
(2009) 10 DEL CK 0006

In the Delhi High Court

Case No : I.A. No. 12852 of 2008 in C.S. (OS) No. 2089 of 2007

Citi-Mates Builders and Promoters Pvt. Ltd.

APPELLANT

Vs

Mrs. Sushma Thadani

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 6, 151

Citation : (2009) 10 DEL CK 0006

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Dinesh Garg and Rachna Aggarwal, for the Appellant; Deepender Hooda, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—By this order, I shall dispose of the application being I.A. No. 12852/2008 filed by the plaintiff under Order XII Rule 6 Code of Civil Procedure, 1908 for passing a decree on the basis of admission made by the defendant in the written statement.

2. Brief facts of the case are that the plaintiff is a private Limited Company duly incorporated under the Companies Act, having its Registered Office at A-356, Second Floor, Defence Colony, New Delhi.

3. Sh. R.K. Satija was the owner of property No. B-44, measuring 325 sq. yds., Defence Colony, New Delhi, which was his self acquired property. He died on 20.2.1991 leaving behind his Will and testament dated 8.2.1982 by virtue of which he bequeathed the abovesaid property in favour of his son, Sh. Yatish Kumar Satija and daughter, Smt. Sushma Thadani, defendant herein as under:

(a) Entire ground floor including garage, passage, front lawn, rear set back and one servant quarter upon the garage in favour of his son, Sh. Yatish Kumar Satija; and

(b) First floor, barsati floor and two servant quarters in favour of his daughter, Smt. Sushma Thadani.

4. The plaintiff avers that by virtue of Sale Deed dated 17.05.2006, Sh. Yatish Kumar Satija sold his share in the suit property i.e. entire ground floor with garage, passage, front lawn, rear set back and one servant quarter upon garage and 50% rights in the land underneath (hereinafter referred to as the said property.) to the former for a valuable consideration and it has purchased the same as bonafide purchaser.

5. Since the date of purchase of the said property, the plaintiff is in actual physical possession of the said property except the garage on the ground floor, measuring about 200 sq. ft.(hereinafter referred to as the suit premises.) which was alleged to be unauthorisedly occupied by the defendant as she has put her lock on the same.

6. The plaintiff alleges that the defendant Smt. Sushma Thadani is neither the owner of the suit premises nor the tenant nor the licensee in respect of the suit premises nor was she ever permitted by the predecessor-in-interest of the plaintiff or by the plaintiff to use and occupy the same. Thus, the act of the defendant of putting her lock on the garage and thus occupying the same is totally unauthorized and illegal. The defendant has no legal right or authority to remain in possession of the suit premises.

7. The plaintiff submits that it requested the defendant number of times to vacate and handover the vacant physical possession of the suit premises and also to pay the damages for such unauthorized use and occupation to the plaintiff with effect from the date of purchase of the said property by the plaintiff i.e. from 17.05.2006 till the date of filing the suit. It also sent a legal notice on the defendant on 25th April, 2007 but the defendant neither replied to nor complied with the terms of the said notice.

8. The plaintiff states that the prevalent market rate of rent of the suit premises similarly situated was/is Rs. 200/- per sq. ft. p.m. i.e. Rs. 40,000/- (Rupees Forty Thousand) p.m. thus, a sum of Rs. 6,60,000/- (Rupees six lac sixty thousand) was claimed by him as due and payable by the defendant on account of damages calculated w.e.f. 17.05.2006 till 30.09.2007 @ Rs. 40,000/- p.m.

9. The plaintiff thus filed the suit praying for passing a decree for possession in his favour and against the defendant in respect of the suit premises and to pass a money decree in a sum of Rs. 6,60,000/- towards the damages for the period from 17.05.2006 to 30.09.2007 @ Rs. 40,000/-p.m. and for pendente lite and future damages at such rate as may be prevalent at the relevant time.

10. During the pendency of the suit, the plaintiff filed the present application being I.A. No. 12852/2008 under Order XII Rule 6 read with Section 151 of the Code to pass a decree for possession in favour of the plaintiff based on admissions made by the defendant.

11. It is stated in the application that the defendant has made various admissions in the written statement to the effect that the plaintiff is the owner of garage portion of the ground floor and the defendant is neither the owner nor the tenant thereof.

12. The plaintiff submits that the defendant filed a suit being CS(OS) No. 1130/2006 in this Court against Mr. Yatish Kumar Satija to restrain him from selling or creating third party interest on the ground floor of the suit property wherein an ad- interim order was passed in his favour initially but which was later on vacated on 24.7.2007 holding that Mr. Yatish Kumar Satija was the lawful owner in respect of the ground floor of the suit property and was thus entitled to transfer the same.

13. The plaintiff alleges that the admissions of the defendant as recorded in the aforesaid orders are the clear admissions of the ownership of the plaintiff in respect of garage portion of ground floor of property No. B-44, Defence Colony, New Delhi. Further the said orders also clearly indicate that no oral understanding or oral settlement was ever alleged by the defendant in the earlier proceedings before any court. The defendant never claimed any ownership or tenancy in respect of any portion which was bequeathed in favour of Mr. Yatish Kumar Satija.

14. In reply to the application, the defendant contended that the plaintiff had taken the possession of the suit property (excluding the garage) forcibly. The plaintiff is a stranger to the undivided family of the defendant and is therefore, not entitled to enjoy joint possession of the property with the co-owner of the same i.e. the defendant.

15. The defendant asserts that in the written statement she has stated her rights over the garage portion to the exclusion of her brother. She relied upon para b. on page 8 of the written statement wherein it is stated that she and her brother had reached an oral family settlement in the year 1999 in the presence of close family members and friends which was to the effect that the servant quarters and the garage on the ground floor would be in her possession in perpetuity and she would become the owner of the servant quarters and the garage situated on the ground floor of the said property by way of adverse possession as she had been in continuous, active and uninterrupted possession of the same without any consideration since the last 37 years.

16. The defendant submits that she and her brother had maintained the undivided entity of the property even after the death of their father by getting the suit property mutated in their joint names and even the conveyance deed was executed in their joint names.

17. She strenuously relied upon the suit filed by her against the plaintiff i.e. CS (OS) No. 1940/2008 to contend that there can be no admission on the part of the defendant of any right of the plaintiff to take possession over any portion of the property. She further submits that there are disputed question of facts and

law raised in the suit as also in the written statement which can be proved only by leading evidence and any judgment at this stage on the basis of alleged admission would cause serious injustice and serve injury to the defendant.

18. The contention of the defendant is that since she is disputing the possession of the suit property of the plaintiff, it raises a triable issue which cannot be decided without recording of evidence. It is stated that since the defendant has been in continuous and uninterrupted possession of the garage since last 38 years to the complete knowledge of her brother Mr. Yatish Kumar Satija, who had been ousted from the same and thus had no right to sell the same. The question of plaintiff having acquired alleged rights over the garage by virtue of sale deed is therefore a nullity.

19. The defendant urged that the plaintiff is in wrongful joint possession of the property excluding the garage and is not entitled to possession of the garage.

20. I have heard learned Counsel for the parties and perused the record. It is apparent that the defendant in CS (OS) No. 1130/2006 made clear admission to the effect that Sh. R.K. Satija, father of defendant and Yatish Kumar Satija left behind a Will dated 8th February, 1982 by virtue of which he had bequeathed the said property in favour of his son and daughter in the portion stated in para 2 of this order.

21. The defendant is only disputing the possession of the suit property with the plaintiff on the ground that it has been taken forcibly from her and pleaded that the oral family settlement was reached in the year 1999 to the effect that the servant quarters and garage on the ground floor would always be in peaceful possession of the defendant in perpetuity. It is also clear from the record that in CS (OS) No. 1130/2006, when the matter was put up for hearing on 11th September, 2008 the defendant agreed to passing of the judgment in terms of order dated 24th July, 2007. As a result, the suit was decreed against the defendant and she was held to be entitled to the first floor, barsati floor and 2 servant quarters only and Mr. Yatish Kumar Satija became owner of entire ground floor including garage, passage, front lawn, rear set back and one servant quarter upon the garage.

22. This Court in order dated 24th July, 2007 also rejected the amendment sought in the plaint by the defendant herein. She challenged this order by way of appeal being FAO (OS) No. 166/2007 which was dismissed by a Division Bench vide order dated 22nd May, 2007 wherein it was observed that the parties are owners of the respective portions in the property as they have accepted the Will. Relevant para of this order is reproduced herein below:

The appellant herein filed a suit for permanent injunction and in paragraph 13 she has stated that her late father who is also the father of the respondent No. 1 before his death executed a registered will dated 8th February, 1982 whereby he bequeathed the property to the appellant and the respondent No. 1. It is also stated that the appellant got the entire first floor and barsati and two servant

quarters and the respondent No. 1 got the entire ground floor consisting of garage, passage, front lawn, rear set back and one servant quarter upon the garage.

The Will stipulates that the ownership rights of the entire ground floor consisting of garage, passage, front lawn, rear set back and one servant quarter upon the garage would devolve on the testator's death to this son Yatish Kumar Satija, respondent No. 1 herein.

It is also crystal clear from the records that the aforesaid Will and the intention of the father of both the parties was given effect to and the rent of ground floor property was being collected by the respondent No. 1 and the other portion of the property as per the Will devolved on the appellant. That being the position, the parties have already accepted the Will and both the appellant and respondent No. 1 have become the absolute owners of the respective shares in the property after the demise of their father.

23. Aggrieved by the abovesaid order, she also filed an appeal in the Supreme Court which was also dismissed. Finally a decree was passed by this Court in CS (OS) No. 1130/2006 against the defendant herein on 11.09.2008. Relevant portion of the said order is reproduced herein below:

On the basis of the averments, initially the Court had granted a temporary injunction. Later, the Court recorded its 24 pages reasoned order and vacated the interim injunction holding that the defendant was lawful owner in respect of the ground floor and was entitled to transfer the property..

24. The provision of Rule 6 in Order XII of the Code clearly elucidate that a judgment on admissions may be made if there exist admissions of fact either in the pleadings or otherwise. This rule is wide enough to afford relief not only in case of admission mentioned in the pleadings but also dehouse the pleadings. The admissions contained in letters or other documents written or executed between the parties are therefore sufficient for the purpose of Order XII Rule 6 of the Code.

25. The word otherwise in Order XII Rule 6 means and includes any admission whether it is made before filing the suit or subsequently. The court can pronounce judgments relying on the documents which were written even before filing the suit.

26. Since in the case in hand, the defendant agreed to pass a decree in CS (OS) No. 1130/2006 in terms of the orders passed on 24th July, 2007 where she was held to be the owner of her respective portion as elucidated in the Will, she cannot in the present suit deny the title of Mr. Yatish Kumar Satija. Mr. Yatish Kumar Satija being the owner of the suit property can certainly sell his land to any one he wishes.

27. The plaintiff admittedly purchased the suit property from Mr. Yatish Kumar Satija by virtue of sale deed dated 17th May, 2006 and is in actual physical

possession of the suit property. The defendant is unauthorisedly occupying the garage on the ground floor i.e. the suit premises.

28. In view of the abovementioned facts, this Court is of the view that there is no requirement for the parties to go for the trial and the decree as prayed for can be passed without any further orders under the provisions of the Order XII Rule 6 of the Code.

29. Therefore, in these circumstances, the plaintiff is entitled for the relief claimed in I.A. No. 12852/2008 and the same is allowed. Consequently, the plaintiff is entitled to the relief of possession in respect of suit premises on admissions and is entitled for a decree in his favour.

30. As regard the relief of damages, there is no admission in the written statement nor the case in this regard is proved, hence the said relief is rejected in view of the facts and circumstances in the present case. The defendant is directed to hand over the vacant physical possession of the suit premises (garage measuring about 200 sq. ft. on the ground floor of the suit property) to the plaintiff within two weeks from today. The plaintiff is also entitled for the cost.

31. The suit as well as all pending applications, if any, are disposed of accordingly.