of Rs.7,12,900/-, as discussed above, is liable to be deducted from his (appellant's) share. Deducting the said amount from his share the value of the property to which he is entitled to get, comes to Rs.15,85,100/-. As against this, the respondent nos.1 and 2 are entitled to have a share valued at Rs.30,10,900/- (i.e. 22,98,000/- + 7,12,900 = 30,10,900/-). As the appellant is in possession of Panna Bhavan a three storied building with appertaining land, the Commissioner has rightly allotted the said building alongwith the land 10,324 sq. ft. in area to him. The valuer valued the bungalow along with appertaining land of the building i.e. 7,175 sq.ft. at the rate of Rs.40/- per sq.ft. total value of Rs.8,29,300/-. In addition to this, the Commissioner has allotted the land 1,822 sq. ft. valued at the rate of Rs.40/- per sq.ft. which comes to Rs.72,880/-. Thus, the valuation of the share already allotted to the appellant comes to Rs.9,02,180/-. As pointd out above, he is entitled to have property valued at Rs.15,85,100/-. Deducting the value to the extent of Rs.9,02,180/- of the bungalow and the land already allotted to his share, he is entitled to have additional property worth Rs. 6,82,920/-. Thus, at the rate of Rs.40/- per sq.ft. land value as worked out by the

Commissioner with the help of valuer, the appellant is entitled to get 17,073 sq.ft. land in addition to the property allotted to him. It would be just and proper to allot the land adjoining to the entire eastern boundary of the property already allotted to his share and the remaining land should be put in possession of respondent nos.1 and 2."

6. We have heard learned counsel for the parties. The trial Court and the High Court have concurrently held that the appellant was running Ginning and Pressing Machine till 1985 i.e. for five years from the date of institution of the suit and that at the time of inspection by the Commissioner, two structures i.e. Gin and Press sheds and the machinery were missing. This implies that the

appellant was responsible for destruction of the sheds and the machinery. Therefore, the two Courts rightly held that the loss shall be compensated by the appellant by way of deduction from his share. The appellant's plea that the land should have been valued at Rs.400 per square feet was clearly misconceived. Since the suit was filed in 1980, value of the property was rightly pegged at the market value prevailing in 1980 and we do not find any plausible reason to interfere with the findings and conclusion recorded by the trial Court and the High Court.

7. In the result, the appeals are dismissed.

.....
.....J.
[G.S. Singhvi]

.....J.
[K.S. Panicker Radhakrishnan]

New Delhi;
April 13, 2011.

ITEM NO.110 COURT NO.9 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 609 OF 2005

LALCHAND MANAKCHAND MEHTA Appellant (s)

VERSUS

NEELAMCHAND HARAKCHAND MEHTA & ORS. Respondent(s)

(With prayer for interim relief)

WITH Civil Appeal NO. 610 of 2005
(With office report)

Date: 13/04/2011 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE K.S. PANICKER RADHAKRISHNAN

For Appellant(s)
In C.A.No.610/05 Mr.Vivek Solshe, Adv.
& for RR in
C.A.No.609/05

For Respondent(s) Mr.Uday B.Dube, Adv.

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

The appeals are dismissed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)