

(2005) 09 DEL CK 0096

In the Delhi High Court

Case No : CS (OS) 495 of 2004 and is 6225/05

Begum Sabiha Sultan

APPELLANT

Vs

Nawab Mohd. Mansur Ali Khan Esq. and Others

RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A, Order 7 Rule 11, 16

Citation : (2005) 09 DEL CK 0096

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Bahar U. Barqi, for the Appellant; Jayant Bhushan Minakshi Nag and Vikash Singh for Defendant No. 2 and Anjali K. Verma and Niraj Gupta for defendant Nos. 1 and 3, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The plaintiff has filed this suit for declaration, partition, rendition of accounts and permanent injunction. The subject matter of the suit is the property measuring 180 kanals and 12 marals, situated at Pataudi, Tahsil Pataudi, Gurgaon District, Haryana State. This property is stated to have been owned by Late Her Highness Mehar Taj Sajida Sultan. The plaintiff seeks partition in respect of her alleged claim to the extent of one-fourth share in the property in accordance with Islamic Personal Law.

The plaintiff further seeks decree for rendition of account in respect of earnings from the said property with effect from June, 2000 and for a permanent injunction against the defendants from alienating, parting with or dealing in any manner with the sad property.

2. It is stated in the plaint that the defendants no. 1 to 3 have illegally dealt with the property on the basis of an alleged oral will dated 01.01.95 executed by Late Her Highness Mehar Taj Sajida Sultan while no such oral will was made. The declaration is thus sought to the effect that the oral will should be declared as never having been made.

3. In the written statement filed by defendants no. 1 and 3, an objection has been raised about the territorial jurisdiction of this Court. Defendant no. 2 has filed an application is 6225/05 u/s Section 16 and Order 7 Rule 10 and 11 of the CPC, 1908 (hereinafter referred to as "Code") In this application notice was issued to the plaintiff today and Learned Counsel for the parties have been heard. Learned Counsel for the plaintiff initially sought some time to file reply. It was however pointed out to Leaned Counsel for the petitioner that while considering the nature of the application filed by defendant no. 2, only the plaint has to be perused. Not only this, defendants no. 1 and 3 have raised an issue in respect of the territorial jurisdiction even in their written statement filed much earlier. This Court was also not satisfied about the territorial jurisdiction of this court and thus a court question was posed to the Learned Counsel for the plaintiff as to how plaintiff makes out the territorial jurisdiction of this court. It may be noticed that the only ground raised in the application filed is on account of territorial jurisdiction.

4. In order to appreciate the controversy, it would be necessary to re-produce the provisions of Section 16 of the Code:

"Subject to the pecuniary or other limitations prescribed by any law, suits, -

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,) for compensation for wrong to immovable property,) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."

5. A reading of the aforesaid proviso leaves no manner of doubt that in respect of claim of partition of Immovable property a suit has to be instituted within the local limit of the court in whose jurisdiction the property is situated. Learned Counsel for defendant no. 2 further pointed out by inviting the attention of this court to the provisions of sub section (d) of Section 16 that even for determination of any other rights or any interest in immovable property the jurisdiction shall be of the court there the property is situated.

6. Learned counsel for the plaintiff on the other hand submitted that the suit is not one merely of partition, but the primary relief is of declaration in respect of will and partition is only a consequential relief. It is further submitted that the case of the plaintiff would in any case falls within the proviso to section 16 since at least some of the defendants are located within the territorial jurisdiction of this court. It may be noticed that the original suit was filed against three defendants, but since there were transactions in respect of the property involving third parties, the said third parties were imp leaded as defendants no 4 and 5. The admitted position is that two out of these five defendants do not reside within the territorial jurisdiction of this court.

7. In order to consider the issue raised by the court as also the application filed by defendant no. 2, it would be useful to re-produce the provisions of Sub Rule (d) of Order 7 Rule 11 of the Code.

"11. Rejection of plaint "The plaint shall be rejected in the following cases:-

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(d) where the suit appears from the statement in the plaint to be barred by any law".

8. A reading of the aforesaid provisions shows that where a suit appears, from the statement made in the plaint, to be barred by any law, such plaint is liable to be rejected. Under sub section (d) of Rule 11 of the Code nothing more has to be read for determination of such an application other than the averments made in the plaint. If the averments made in the plaint are considered as also the relief claimed for by the plaintiff, there is no manner of doubt that the only property in respect of which partition ,rendition of accounts, injunction is sought is not within the territorial jurisdiction of this court. Not only this, the declaration which has been sought in respect of the oral will also deals with only this property. Thus even the declarations really for purposes of determination of rights relating to Immovable property and would be covered by sub section (d) of Section 16 of the Code. The fact that the oral will was made at Delhi will not help the plaintiff.

9. It has to be kept in mind even otherwise that the mere declaration would be of no consequence to the plaintiff. The plaintiff is desirous of obtaining her share in the property in question. Normally only a suit for partition would be filed. However since the defendants had claimed an oral will, the plaintiff had to seek a declaration in respect of oral will so that the same is inoperative for the plaintiff to succeed in the suit for partition of the property. The complete subject matter of all the reliefs is thus outside the territorial jurisdiction of this court. Insofar as the reliance on the proviso to section 16 is concerned, the same applies where through the personal obedience of defendant the suit can be determined and the defendant actual land voluntarily resides within the territorial jurisdiction of the court in which the suit is filed. In the present case the admitted position is that at least two of the defendants do not reside within the territorial jurisdiction of this court. I am unable to accept the plea of the learned counsel for the plaintiff

that since three of the five defendants reside in Delhi a majority of the cause of action has arisen within Delhi. This plea is only to be stated to be rejected.

10. I am thus of the considered view that this court has no jurisdiction to determine the controversy in the present suit or grant relief to the plaintiff and the plaint is liable to be returned to the plaintiff to be presented before the court of competent jurisdiction in accordance with law. Ordered accordingly. Suit stands disposed of.

11. A question was posed to the learned counsel for the plaintiff as to in which court the plaintiff wants to file the suit in view of the provisions of Rule 10A of Order 7 of the Code so that date can be fixed before that court for the parties to appear. Learned counsel states that he has no instructions from the parties, thus, he is not in a position to state the competent court where he would present the plaint.

IA 6225/05 Application is allowed.

IA 2985/04, is 2986/04, is 2987/04, IA5253/04, is 4429/05 and is 6224/05 No orders are called for in these applications in view of the suit having been disposed of.

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