
(2011) 12 DEL CK 0029

In the Delhi High Court

Case No : Regular First Appeal 295 of 2003

Chander Bhan Dass

APPELLANT

Vs

Shri Ram Nath Sharma

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2011) 12 DEL CK 0029

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Paritosh Budhiraja, for the Appellant; M.K. Vashishta, Advocate along with Respondent in Person, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 5.2.2003. By the impugned judgment, the trial Court dismissed the suit of the appellant/plaintiff filed for possession and damages.

2. The brief facts of the case are that the property bearing No. 5524-5531 Shora Kothi, Pahar Ganj, New Delhi, admeasuring 700 sq. yds along with Shop No. 4569-4571, Main Bazar, Pahar Ganj, New Delhi were owned by Mahant late Shri Manohar Dass. Mahant late Shri Manohar Dass executed a Will dated 15.12.1971 in favour of the appellant/plaintiff. The appellant/plaintiff obtained a probate of this Will by Probate Case No. 10/1978 vide order dated 12.2.1997. This Will was exhibited before the Trial Court as Ex. PW1/1.

3. In the probate proceedings, the respondent/defendant also claimed to be a "chela" of Mahant late Shri Manohar Dass and claimed that he had, in his favour, a Will dated 29.5.1945 executed by Mahant late Shri Manohar Dass and thus the appellant/plaintiff's claims rights in the property were disputed. As already stated, the probate petition was allowed in favour of the appellant/plaintiff herein, whereby appellant/plaintiff was granted with the probate of the Will dated 15.12.1971. The Will propounded by respondent/defendant herein dated

29.5.1945 was disbelieved by the probate Court.

4. The present suit was, thereafter, filed for possession of the suit property comprising of one room with front varanda and one room having open space in front thereof and one latrine and bathroom on the first floor and one store beneath stairs forming part of the suit property No. 5524-5531 Shora Kothi, Pahar Ganj, New Delhi. This disputed portion was shown in red in the site plan filed with the suit.

5. Before the trial Court, the respondent/defendant firstly sought to place reliance on the Will dated 29.5.1945, said to have been executed in his favour by Mahant late Shri Manohar Dass. Secondly, it was also argued that as per the probated Will the appellant/plaintiff had a right only to manage the property, but had no rights to take possession thereof.

6. The trial Court has held that the probate granted with respect to the Will dated 15.12.1971 in favour of the appellant/plaintiff, and certified copy of which was placed before the trial Court Ex. PW1/1, was final so far as the dispute between the parties with respect to ownership of the suit property. It was held that the respondent/defendant could not lay a claim on the basis of the Will dated 29.5.1945 which was disbelieved by the probate Court. The trial Court however dismissed the suit by holding that as per the interpretation of the Will, the appellant/plaintiff had only the right to enter and manage, the property but not to claim possession thereof.

7. In order to appreciate the issue as to whether the Will dated 15.12.1971 prohibits the appellant/plaintiff from taking possession of the suit property, it is necessary to reproduce the translated version of the Will, Ex. PW1/1 and the same reads as under:-

I, MAHANT MANOHAR DAS DISCIPLE "CHELA" MANANT GOPAL DASS RESIDENT OF 5527, SHORA KOTHI, PAHAR GANJ, NEW DELHI

That life is uncertain, therefore it is the duty of every person to make necessary arrangements so that no dispute takes place at later stage. Because my age is around 74 years. Keeping in view that fast life there is no certainty of my life- God knows when it may come to an end. At this time I am in full senses and sound mind and good health and my physical health is also good. I can see properly with my eyes and could walk on my foot, and can hear from my ears, and with my tongue I can speak properly. I can identify what is right and what is wrong and can understand my profit and loss, my mind is properly working my beloved disciple "Chala" Chander Bhan Dass aged about 13 years resident of 5527, Shora Kothi, Pahar Ganj, New Delhi is residing with me since his childhood and my disciple has become Kabir Panthi in my presence and I am bearing cost of his education and best and heart, and I am happy with his services. I got property being disciple "Chela" from my Guru Mahant Gopal Gas sans my Guru has expired and I am owner in possession of the said property and in this property no other person is claimant, owner, sharer, I am sole owner in

possession of this property, therefore in my sound disposing mind and good health, without any kind of threat, pressure or duress execute this Will in favour of Chander Bhan Dass Sadhu Kabir Panthi Chela resident of Shora Kothi, Pahar Ganj No. 5527, New Delhi.

1. That so far I am alive, I shall remain owner in possession of all my moveable and immovable properties, I can give the same to anybody and do whatever I want with my properties, nobody has got any right or interest therein.

2. After my demise all my movable and immovable properties shall devolve to Master Chander Bhan Dass Disciple "Chela" and shall own and possess the same absolutely and forever and nobody else have got any right, title or interest in any manner and those celebration and occasions takes place it shall continue from the income from Kabir Panthi and properties by my said disciple and from the rental income my said disciple shall serve my "Gaddi" and sage and my disciple shall recover rental from the tenants and shall get executed Deeds from tenants in his favour and lookafter the safety of the property and shall not destroy the same, and so far Chander Bhan Dass not attains the age of majority, his guardians and elders shall be Bija Dhardas and Devki Nandan Dass who are also my disciple and shall become guardians of Chander Bhan and those works which are related to the "Gaddi" regarding movable and immovable properties shall be discharged by my said Disciple with the consultation and suggestions of Bijadhar Dass and Devkinandan Dass, so that my soul shall remain in peace and my disciple "Chela" shall not keep properties mortgage or sell the same.

(Emphasis added)

3. My Last rites funeral shall be performed by any disciple Chiranjivi Chander Bhan Dass as per the rites and customs of Kabir Panthi and I direct my disciple "Chela" Chander Bhan Dass that he shall not remove Bijadhar Dass and Devki Nandan Dass from his House because they are my disciple and whatever work has to be done, consultation and suggestions of both these persons should be obtained and not to be done without their consultations because I have great confidence on these two.

4. After my death my Disciple shall get the mutation done in the Government Record in his name and if anybody does any act against the contents of the Will and against the interest of Master Chander Bhan Dass or his property and file any claim, the same objection or claim shall be treated as false and illegal. Therefore, this Will Deed is executed for record and use as and when required.

Detail of property

1. One property NO. 5524 and 5531 Ilaqa No. 15, measuring around 700 Muraba Yds at Shora Kothi, Pahar Ganj, New Delhi.

2. Three shops No. 4569 to 4571 Ilaqa No. 15 at Main Bazar, Pahar Ganj, New Delhi.

3. Agricultural land around quarter to twelve Bighas situated at Village Kheri Tagan Tehsil Jansad District Muzaffar Nagar, U.P.

4. Agricultural land around twelve and a half bighas and properties and house and trees, garden etc. at village Nawala Tehsil Jansad District Muzaffar Nagr.

5. Gaddi Village Bindapur Tehsil Hajipur District Muzaffar Pur (Bihar) Branch Gaddi and related rights. Executed on dated 15 December, 1971.

RAMCHARAN DEED WRITER DEHI

licence no. 15

WITNESS : SD ILLEGIBLE

OM PRAKASH GUPTA

S/o. SHRI CHIMMAN LAL

213, GHER MANCHI, PAHAR GANJ,

NEW DELHI

SD/MAHANT DEVADAS

ILLEGIBLE

Seal of Deed Writer

Delhi

WITNESS : MAHANT GIRIJANANDAN GOSWAMI

DISCIPLE MAHANT SRI NAR SINGH GOSWAMI

TURKIMATH DISTRICT MUZAFFARPUR (BIHAR)

WITNESS : MAHANT PREM DAS 6035, ILLEGIBLE.

8. Para 2 of the probated Will leaves no manner of doubt that complete ownership of all suit properties was granted by Mahant late Shri Manohar Dass to the appellant/plaintiff. A reference to para 2 of the aforesaid Will makes it more than abundantly clear that the appellant/plaintiff was the whole and absolute owner of the suit property. Once a person is whole and absolute owner of a property he would be fully entitled to deal with the same including filing of a suit for possession against the trespassers. I really fail to understand as to how the trial Court has arrived at a finding in the face of para 2 of the Will that the appellant/plaintiff had only a right to enter and manage property, but, not to take possession thereof from trespassers.

9. There is also an issue with respect to the claim of mesne profits. I may note that except a self serving deposition of the appellant that rents of same premises will be Rs.5,000/- per month, no other evidence was led to prove the rate of rent in the area. However, I may note that in the evidence by way of affidavit, filed on

behalf of the respondent/defendant, there is no averment that the rate of rent in the area is not Rs.5000/- per month. Since, however, the onus of proof to prove mesne profits was on the appellant/plaintiff, therefore, I cannot grant an amount of Rs.5000/- per month, though the property is situated in prime location in Delhi, namely, Pahar Ganj. In the facts and circumstances of this case I therefore grant mesne profits @ Rs.500/- per month for a period of three years prior to the date of filing of the suit, pendente lite and future till the respondent hands over possession of the suit premises to the appellant/defendant.

While awarding mesne profits I take judicial notice of the high rate of rents prevalent today in the city of New Delhi and an amount of Rs.500/- per month is only a nominal amount considering the area in occupation of the respondent/defendant and the prime location where the suit property is situated.

10. In view of the above, the impugned judgment dated 5.2.2003 is set aside. Suit of the appellant/plaintiff for possession with respect to the disputed property which has been shown in red in the site plan, Ex. PW1/2 is decreed. The appellant/plaintiff is also granted mesne profits @ Rs.500/- per month for the period of three years prior to the filing of the suit till the respondent/defendant hands over possession of the suit premises to the appellant/plaintiff.

11. The present appeal is disposed of accordingly, leaving the parties to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.