
(2011) 03 DEL CK 0038

In the Delhi High Court

Case No : I.A. No. 5998 of 2004 in CS (OS) No. 547 of 2003

Dayawati Khanna

APPELLANT

Vs

Suman Mehra and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0038

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Jagdeep Kishore, for the Appellant; Sanjeev Anand and Dibya Nishant for Def. Nos. 2, 5 and 6, Manish K. Jha and Nidhi Sidana for Def. Nos. 1 and 3 and Sanjay Gupta, for Def. No. 4, for the Respondent

Judgement

V.K. Jain, J.—This is an application filed by Defendant No. 6 for permission (i) to let out the second and third floor of the suit property which is a duplex unit, (ii) to restrain the Plaintiff and Defendant No. 4 and anyone else claiming through them from interfering in his use and enjoyment of the aforesaid portions of the property and to have access to all the portions of the property and (iii) to restrain them and anyone claiming through them, from interfering in use of the basement of the aforesaid property by him.

2. The Plaintiff, who is stated to be aged about 80 years, is the wife of Defendant No. 6, who is stated to be about 86 years old, whereas Defendant Nos. 1 to 5 are their daughters. Property No. 21A, Aurangzeb Lane, New Delhi was owned by an HUF consisting of Defendant No. 6 Shri T.N. Khanna and his three brothers namely Bhola Nath, Mahadev Prasha and Santosh Kumar. A partition took place amongst the members of the aforesaid HUF and in that partition, Unit No. 4 in the aforesaid property fell to the share of Shri T.N. Khanna, HUF. This partition was affirmed by an arbitrator who was appointed to adjudicate on certain disputes which had arisen amongst Shri T.N. Khanna and his three brothers.

3. As per the award rendered by Justice M.L. Verma on 25th May, 1995, a sum of Rs. 7,12,710/- was to be paid by Shri T.N. Khanna, HUF, to Bhola Nath Brothers,

HUF. The case of the Plaintiff is that the aforesaid amount of Rs. 7,12,710/- was paid by her to Bhola Nath Brothers, HUF, through T.N. Khanna, HUF and also that she surrendered her entire shareholding in the company Eastern International Hotels Ltd. and 50% shareholding in another company Devraha Investments Pvt. Ltd. It was also agreed by the family members that the entire shareholding in DIPL would be equally divided amongst the five daughters of the Plaintiff and Defendant No. 6 and the Articles of Association of the aforesaid company were altered accordingly. 25% shareholding in Claridges Hotel Pvt. Ltd., held by one of the brothers of Defendant No. 6, who was given 50% interest in EIHL was agreed to be transferred directly in favour of DIPL in which the Plaintiff had relinquished her interest. According to the Plaintiff 30,000 shares, which she held in EIHL had intrinsic value of over Rs. 2 Crores but were valued at Rs. 1/- each in the award. According to her DIPL received 1,000 shares in Claridges Hotel Pvt. Ltd. in exchange for 19.43% shareholding held by the family by T.N. Khanna group in EIHL and those shares of Claridges Hotel Pvt. Ltd. were sold in April 2003 for Rs. 24 Crores. It is also alleged that the Plaintiff held substantial shareholding in another company Mukta Enterprises Pvt. Ltd. which held about 1,14,700 shares in EIHL worth about Rs. 8 Crores. It is also the case of the Plaintiff that on making the aforesaid payment and in view of the sacrifices she claims to have made in the aforesaid manner, she was to acquire rights in Unit No. 4 of the property No. 21-A, Aurangzeb Lane, New Delhi. In nutshell, the case of the Plaintiff, thus, is that under an understanding which she had with the other members of the family, and, in view of surrendering her financial interest in various companies and making of payment of Rs. 7,12,710/- to Bhola Nath Brothers, HUF, she was to become the sole owner of Unit No. 4 in the property No. 21-A, Aurangzeb Lane, New Delhi. The Plaintiff has, besides some other reliefs, sought a declaration that she is the owner of Unit No. 4 in property No. 21-A, Aurangzeb Road, New Delhi.

4. The case of the Defendant No. 6, however, is that there was no such understanding/agreement as is claimed by the Plaintiff. He has also claimed that the suit is barred by limitation.

5. Admittedly, there is no document evidencing the understanding/agreement pleaded by the Plaintiff. The understanding is alleged to have been arrived in the year 1995. However, in her Will executed on 25th October, 2000, the Plaintiff herself referred to Unit No. 4 in the property No. 21-A, Aurangzeb Lane, New Delhi as the property of Shri T.N. Khanna, HUF.

6. Assuming however that the Plaintiff had made payments and sacrificed financial interests as claimed by her, prima facie, to my mind that would not confer absolute ownership rights on the Plaintiff in Unit No. 4 in the property No. 21-A, Aurangzeb Lane, New Delhi. The payment, if any, made by her on behalf of T.N. Khanna, HUF, of which she also is a member, may though amount only to a loan from her to the HUF. The ownership rights in an immovable property cannot be transferred by way of such oral understandings. This can be done only by

executing a registered instrument evidencing transfer of ownership from one person/entity to another person. Therefore, prima facie, it is difficult to accept that the Plaintiff is the sole owner of Unit No. 4 in the property No. 21-A, Aurangzeb Lane, New Delhi.

7. It is an admitted case that the second and third floor of the aforesaid property which is a duplex unit was let out for about four years between the period 1998 and 2002. The situation at present is that the Defendant Nos. 2, 5 and 6 want the second and third floor units to be let out whereas the Plaintiff and Defendant Nos. 1, 3 and 4 are opposing the proposed letting out.

8. A perusal of the photographs filed today in the court by the Plaintiff would show that on entering the property through the main entrance, there are stairs on the left side and the lift is next to the stairs. On the right side, there is a door leading to the kitchen and two other doors, one leading to the drawing/dining room and the other to the bathroom. There is yet another door which opens in a guest toilet. It appears to me that when constructed, this property was not meant for letting out but the fact remains that it was let out for as many as four years without objections from the other members of the family.

9. It transpires during arguments that, at present, Defendant No. 6 occupies the basement where he is running an office and a bed room on the ground floor whereas the kitchen, drawing/dining room etc. on the ground floor are in the joint possession of the parties. As regards the bed rooms on the first floor, it appears that they are being used only by the Plaintiff, though the case of the Defendant No. 6 is that only one bed room on the first floor is in exclusive use of the Plaintiff and he has right to use the other two remaining rooms on the first floor.

10. However, for the purpose of deciding this application, I need not go into the question as to who is using which portion of the ground and the first floor of the property. What is material is that the property, prima facie, appears to be owned by Shri T.N. Khanna, HUF and if it is divided, the parties to the suit will have 1/7th share each in it.

11. In view of the objections from the Plaintiff and Defendant Nos. 1, 3 and 4 and considering that fact that induction of a tenant, who must necessarily pass through the lobby on the ground floor where the doors of kitchen, drawing/dining and toilet abut, and therefore, the privacy of the Plaintiff is likely to be disturbed on account of use of the lobby by the tenant and his visitors, I do not deem it appropriate to permit letting out of the second and third floor of the unit at this stage. It is however directed that at the time of final decision of the suit, the Court would take into account the fact that the Plaintiff and Defendant Nos. 1, 3 and 4 had opposed the letting out of the aforesaid units and thereby blocked the income which could have been accrued to HUF from letting out the aforesaid unit. If the Court later on, at the time of disposal, finds that the Plaintiff is not the sole owner of Unit No. 4 in the property No. 21-A, Aurangzeb Lane, New

Delhi and the Plaintiff and Defendant Nos. 1, 3 and 4 had no justification to oppose the proposed letting out, the Court may then while passing the final decree, make direct appropriate payments to other members of the HUF, if so deemed appropriate at that time.

12. If the property in question is owned by an HUF in which the Plaintiff and Defendants 1, 3 and 4 have only 1/7th share each, I fail to appreciate how in the absence of a partition of the property can any co-owner of the property be retrained from having access to any part of the property which he wants to use along with the other co-owner(s). All the co-owners of a property are entitled to joint use and possession of the property owned by them and unless any particular part of the property is in exclusive possession of one of the co-owners so as to amount to complete ouster of the other co-owner(s), all of them have a legal right to use and enjoyment of each and every portion of the joint property and possession of one co-owner shall be deemed to be on behalf of all the co-owners. This is more so when the co-owners/joint owners of the property also happen to be members of the same family. In the facts and circumstances of the case, it is difficult to say that the Plaintiff is in exclusive possession of the first floor and Defendant No. 6 is in exclusive possession of the basement to the complete exclusion of the other co-owner(s), amounting to their ouster from possession of the aforesaid portions. It transpires during arguments that it is the only the Plaintiff and Defendant No. 6 who are residing in this property. When husband and wife are residing under the same roof, it is difficult to accept that they are in exclusive possession of different portions of the property owned by an HUF of which both of them are members to such an extent that it amounts to complete ouster of the other spouse. Since prima facie, the property is owned by Shri T.N. Khanna, HUF, it is made clear that all the members of the HUF will have an unhindered access to each and every portion of the suit property, including the basement and first floor.

13. The application stands disposed of accordingly.

I.A. No. 703/2006 (Order 39 Rule 1 and 2)

14. The applicant is given liberty to file medical opinion/advice from her doctor to the effect that tower/antenna installed on the terrace is likely to be detrimental to her health.

15. The Defendants will also be entitled to submit medical opinion to rebut the opinion, if any, filed by the Plaintiff.

16. List this application for consideration on 29th August, 2011.