

(2001) 02 DEL CK 0046

In the Delhi High Court

Case No : IA. 4504/97 in S. No. 1328 of 1995

Chander Kishore Gulati

APPELLANT

Vs

Varinder Kishore Gulati and others

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : (2001) 90 DLT 649 : (2001) 4 RCR(Civil) 586

Hon'ble Judges : Sharda Aggarwal, J

Bench : Single Bench

Advocate : S.K. Kaul and Mr. Lalit Bhardwaj, Advocat, for the Appellant; Ms. Tasneem Ahmadi, for the Respondent

Judgement

Sharda Aggarwal, J.—The present application has been by the plaintiff u/s 151 of CPC (for short CPC) for directions. The plaintiff has filed a suit for partition against the Defendants related to properties situated at Delhi, Jammu and Mumbai. The properties were claimed to be HUF properties by the plaintiff. Initially, the suit was filed in the High Court of Jammu and Kashmir where an objection was taken by the Defendants regarding the territorial jurisdiction of that Court. A Single Judge of the High Court of Jammu and Kashmir held that High Court at Jammu and Kashmir has no jurisdiction to entertain the suit with respect to the properties situated at Delhi and Mumbai. Against that, a Letters Patent Appeal was filed and the Division Bench of the said High Court accepted the appeal of the plaintiff. Against that order, the Defendants filed a SLP before the Hon'ble Supreme Court where Defendants 1 to 5 made a statement over the items of the properties which were situated in Jammu with reference to the alleged corporate settlement. The Hon'ble Supreme Court had also clarified while disposing of the SLP vide their orders dated 27th April, 1995, that, the statement of the Defendants would not stop the plaintiffs from contending in any proceedings that the suit properties were joint family properties. The plaint was returned for being presented to the proper court and thus the same was presented before this Court.

2. During the pendency of the proceedings before this Court, the Defendants had moved an application u/s 12 of the Court fee Act to which the plaintiff had filed a reply and the Defendants filed rejoinder thereto. It was in that rejoinder that the Defendants stated that "Sandeep Building" at Mumbai which was one of the properties shown in the plaint as HUF property, had been sold. The plaintiff on coming to know this fact through the rejoinder of the Defendants filed the present application seeking directions with respect to the sale of "Sandeep Building" situated at Mumbai during the pendency of the suit. The plaintiff's case is that the Defendants could not have alienated the property "Sandeep Building" one of the joint family properties during the pendency of the suit and since the property has been disposed of they cannot be allowed to appropriate the proceeds thereof.

3. The plaintiff in this respect has prayed that the Defendants be directed to disclose the name of the purchaser of "Sandeep Building" at Mumbai, the date of the alleged sale deed and the amount of the sale deed and the amount of said consideration received and to furnish all the documents executed between the Defendants and the Vendee in respect of the sale of the said building at Mumbai. In addition to that, the plaintiff has also prayed that the Defendants be directed to deposit the sale proceeds of the said building in this Court.

4. The application has been opposed by the Defendants by filing a reply. One of the objections taken is that the present application is in the nature of discovery and is not maintainable u/s 151 CPC.

5. Another objection raised is that the Defendants had moved an application before this Court u/s 12 of Court Fee Act on the ground that the suit was not maintainable as a fixed court fee was paid. and the plaintiff had to pay ad-valorem court fee at the value of his share of the properties in Delhi whereof partition was sought. That application was allowed vide orders dated 28th July, 1988 and the plaintiff was directed to pay ad-valorem Court fee at the value of his share of properties in Delhi where of partition was sought and deficiency in Court fee was ordered to be made good, and suitably amend the plaint within four weeks from the date of that order. Against that order. the plaintiff had preferred an appeal being FAO (OS). 213/1998 wherein vide orders dated 4th September, 1988 a Division Bench of this court stayed the operation of the order dated 28th July, 1998 till the disposal of the appeal. The object is that this order of the Division Bench in fact stayed the entire proceedings of the suit and the present application cannot be entertained.

6. On merits, application is opposed on the ground that the property "Sandeep Building" was a partnership firm property and was not a HUF property and as such cannot be made the subject matter of the present suit.

7. Learned counsel for the plaintiff has stated at the outset that he does not press the relief mentioned in para 12(c) that is directions to the Defendants to deposit the sale proceeds received by them of the sale of "Sandeep Building" at

Mumbai, and wants to withdraw the same with liberty to seek the same relief later on. Regarding the objections raised by the Defendants, that by the orders dated 4th September, 1998 in FAO(OS).213/1998 the entire suit proceedings are stayed. I have been taken through that order and the order dated 28th July, 1998 against which the FAO was preferred. Reading of the two orders make it abundantly clear that the entire suit proceedings were not stayed and only operation of the order dated 28th July, 1998 of the learned Single Judge was stayed.

8. Learned counsel for the Defendants has vehemently argued that the present application moved by the plaintiff is not maintainable u/s 151 CPC as it is in the nature of seeking discovery of facts for which there is specific provision in the CPC. The arguments of learned counsel, however, do not convince "this Court. It is not an application falling under Order XI CPC. Even otherwise mentioning of a wrong provision does not debar the plaintiff to seek the relief claimed. Learned counsel for Defendants in this respect had relied upon Nain Singh Vs. Koonwarjee and Others, . This authority is not applicable on facts on the case in hand. In the said authority a remand order under Order 41 Rules 23 CPC was sought to be reviewed under the provisions of Section 151 CPC. It was held by the Hon"ble Supreme Court that such an order could not be reviewed u/s 151 CPC as the order was appealable under Order 43 of the CPC.

9. The argument of learned counsel for the Defendants that "Sandeep Building" situated at Mumbai is not a HUF property and it cannot be treated as subject matter of the suit is devoid of any force. The plaintiff in the suit have claimed that the said property was a joint family property and they sought partition thereof. No doubt. the Defendants are opposing that plea but it has to be decided only after trial as to whether the said property is a joint family property or whether the same is liable to be partitioned. It is, however, not disputed that the property "Sandeep Building" situated at Mumbai has been sold by the Defendants during the pendency of the suit. Since this property is subject matter of the suit the plaintiff is entitled to know the particulars regarding the sale of the said property. The Defendants are, accordingly, directed to disclose the name of the purchaser of Sandeep Building, the date of the sale and the sale consideration received by them. The Defendants are also directed to place on record the sale documents executed between the Defendants and the purchaser of the said property within four weeks.

10. The application is accordingly, disposed of.