

(2012) 05 DEL CK 0186

In the Delhi High Court

Case No : Regular First Appeal (OS) 35 of 2009

Asha Sharma and Others

APPELLANT

Vs

Sanimiya Vanijiya P. Ltd. and Others

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 3, Order 7 Rule 1, Order 7 Rule 11

Citation : (2012) 05 DEL CK 0186

Hon'ble Judges : Siddharth Mridul, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Abhinav Vasisht, instructed by Mr. Rajat Joseph, for the Appellant; C. Mukund with Mr. Ashok Jain, Pankaj Jain, Advocates R-3 and R 5, Mr. Rajeev Virmani instructed by Mr. Vikas Mehta, Narhari Singh, Shakeel Ahmad, Advocates R-4 and R-6 and Mr. A.P. Mukundan, Advocate R-9, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Applying the principles of estoppel by pleading and acquiescence, suit filed by the appellants has been held to be barred and accordingly rejected under Order VII Rule 11(d) of the Code of Civil Procedure. The order impugned is dated August 20, 2008. The appellants are the successor in interest of Late Ms. Satyawati Sharma. During her life time Satyawati Sharma filed a suit praying as under:

It is, therefore, most respectfully and in the interest of justice prayed that:

(i) A decree of possession/eviction order directing the defendant No.1 to 3 to hand over the vacant possession of the entire ground floor & part of Ist floor as well as the big on the first floor and open spaces of 70-Golf Links, New Delhi as shown in the plant annexed be passed.

(ii) A decree of recovery of amount of Rs. 10,17,320/-alongwith interest @ 18% per annum from 1-9-96 till the date of recovery be passed in favour of the

plaintiff and against the defendants.

(iii) A decree of mandatory injunction directing the defendant No.1 to 3 to deposit the mis-use charges as claimed by the defendant No.4 from the date of non-payment of mis-user charges till the date of deposit in the name of the plaintiff be also passed.

(iv) The cost of the suit be also ordered to be paid to the plaintiff.

2. Inter-alia, in paragraphs 17 and 19 of the plaint, Late Satyawati Sharma pleaded as under:

17. That the plaintiff was so perturbed that it agreed to dispose of the property in favour of defendant No.6 to 11 and had to execute the sale deed in their favour. Since the matter of payment of mis-use charges and the re-entry was still pending therefore, the letter of attornment to the defendant No.1 to 3 was not issued.

xxx

19. That the plaintiff on the one hand has been suffering due to continuous mis-user at the hands of defendant No.1 to 3 on the other hand the defendant No.4 & 5 were stressing for the deposit of mis-user inspite of specific request that mis-user by the defendant No.1 to 3 have not stopped. When the plaintiff agreed to sell the property to defendant No.6 to 11 the defendant No.1 to 3 filed a suit for injunction in the court of Shri Sanjeev Jain, Civil Judge and obtained an interim injunction for the stoppage of raising of the wall to separate the property occupied by defendant No.1 to 3 and the defendant No.6 to 11 on the first floor. It is submitted that the total property under the occupation of the defendant No.1 to 3 consists of the entire ground floor with constructed area of 1750 sq. ft. and one big room etc on the first floor comprised in an area of 669 sq. ft. Defendants No.6 to 11 are proforma defendants only and no relief is being claimed against them.

3. To understand the prayer and the relevance of the afore-noted pleadings made in para 17 and 19 by Late Satyawati Sharma, a word needs to be spoken by us to explain the plaint. She sought decree of possession against Indian Overseas Bank, impleaded as defendant No.1 in the suit, and for no reason impleaded the Managing Director and the Manager of the branch of the bank carrying on business from 70 Golf Links, New Delhi as defendants Nos.2 & 3. For reasons unknown, the Secretary, Ministry of Urban Development, Government of India, was impleaded as defendant No.4 and the Land and Development Officer as defendant No.5. Six Private Ltd. Companies were impleaded as defendants Nos. 6 to 11. She pleaded of being the perpetual lessee of the land bearing Municipal No.70, Golf Links, New Delhi on which a building was constructed. She pleaded that on November 05, 1970, she let out the ground floor of the property to defendant No.1 to run a bank upon an assurance that being a Government bank, she would have no problem with the lessor, since a property which had to be

used for a residential purpose was being let out to be used for banking purposes. She pleaded that the lease was extended from time to time and as per last extension, the lease expired on December 31, 1981. Pleading that DDA prosecuted her for using the property or permitting it to be used contrary to the master plan, she made a grievance that the misuse by the bank even resulted in L&DO claiming misuse charges and for non-payment of which threatened to determine the perpetual lease in her favour. She pleaded having paid money for the property to be converted to a free-hold tenure. So perplexed was she, as pleaded in para 17 of the plaint, that she executed sale-deed in favour of defendants No.6 to 11 transferring her title in the property to them. She pleaded in para 19 thereafter, of some dispute with respect to the bank and defendants No.6 to 11 qua a portion on the first floor took place, a pleading which we fail to understand, for the reason under the six sale-deeds executed by her, she has sold the entire property to defendants No.6 to 11. Pleading arrears of rent outstanding prior to the sale, the suit was filed, praying as afore-noted. But expressly stated in para 19 that defendants No.6 to 11 were impleaded as proforma parties and no relief was claimed against them.

4. Now, Satyawati Sharma could not claim a decree for possession against the bank in view of the admissions made by her in para 17 of having sold the property to the bank. She could have only sued for the arrears of rent payable and such other amounts by way of damages payable to her by the bank till the date when she executed the six sale-deeds, provided she had not transferred even said rights in favour of defendants No.6 to 11.

5. The suit filed was registered as CS(OS) No.2631/1996 but was transferred to the Court of the District Judge, Delhi when pecuniary jurisdiction of this Court was enhanced.

6. Three out of the six companies to whom Satyawati Sharma had sold her undivided share effected further sales in favour of Aditya Sarda, Nitish Sarda, Preetesh Sarda and Sidhesh Sarda who sought to be substituted as defendants by moving an application under Order XXII Rule 10 of the Code of the Civil Procedure.

7. In reply to aforesaid application, in para 1 of the reply, Satyawati Sharma pleaded as under:

That the present application of the applicants is not maintainable because, the property in dispute viz. 70 Golf Links, New Delhi, was transferred through Sale Deed dt. 30.6.1996. Therefore the provisions of Order 22 Rule 10 C.P.C. is not applicable.

8. Satyawati Sharma died during pendency of the suit and the appellants filed an application praying that they should be substituted as the legal heirs of Satyawati Sharma. Defendants No.6 to 11 sought to be transposed as plaintiffs stating that since Satyawati Sharma, after having executed the six sale-deeds, was left with no title, interest or right in the property, nothing devolved upon the appellants.

The appellants in turn took a stand that Satyawati Sharma did not transfer the right to receive the rent and claimed damages from the bank when she sold the property and thus they would be entitled to be brought on record as the legal heirs of Satyawati Sharma. It was for the first time, while opposing the application filed by the appellants that the six companies informed that on December 22, 2001, after having filed the suit, Satyawati Sharma assigned her residual interest in the property i.e. to claim the past rent and damages to them. In response thereto, the appellants pleaded that on April 17, 2003, Satyawati Sharma had cancelled the assignment deed executed by her on December 22, 2001.

9. Ignoring that Satyawati Sharma had pleaded having executed six sale-deeds conveying title in the subject property in favour of defendants No.6 to 11 and that claim in the suit was for past rent and damages, in respect of which there were no constituted pleadings either in the plaint or in the written statement with respect to the assignment document dated December 22, 2001 or the document dated April 17, 2003, purporting to cancel the former and that these pleadings emerged in the interim applications filed; ignoring further that if the assignment document dated December 22, 2001 was under challenge with reference to who would succeed Satyawati Sharma to prosecute the suit required a decision on the subject matter of substitution, vide order dated March 10, 2004, the learned Trial Judge dismissed application filed by the appellants to be substituted as the legal heirs of Satyawati Sharma and transposed defendants No.6 to 11 as plaintiffs, ignoring to take a decision on the application filed under Order XXII Rule 10. The relevant part of the order dated March 10, 2004 reads as under:

This suit was filed by Satyawati Sharma against Indian Overseas Bank for recovery of possession of premises and arrears of rent. Satyawati Sharma had already sold the property in question, before filing of suit to defendant no.6 to 11. However, in the sale deed executed in favour of defendant no.6 to 11, she had not given the right to defendant no.6 to 11 in respect of the past arrears of rent. She, instead of filing suit for recovery of past arrears of rent against Indian Overseas Bank, who was the tenant in the property, filed suit for possession as well as for recovery of arrears of rent. Defendant no.6 to 11 who had purchased the property from Satyawati Sharma, also filed a suit for eviction against Indian Overseas Bank, who was tenant in the property. Satyawati Sharma, during the pendency of the suit, assigned her rights to recover the arrears of rent also in favour of defendant no.6 to 11. Her L.Rs. also wrote letters in favour of defendant no.6 to 11 stating that no right either on the property or on the arrears of rent vests in them. In view of these letters and assignments of right by Satyawati Sharma in favour of defendant no.6 to 11, the suit filed by Satyawati should have been withdrawn. However, the suit has been continued and after death of Satyawati Sharma, her L.Rs. made an application for being impleaded as plaintiffs. I consider that the suit is not maintainable since Satyawati had not been left with any right in the property as she transferred the ownership rights and subsequently the rights concerning arrears of rent. No

rights were left with L.Rs. of Satyawati Sharma as well. However, defendant no.6 to 11 have filed an application of transposing them as plaintiffs in the case, on the basis of assignment of rights to recover arrears of rent from Indian Overseas Bank. The application is allowed and defendant no.6 to 11 are transposed as plaintiffs. The suit shall be tried along with the other suit filed by the plaintiffs(defendant no.6 to 11) for recovery of possession of the premises.

10. Appellants filed a Civil Revision Petition in this Court challenging the aforesaid order passed by the learned Additional Sessions Judge, which was registered as C.R.No.316/2004. In paragraphs 4, 5 and 6 of the Revision Petition, appellants pleaded as under:

4. That in the mean time the deceased petitioners sold the property to respondents No.6 to 11 by virtue of 6 sale deeds which were executed at Kalkota on 30.10.1995 thus after 30.10.1995 the deceased petitioner ceased to be the owner of the property which was wasted (sic) in respondents No.6 to 11.

5. That due to some misunderstanding and ill advice the deceased petitioner filed a suit against the respondent No.1 impleading respondents No.2 to 11 as party. The suit was for recovery of possession, recovery of rent and mesne profits. In fact Late deceased petitioner was given to understand that the rent agreement is between her and the bank as such the bank is liable to restore the possession to deceased petitioner despite sale deed executed by deceased petitioner in favour of respondents No.6 to 11. At present the legal heirs of the deceased petitioner concede that the said notion was absolutely incorrect and illegal in as much as after execution of the sale deed i.e. after 30.10.1995 when deceased petitioners sold the property to respondents No.6 to 11, she has no right to claim the possession of the property and the said right virtually wasted in respondents No.6 to 11.

6. That however, apart from the above the deceased petitioner has also filed the suit for recovery of rent and mesne profits which related to the date prior to the sale of the property by deceased petitioner to respondents No.6 to 11. The rent was claimed as detailed at page 13 of the plaint, however, it does not accede the period of sale deed. A copy of the plaint is filed herewith annexure P-1.

11. The Civil Revision Petition was disposed of by a learned Single Judge of this Court vide order dated May 04, 2006, in which he noted that there was no dispute regarding Satyawati Sharma having sold the property, but the dispute was whether vide assignment document dated December 22, 2001 she had assigned her residual right to recover past rents and damages from the bank and whether she had cancelled the same vide deed of cancellation dated April 17, 2003; the effect noted by the learned Single Judge was of the entitlement of the appellants to seek substitution and litigate to recover the arrears of rent and damages. Setting aside the order dated March 10, 2004, the Civil Revision Petition was disposed of by passing five directions, in para 24 of the order dated May 04, 2006, which paragraphs read as under:

Keeping in view the above position of law, I set aside the impugned order dated 10.3.2004 with the following directions:

(i) The application of the petitioners under Order XXII Rule 3 of the Code is allowed and they are impleaded as legal representatives of Ms. Satyawati Sharma.

(ii) The respondents 6 to 11 will be permitted to plead and establish their case on the basis of deed of agreement (assignment) and the General Power of Attorney. The respondents 6 to 11 will move an application for amendment of the written statement to rely upon the said documents dated 22.12.2001 and the same will be allowed by the learned trial court.

(iii) The trial court will examine the question of validity of the alleged assignment deed dated 22.12.2001, the General Power of Attorney and the other documents.

(iv) The respondent 6 to 11 will be also entitled to prove and establish the claim for manse profits, damages and arrears of rent against respondent no.1 and other respondents.

(v) In case the assignment is found to be legal, valid and genuine, the respondent 6 to 11 will be entitled to exemplary costs from the petitioners and the respondents 6 to 11 (and not the petitioners) will be entitled to execute the decree against other respondents.

12. It is in the aforesaid history of the past litigation that appellants filed a suit registered as CS(OS) No.1883/2006 on the original side of the suit seeking a declaration that the six sale-deeds executed by Satyawati Sharma be declared void; alleging a fraud played upon Satyawati Sharma by the six companies. Possession of the first and second floor was claimed.

13. In the plaint it was pleaded that Satyawati Sharma never executed the sale-deeds. It was pleaded that Satyawati Sharma was not in Calcutta when the sale-deeds were executed at Calcutta (we may note that pertaining to properties at Delhi, sale-deeds could then be executed in any metropolitan city), it was pleaded that Kamal Sharma, a son of Satyawati Sharma manipulated the execution of the sale-deeds.

14. About the plaint, we only wish to state that the pleadings are inchoate. On the one hand it is pleaded that Satyawati Sharma never executed the sale-deeds, on the other hand it is pleaded that the execution was the result of a fraud played upon her. What were the acts constituting the fraud have not been pleaded.

15. Now, as noted by us hereinabove, when Satyawati Sharma, during her lifetime filed Suit No.2631/1996, she pleaded in para 17 of having executed sale-deeds in favour of the six companies. The question therefore of the sale-deeds not being hers to knowledge does not arise. In para 19 she has pleaded about a dispute between the tenant on the ground floor and the six companies to whom she had sold the property. Further, in response to the application under Order

XXII Rule 10 CPC filed by Aditya Sarda, Nitish Sarda, Preetesh Sarda and Sidhesh Sarda, Satyawati Sharma opposed the claim by pleading: That the present application of the applicants is not maintainable because, the property in dispute viz. 70 Golf Links, New Delhi, was transferred through Sale Deed dt. 30.6.1996. Therefore the provisions of Order 22 Rule 10 C.P.C. is not applicable.

16. Further, when the appellants filed Civil Revision No. 136/2004, they pleaded not only knowledge of the sale-deeds, but the fact that the same were not in issue. The pleadings in the Civil Revision as per paragraphs 4, 5 and 6 have been noted by us in paragraph 11 above.

17. The suit was opposed by invoking Order VII Rule 11(d) of the Code of Civil Procedure. Inter-alia, it was pleaded that the suit was barred by res-judicata, a plea rightly rejected by the learned Single Judge, and we think a plea which was uselessly argued. The plea which merited consideration was that on the principle of estoppel by pleading and acquiescence the suit was not maintainable. Needless to state estoppel by pleading was with respect to Satyawati Sharma's pleading in Suit No.2361/1996, her reply to the application under Order XXII Rule 10, appellants' pleadings in C.R.No.316/2004.

18. By admitting having executed six sale-deeds by her when she filed Suit No.2361/1996, if not more, Satyawati Sharma manifested her knowledge of the existence of the six sale-deeds. In her reply to the application under Order XXII Rule 10, she opposed impleadment by stating that the right transferred by her under the six sale-deeds was prior to when she filed the suit. She pleaded that Order XXII Rule 10 would apply where interest is transferred during pendency of a suit. Thus, the contention of the appellants that Satyawati Sharma never executed the six sale-deeds is a plea which is barred by the principle of estoppel by pleading. Satyawati Sharma never questioned the six sale-deeds executed by her inspite of being having knowledge thereof and there is thus clearly estoppel by acquiescence. The appellants, while filing the Civil Revision Petition No.316/2004 clearly admitted to Satyawati Sharma having executed the six sale-deeds, validity whereof was never questioned by them. Principle of estoppel by pleading is squarely attracted to the appellants as well.

19. The learned Single Judge has correctly applied the law pertaining to estoppel by pleading as also acquiescence by correctly appreciating the decisions reported as (1911) 2 KB 1125 Jai Narain Parasrampur (Dead) and Others Vs. Pushpa Devi Saraf and Others, Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others, Deewan Singh vs. Rajendra Prasad Ardevi.

20. Submission urged by learned senior counsel for the appellants that Order VII Rule 11(d) of the CPC relates to when the suit appears from the statement in the plaint to be barred by law, and that the plea of estoppel by pleading cannot apply for the plaint to be rejected, is noted and rejected by us for the reason the law pertaining to estoppel by pleading would result in a suit being barred by law. Needless to state, if with reference to previous pleadings in a suit, a party is

barred from pleading to the contrary in a subsequent suit, the principle of estoppel by pleading is squarely attracted.

21. Besides, a Court of Record has inherent power which a court of justice must possess to prevent misuse of its procedures in relation to an action initiated which would amount to an abuse of the process of the law. In the decision reported as *Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others*, , the Supreme Court had held that the power of a Court to reject a plaint which is an abuse of the process of the law is not restricted to Order VII Rule 11 of the Code and if it is warranted, the inherent power of the Court can always be invoked.

22. Decisions cited by learned counsel which is reported as *Kamala and Others Vs. K.T. Eshwara Sa and Others*, is not applicable inasmuch as in para 47 of the decision it has been held that while applying the principle of estoppel, each case has to be considered on its own facts. Said case related to a plaint being rejected under Order VII Rule 11(d) of the Code. Facts were that a previously instituted suit seeking partition had resulted only in a preliminary decree being passed. The second suit claimed partition of the same properties. Needless to state if co-ownership or jointness is not in dispute, unless the relationship is severed, a cause of action would continue and it is in this context the said decision has to be understood. The second decision relied upon being *Chhaganlal Keshavlal Mehta Vs. Patel Narandas Haribhai*, where the law of estoppel and admission has been discussed, is also not of any relevance inasmuch as the purported admissions upon which estoppel was claimed were contained in endorsements in documents. The endorsements were by different legal heirs of the mortgagor when the mortgagee wanted the mortgaged property to be repaired. The disclaimers were held to be shirking the responsibility to repair the mortgaged property. The Supreme Court held that title to a property can never be in vacuum.

23. Suffice would it be to state that admissions made in documents or made orally can be explained by the maker of the statement and in that context previous admissions contained in documents, cannot attract Order VII Rule 1(d) of the Code, but admissions in pleadings stand on a different footing and if a matter pertaining to a ownership of a property or execution of a sale-deed, though not a matter in issue, but arose properly for consideration or was relevant in the context of a claim made or a claim defended, pleadings would be not only relevant but would also attract the principle of estoppel by pleading. We concur with the view taken by the learned Single Judge and dismiss the appeal but leave the costs easy.