

(2016) 07 DEL CK 0167
In the Delhi High Court
Case No : RSA No. 193 of 2016.

Delhi Development Authority - Appellant @HASH Shri. Sudip Kumar Lahiri

Date of Decision : 26-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2017) 3 ADDelhi 82 : (2017) 169 AIC 811 : (2016) 233 DLT 325

Hon'ble Judges : Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Mr. M.K. Singh, Advocate, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.(Oral) - C.M. No. 26509/2016 (exemption)

1. Exemption allowed subject to just exceptions. C.M. stands disposed of.

RSA No. 193/2016 and C.M. Nos. 26508/2016 (stay) and 26510/2016 (condonation of delay)

2. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant/Delhi Development Authority(DDA) against the Judgment of the First Appellate Court dated 26.10.2015 dismissing the first appeal filed by the present appellant/defendant as being barred by limitation as the appellant/defendant failed to explain the delay of 127 days. I wish the first appellate court instead of going into the technicalities of not condoning the delay, should have looked into the merits of the matter which would have shown that the first appeal filed by the appellant/DDA was wholly frivolous and in fact is only the insistence of the DDA to continue with the present legal proceedings, and, an indication as to how citizens of this country are harassed by officials of the public bodies such as the DDA.

3. I may note that the present appeal is also filed with the delay of 125 days and which is sought to be condoned by filing the C.M. No. 26510/2016. In the

peculiar facts of this case though there is no valid reason given for seeking condonation of delay except the typical explanation given of sending the file from one official to another, but since continuation of legal proceedings will amount to continuation of harassment of the respondent/plaintiff, not only I am condoning the delay of 125 days in filing this second appeal by allowing C.M. No. 26510/2016, I am also condoning the delay in filing the first appeal by setting aside the Judgment of the First Appellate Court dated 26.10.2015. In the peculiar facts of this case, instead of remanding the matter to the first appellate court to decide on merits, I am deciding the appeal on merits itself.

4. The facts of the case are that one Smt. Pratima Maitra was the owner of the suit plot bearing no.S-89, Panchsheel Park, New Delhi admeasuring 400 sq yds. During her lifetime Smt. Pratima Maitra lost her husband and only son where after she started residing with her nephew/plaintiff/respondent/Sh. Sudip Kumar Lahiri. Smt. Pratima Maitra continued to reside with her nephew/Sh. Sudip Kumar Lahiri till her death and therefore executed a Will dated 1.4.1992 whereby the co-ownership in the suit property was bequeathed in favour of the respondent/plaintiff/nephew. This Will is duly registered before the Sub-Registrar. It is also noted that by the Will certain other properties of the deceased were jointly bequeathed to the respondent/plaintiff/nephew and the younger brother of the deceased namely one Brig. Sandip Biswas S/o late Shri. U. N. Biswas. Since the contents of the Will would be relevant in the facts of the present case, I would seek to reproduce the Will in its entirety as under:-

"Will

1. I, Mrs. Pratima Maitra, wife of Late Major General S.S. Maitra, resident of S-89, Panchsheel Park, New Delhi as a Hindu widow governed by the Dayabhaga School of Hindu Law. I make this Will, in supersession of my earlier Will dated 6.4.1986. I consider it necessary to revoke my earlier will dated 5.4.1986 and make this will afresh in view of certain changed circumstances in the last six years.

2. My niece Mrs. Ishita Godhino, formerly named Ishica Bagchi d/o Shri. S.C. Bagchi fo Jalpaiguri has since been employed in a multinational Bank with a handsome salary. She is quite well off and happily married. Her husband too is a person of substantial means. Accordingly, I wish to substitute her name with that of my younger brother Brig. Sandeep Biswas son of Late Shri. U.N., Biswas I am very found of my said younger brother, and hence I make this change from my earlier Will.

3. I am making this Will on first (1st) day of April 1992, on my own accord, without being under pressure from and quarters, in absolutely sound state of mind after proper deliberations and with full understanding of the implications of making this Will, with the sole objective of ensuring a troublefree succession to my self-acquired immovable and movable properties, and also all other properties-immovable and movable that I shall be owning at the time of my

death. Whether by inherence succession, will or by virtue of operation of any other law.

Immovable Properties

4. The immovable properties in which I have interest as on date, are situated as follows:-

(a) A two storeyed house at S-89, panchsheel Park, New Delhi with land admeasuring 400 square yards.;

(b) A plot of land admeasuring 500 square yards at F-1/1, Sector-10, Model Town, Faridabad.

(c) A single storeyed house at R-11, Hauz Khas, New Delhi- 110016.

The immovable property (a) as mentioned above, has been entirely self-acquired by me. I had purchased the plot No.S-89, Panchshool Park, New Delhi as per perpetual sub-lease deed executed on the tenth day of December 1970 in terms of a tripartite indenture made on 28.12.72 between the President of India. The Panchshila Cooperative House Building Society Limited, and myself. In the said plot a two storeyed house was constructed, and with my own funds. The immovable property (b) as mentioned above, had been purchased by my late husband Major General Shri. S.S. Maitra, and by a probate dated 21.4.91 granted by the Hon?ble High Court of Calcutta. I become owner of the said land.

5. I hereby bequeath the aforesaid immovable property as mentioned in 4 (a) and my immovable property as mentioned in 4 (b) and my ?th share in the immovable property as mentioned in 4 (c), jointly to the following persons absolutely:-

i. Shri. Sudip Lahiri s/o Late Sh. K.K. Lahiri.

ii. Brig. Sandip Biswas s/o Late Shri. U.N. Biswas.

Movable Properties

6. I also bequeath all movable properties that I shall be owing at the time of my death to Shri. Sudip Lahiri S/o Late Shri. K.K. Lahiri absolutely.

7. I appoint Shri. Sudip Lahiri and Brig. Sandip Biswas as joint executors of this Will. They will be entitled to obtain to probate without being required to furnish any security. I hereby direct the said executors to pay all my just debts and to meet all other testamentary expenses out of my estate. In addition to my signature, I hereby also append my thumb impression too.

Sd/-

Testator Signature

Testator (Thumb Impression)

Dated: 1.4.92 at New Delhi

Signed and thumb impression imprinted by the above testator, Mrs. Pratima, in our presence. Each of us has signed in the testator's presence as an attesting witness on the same date and immediately after the testator had put in her signatures and thumb impression.

Witnesses:

1. Name: Anirduddha Chatterness.

Signature:Sd/-

Address: D-17, Green Park,

New Delhi-110 017

2. Anil Ahuja

Signature: Sd/-

Address: 1, Siri Fort Road

New Delhi.3"

(emphasis is mine)

5. The appellant/defendant/DDA issued a show cause Notice dated 8.5.1997 on the ground that Smt. Pratima Maitra had sold and transferred the suit property to the respondent/plaintiff. Respondent/plaintiff challenged this show cause notice by filing the subject suit and which was decreed by the Trial Court vide its Judgment dated 3.11.2012 and para 9 of the judgment of the trial court is reproduced as under:-

"9. Considering the case of defendant, the show cause notice has been sent on the ground that the suit property has been sold without permission and against the lease conditions. One fails to understand how they arrived at such conclusion in the absence of there being any sale deed or even agreement to sell. There is only a WILL in respect of suit property in respect of which probate has also been obtained. Thus the show cause notice dated 08.05.1997 Ex.PW1/10 is bad in law and defendant is restrained from taking any action on the basis of the notice Ex.PW1/10.

Accordingly, this issue is decided in favour of the plaintiff and against the defendant."

6. It is therefore clear that on the filing of the present suit, it came to the knowledge of the officials of the DDA, that bequeathing of the suit property to the respondent/plaintiff was not a sale transaction by a Will, and which transfer/sale by a Will also takes place in Delhi. The subject Will was however a genuine Will of late Smt. Pratima Maitra bequeathing the suit property to her nephew who had taken care of her during her lifetime inasmuch as Smt. Pratima Maitra had

during her lifetime lost her husband and only son. The Will of Smt. Pratima Maitra dated 1.4.1992 in favour of the respondent/plaintiff has been probated (Ex.PW1/11, certified copy of order of probate court) as noted by the trial court. The present case is therefore not a case where the suit property has been transferred for consideration by the lessee/allottee of the same, and once that is not so, there does not arise the question of applicability of the judgment of the Supreme Court in the case of Delhi Development Authority v. Vijaya C. Gurshaney(Mrs) and Another (2003) 7 SCC 301 and which judgment was passed when by a Will there was in fact a sale transaction/transfer of the allotted/leased property for consideration because one of the documents in that case for transfer of the property, in addition to an agreement to sell and general power of attorney, was a Will, and therefore the Supreme Court held that even when effectively a transfer of property for consideration takes place by a Will, there is in fact a transfer, thereby entitling the payment of unearned increase to the governmental authority/superior lesser.

7. In the present case, there is no transfer of the suit property for consideration but by a Will the deceased bequeathed the suit property to her nephew and therefore once the respondent/plaintiff had filed the subject suit bringing out these facts, the appellant/defendant should have had the courtesy not to continue to harass the citizens of this country and it should have withdrawn the show cause notice. The appellant/defendant however not only continued with the show cause notice but vehemently contested the suit which was decreed in favour of the respondent/plaintiff after trial. The appellant/defendant still did not rest there and chose to file the first appeal which has been dismissed by the impugned Judgment dated 26.10.2015 by refusing to condone the delay of 127 days, however, I have in the peculiar facts of this case examined the merits as I do not want to prolong the agony of the respondent/plaintiff.

8. In view of the above, there is absolutely no merit in the defence of the appellant/defendant before the trial court and the trial court has rightly decreed the suit by its Judgment and Decree dated 3.11.2012, relevant para 9 of which judgment is reproduced above.

9(i) The present appeal is therefore being an abuse of the process of the law since it continues with the frivolous defence taken in the suit and the same is accordingly dismissed.

(ii) While dismissing this appeal, let a copy of this judgment be forthwith placed before the Vice Chancellor of DDA and let Vice Chancellor of DDA constitute a committee of two very senior officials of the DDA to conduct an enquiry that whether at all citizens of this country such as the respondent/plaintiff should have been harassed in the facts of the case such as the present by continuing with this litigation. This I am observing because there is no dispute as per the written statement filed by the appellant/defendant that the respondent/plaintiff is not the nephew of late Smt. Pratima Maitra. In fact, the contents of the Will show that the Will is not a transaction of sale and purchase to the respondent/plaintiff

because the Will deals with various other immovable properties of Smt. Pratima Maitra and total of which properties have been bequeathed to the two beneficiaries, with one beneficiary being the respondent/plaintiff who has got the suit property. It is high time that officials of public bodies such as the appellant/DDA realise that duties and powers vested with them are to enable serving of public interest and not harassment of common citizens of this country. This committee constituted as per the present directions will examine as to once the facts came on record of the respondent/plaintiff being only a nephew of deceased Smt. Pratima Maitra and the contents of the probated Will showed that there did not arise any question of sale or transfer of the property in the facts of the present case, should not the concerned officials of the appellant/defendant withdrawn the show cause notice and not continued with the defence in the suit, much less continuing the same by filing the first appeal against the Judgment of the Trial Court dated 3.11.2012 and thereafter the present second appeal. The Vice Chancellor of the DDA is directed to constitute a committee within a period of two weeks of receipt of the present judgment and the committee will submit its report to the Vice Chancellor within four weeks of being constituted. Committee will also report the actions to be taken against the erring officials who are found inadequate in performing their duties as were required to be performed in the facts of the present case. A copy of this report will also be brought to this Court on the next date fixed so that this Court can examine as to whether the appellant/defendant has acted in accordance with the intent and spirit of the directions given in this judgment i.e to fairly examine the stand of the concerned officials of the DDA. I may also clarify that the committee must examine the roles of all its officials who are responsible for taking decision to continue to pursue with the show cause Notice dated 8.5.1997 and culminating in the filing of this present second appeal.

10. List for further proceedings on 28th September, 2016.

11. Dasti to counsel for the appellant.