

(2010) 03 DEL CK 0376

In the Delhi High Court

Case No : C.M. (Main) No"s. 1952-1953 of 2006 and C.M. Application No. 15534 of 2006

Amit Goel and Another

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2010) 03 DEL CK 0376

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : R.K. Saini and Nikhil Bhalla, for the Appellant; S.L. Gupta, Virender Singh and Ravi Shankar for R-1 and 2 and Rajeev Sharma, for R-3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—Property No. 921-922, Clock Tower, Subzi Mandi, Delhi was owned by Sh. Jai Narayan Goel. The property was under tenancy of State Bank of India. Sh. Jai Narayan Goel executed a Will dated 13th September, 1983 and bequeathed the property in following manner:

After my death, my wife Smt. Phoolwati during her lifetime shall remain owner of the property. After her death, my sons Sh. Prem Chand Goel and Sh. Madan Mohan Goel shall become owner of the property in equal share.

2. There is no dispute about the Will executed by Sh. Jai Narayan Goel. Sh. Jai Narayan Goel died on 18th February, 1985. After his death, Smt. Phoolwati was attorned as landlord of the premises by the tenant and she started receiving monthly rent from State Bank of India. Smt. Phoolwati died on 24th October, 2005. Since the Bank was in arrears of rent, a suit for recovery of arrears along with interest was filed in the year 2005 against the Bank by the present plaintiffs Sh. Amit Goel and Sh. Dinesh Kumar Bansal. Sh. Amit Goel is son of Sh. Prem Chand Goel, who was to succeed to half of the share. Sh. Dinesh Kumar Bansal is

son of Sh. R.K. Gupta. It is stated that Smt. Phoolwati during her lifetime transferred her half share in the property in favour of Sh. Amit Goel, who was duly attorned by State Bank of India as landlord-owner.

3. Sh. Madan Mohan Goel who was the other son of Smt. Phoolwati and was the owner of half of the property subject to Phoolwati life interest had expired before death of Smt. Phoolwati. His legal heirs Smt. Asha Rani Goel, Ms. Nidhi Goel and Ms. Pooja Goel made an application under Order I Rule 10 CPC before the learned Additional District Judge to be impleaded as parties to the suit for recovery of possession and recovery of arrears of rent, which was allowed by learned Additional District Judge by the impugned order.

4. The petitioners have filed present petition on the ground that the applicants were not necessary parties since the suit was between the landlord and tenant for recovery of possession and recovery of rent and the applicants were not parties for adjudication of issues.

5. The bequeathment done by Sh. Jai Narayan Goel by virtue of Will dated 13th September, 1983 makes it abundantly clear that Smt. Phoolwati had only life interest in the property and what she could sell to anyone was her own interest and she could not have sold anything more than what she owned. Her interest was to come to an end by her death, therefore, whatever rights she transferred also extinguished with her death. After her death, the rights in the property were to go in accordance with the Will of late Jai Narayan Goel to her two sons, namely, Sh. Prem Chand Goel and Sh. Madan Mohan Goel absolutely. Since ownership to these two sons was to be absolute after death of Smt. Phoolwati, right of legal heirs of these two sons after death of anyone of them cannot be doubted.

6. The plea taken by the petitioner that since Sh. Madan Mohan Goel predeceased Smt. Phoolwati, the entire share of Smt. Phoolwati would go to other surviving son Sh. Prem Chand Goel and, therefore, legal heirs of Sh. Madan Mohan Goel, who was already dead, had no right to inherit the property after death of Smt. Phoolwati is fallacious. Since Smt. Phoolwati had only limited right in the property, that is, right to enjoy it during her lifetime even if one of the son had died before her, his legal heirs would be entitled to the share of the deceased son after death of Smt. Phoolwati and had a right to claim the rent as well as possession along with other co-owners.

7. The other argument forwarded by the petitioner is that since the dispute was only in respect of recovery of rent and the petitioner had already been attorned by the Bank and were receiving rent, the applicants were not necessary party. This argument was rightly turned down by the trial court. Attornment by the tenant is not a test of the petitioner being rightful receiver of the rent. If a tenant attorns in favour of some stranger, he would not become landlord. The person entitled to receive rent needs to have legal a right to receive the rent either as owner or as successor of the owner/landlord or as agent of the landlord. The

attornment done by Smt. Phoolwati or authority given by Smt. Phoolwati came to an end with her death and after her death only the persons entitled to inherit the property in accordance with the Will of Sh. Jai Narayan Goel would be the landlord/owners.

8. I, therefore, consider that the trial court rightly allowed the application made by the applicants under Order I Rule 10 CPC for being impleaded as a party. This petition has no force and is hereby dismissed.