

(2001) 03 DEL CK 0136

In the Delhi High Court

Case No : I.A. No. 12582 of 2000 and S. No. 2049 of 1999

Aruna Jain

APPELLANT

Vs

Tirlok Kumar Gambhir

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Citation : (2001) 3 CivCC 422 : (2001) 4 RCR(Civil) 56

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : M.L. Lahoty and Mr. Paban K. Sharma, for the Appellant; Daljinder Singh, for the Respondent

Judgement

J.D. Kapoor, J.—Through this application the plaintiff seeks inclusion of a prayer for declaration that the legal notice dated 26th August, 1999 purporting to cancel the irrevocable registered general power of attorney and Will and acts done thereunder are ab initio void and illegal and also for a permanent injunction restraining the defendant from acting under a proceeding on the basis thereof or in any manner dealing in the suit property. These prayers are being included in view of the admission in the written statement by the defendant that he had himself appeared before the sub Registrar and had put his thumb impression as well as his signature on the aforesaid documents. These relief's are being claimed after the plaintiff came to know about the cancellation of the aforesaid documents on 13.11.2000. When he was served with a copy of the written statement that certain cancellation deeds have been unilaterally got registered on 14.9.1999 by the defendant whereas the copy of these documents including the registered cancellation deeds were supplied only on 28.11.2000.

2. The application has been resisted on the sole ground that for this alleged act the plaintiff has a remedy by way of independent suit seeking declaration as prayed in the amendment application. It is averred by the applicant/plaintiff that in the application under Order 39 Rule 4 CPC moved by the defendant it was mentioned that by way of notice dated 26.8.1999 the defendant had cancelled

the are transaction and this gave rise to the instant suit. It was filed on 16.9.1999 seeking stay of acts of the defendant and ad interim ex party injunction was granted in favour of the plaintiff. As a result the instant suit was on the basis of the cancellation of the documents made by him on 14.10,1999 and in that suit no reference of cancellation deed was made. What was pleaded was that the defendant intended to cancel the aforesaid documents.

3. So much so the order dated 16.9.1999 was also not referred, As is apparent from the suit filed by the plaintiff as well as subsequent suit filed by the defendant the main dispute is with regard to the act of cancelling the documents executed by the defendant in favour of the plaintiff pertaining to the sale transaction. On the one hand the plaintiff has sought declaration of part ownership of the suit premises and on the other hand the defendant has sought possession of the suit premises from the plaintiff on the basis of the cancellation of the documents of sale transaction made by the defendant.

4. The provision of Order 6 Rule 17 confer upon the court the power to allow the amendment of the pleadings including the relief's if the nature of the relief sought is by result of subsequent event or disclosure of a new fact in pleadings including any application or reply thereto and even if it gives rise to a new cause of action it does not tantamount to introducing or setting up a new case All disputes relevant to decide the original cause of action should be decided at one go and the party should not be driven to or indulge in multiplicity of proceedings. The nature of amendment sought by the plaintiff is not such that creates a new defence or a new cause of action. Rather the dispute sought to be settled by the plaintiff through his application is co-related to the relief sought by the defendant in the suit filed by him in the district court. For the foregoing reasons the application is allowed.

5. Let amended petition if already not filed be filed within four weeks and the amended written statement be filed within four weeks thereafter.

6. I.A. stands disposed of.

I.A. No. 10684/99

7. The limited relief sought by the defendant through this application is that the interim order dated 16.9.1999 has even prevented entry to the overhead water tank for the purpose of cleaning and repairing them.

8. Vide order dated 16.9.1999 the defendant was restrained for disturbing for interfering with the plaintiffs possession in the suit property as well as from dealing with in any manner or otherwise creating any third party interest in the suit property till further orders.

9. I am afraid this order never prevented the defendant from cleaning or repairing overhead water tanks. The application is allowed as the owner of the premises has every right to supervise the property for its proper upkeep.

10. Relief shall be confined only to the above extent.

I.A. stands disposed of.