

(2021) 04 DEL CK 0066

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 25 Of 2021, Civil Miscellaneous
Application No. 1198 Of 2021

Anita Chandra

APPELLANT

Vs

Sudhir Chandra And Ors

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 13 Rule 1, Order 13 Rule 4
Specific Relief Act, 1963 — Section 31
Evidence Act, 1872 — Section 62

Citation : (2021) 04 DEL CK 0066

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Abhishek Batra, Omprakash

Final Decision : Disposed Of

Judgement

Navin Chawla, J

1. This petition has been filed by the petitioner challenging the order dated 16.12.2020 passed by the learned Additional District Judge-03, District East, Karkardooma Courts, New Delhi in Suit, being CS No.2261/2016 titled Sudhir Chandra v. Col. Dinesh Chandra & Anr., allowing the application of the respondent no.1 for a direction to the petitioner to file the documents in original before the Court under Section 31 of the Specific Relief Act, 1963 (hereinafter referred to as the Act).

2. The suit has been filed by the respondent no.1 praying for the following reliefs:

"a) A decree of declaration thereby declaring each of the documents at Annexure A as being null and void, non est, inoperative and ineffective.

b) A decree of cancellation thereby cancelling the General Power of Attorney purportedly dt. 2.7.91 allegedly executed by the plaintiff in favour of defendant No.1 .

c) A decree of cancellation thereby cancelling the agreement for sale dt.2.7.91 purportedly executed by the plaintiff in favour of defendant No.1 thereby purporting to agree to sell the Delhi suit property for consideration of Rs.6 lacs.

d) A decree of cancellation thereby cancelling the affidavit dt.10.9.93 on non judicial stamp paper of Rs.2/- bearing No.18988 sold on 9.9.93 executed by defendant No.1

e) A decree of cancellation thereby cancelling the two indemnity bonds executed by defendant No.1 dt.10.9.93 on stamp papers bearing Nos.18985 and 18987 of Rs.10/- each.

f) A decree of cancellation thereby cancelling the "undertaking" executed by defendant No.1 on 10.9.93 on non Judicial stamp paper of Rs.2/- bearing No.18989 purchased on 9.9.93.

g) A decree to cancellation thereby cancelling the conveyance deed dt. 15.4.94 executed by President of India through DDA in favour of defendant No.1 registered with the office of Sub Registrar IV, Delhi on 19.4.94 vide S.No.1487, Addl. Book No.1, Vol.2525 at pages 103-105.

h) A decree of possession in favour of the plaintiff and jointly and severally against the defendant Nos.1 to 3 their servants, agents, assigns or any other person dealing with them in respect of Delhi suit property comprising of Ground Floor and First Floor admeasuring 370 sq. yds. and bounded as under:

East 30' wide road

West Plot No.F-3

North Plot No.F-74

South Plot No.F-76

i) A decree for mesne profits and damages in favour of the plaintiff and against the defendant Nos. 1 to 3 for Rs.60,000/- p.m. from the date of filing of the suit till date delivery of possession of the Delhi suit property by defendants to the plaintiff being the damages payable by defendants for their unlawful and unauthorised use and occupation of Delhi suit property.

j) A decree of permanent and perpetual injunction thereby restraining the defendants, their servants, agents or assigns from in any way dealing with, alienating, encumbering or parting with possession of Delhi Suit property i.e. property bearing No.F-75, Preet Vihar, New Delhi- 92 admeasuring 370 sq. yds. and bounded at under:

East 30' wide road

West Plot No.F-3

North Plot No.F-74

South Plot No.F-76

k) A decree of permanent and perpetual injunction in favour of the plaintiff and against the defendants, thereby perpetually restraining the defendants their servants, agent, or assigns from in any way dealing with, alienating, encumbering or parting with the possession or collecting the rents of Bulandshahr suit property i.e. five shops situated in Dharam Niwas, Civil Lines, Bulandshahr, U.P. bounded as under:

East Hadudi

West Singhal Bhawan

North Rasta

South Kothi Dharam Niwas."

3. At the stage when the suit was listed for final arguments, the respondents filed an application seeking filing of the documents in original by the petitioner. The said application has been allowed by the learned Trial Court observing as under:

"7. Having heard the submissions and perused the record of the case this court is of the view that defendant Anita Chandra ought to file the original documents in her power and possession once the final argument are concluded and judgment is reserved. This is imperative in view of section 31 of Specific Relief Act. In the event of the suit being decreed, the court would be required to adjudge the document(s) to be void or voidable and 'order it to be delivered and cancelled'. This provision does not say that the order/decreed for cancellation of instruments(s)/ document(s) shall be subject to outcome of first appeal. This provision neither states that court will not order document(s) to be delivered and cancelled until and unless the defendant has exhausted all his / her remedies under the law after the decree of the trial court. Besides this, at this stage it would be too naive to assume that in all probability defendant Anita would go in appeal for the reason that we do not know the future. Cases are not unknown where a party, despite not being on the winning side in a lis, has preferred not to challenge the court order/decreed. That apart, this does not prejudice defendant Anita. In the event of the suit being dismissed, the documents would be released to her. And in the event of the suit being decreed, the court would only be doing its duty as enjoined upon it by law.

8. Counsel for defendant Anita Chandra argued that the documents would be mutilated in the court file and as such it would cause irreparable loss to her. This apprehension is being taken care of by asking her to deposit the original documents in her power and possession once the final argument are concluded and the judgment is reserved.

9. This application is being disposed of with direction to defendant Anita Chandra to file all the original documents in her power and possession once the final

argument are concluded and judgment is reserved. However, this does not mean that she would not show any original document to the court at the time of final arguments in case the court desires to take a look at the same in order to better appreciate the case/ arguments/ evidence on record/ the rival contentions etcetera. List on 16.01.2021 for final arguments. This matter is an old one. Counsels for both the sides are impressed upon to assist the court in expeditious disposal of this case."

4. The grievance of the petitioner in the present petition is that the learned Trial Court could not have taken recourse to Section 31 of the Act for seeking filing of the documents in original by the petitioner.

5. On the other hand, the learned counsel for the respondent no.1 submits that the Court can, at any stage, require the parties to file the documents in original and especially where the authenticity of the documents is in question. He places reliance on the judgment of this Court in *Aktiebolaget Volvo & Ors. vs. R.Venkatachalam & Anr.* 2009 SCC OnLine Del 1481.

6. I have considered the submissions made by the learned counsels for the parties.

7. In the present case, the respondent no.1 has challenged the execution of documents. This Court, in *Aktiebolaget Volvo* (supra) has considered the scheme of the Code of Civil Procedure, 1908 as also the Indian Evidence Act, 1872 and has observed as under:

"23. When at the stage of proof of documents, the requirement under Section 62 of the Evidence Act is only of production of original for inspection of the court, Order 13 Rule 1 of the CPC requiring production of originals has to be necessarily meant as production of original for inspection of the court and not as filing of the original. Significantly, Order 13 Rule 1 also uses both expressions "produce" in connection with original and "filed" in connection with the copies. The different expression used, together with definition/meaning of produce cited by counsel for plaintiffs also lend me to hold that the original documents are only intended to be produced i.e. to be given inspection of while the copies are to be filed.

24. I, therefore, find that the scheme of the aforesaid legislative provisions also permits production of originals for inspection only and filing of copies only.

25. However, Order 13 Rule 4 CPC and the practise directions in the trial of suits issued by this court, also provide for making of endorsement on documents admitted in evidence. The document which is admitted in evidence is the primary document i.e. the original. Is the endorsement of exhibit mark to be made on original only which would again mean placing it on court record? In my view no. These provisions are procedural. When the substantive law permits only production for inspection of original, once that has been done, the endorsement/ exhibit mark can be put on copy on court record also.

26. The aforesaid should not be understood as laying down that in all cases the

filing of photocopies is enough. If the document is doubtful or for any other reason required by the court to remain in original on the file of the court, the court can always direct so and a party cannot insist on filing of copy only. There may be other instances where filing of the original is necessary, as in the case of documents like Will, Agreements which may be terminated/cancelled by destruction. The courts can in such cases insist upon the original being filed on the record."

8. Therefore, while filing of the original document is not mandatory, at the same time, in the present suit, as the execution of documents itself is in challenge, the Court can and has rightly directed the production of the same in original.

9. At the same time, the fear of the petitioner is also germane inasmuch as the learned Trial Court has placed reliance on Section 31 of the Act for directing the production of the documents and has also observed that the same are required to be delivered for purposes of making an endorsement of cancellation incase the respondents are to succeed in the suit. The petitioner, therefore, rightly apprehends that once the decree is passed, the learned Trial Court would simultaneously proceed to make the endorsement on the documents.

10. Section 31 of the Specific Relief Act reads as under:

"31. When cancellation may be ordered.- (1)Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

(emphasis supplied)

11. A reading of the above provision would clearly show that the Courts have to first adjudicate on the documents in challenge as being void or voidable and thereafter order it to be delivered and cancelled. The decree for the Court would therefore be one of declaration and for a direction to the possessor of the documents to deliver the same for it to be cancelled. The Courts would not, at the time of passing of decree itself make such endorsement on the documents merely because the documents are on the record of the Court, thereby making the right of the unsuccessful party to appeal against the said decree redundant. To hold otherwise would mean that in case of success in the appeal, endorsement made by the Trial Court on the documents in question would have to be cancelled leading to the unwarranted mutilation of the document. Such a course needs to be avoided.

12. In view of the above, while not interfering with the Impugned Order, it is

directed that the learned Trial Court shall not proceed to make any endorsement on the documents which are produced and filed by the petitioner in compliance with the Impugned order till the period of limitation for challenging any decree that may be passed, if at all, against the petitioner has expired and subject to any orders being passed by the Appellate Court in such appeal, if filed by the petitioner.

13. The petition is disposed of with the above directions. There shall be no order as to costs.