

(2009) 12 DEL CK 0345

In the Delhi High Court

Case No : I.A. 3491 of 2008 in C.S. (OS) 68 of 2005

Dinesh Gupta and Another

APPELLANT

Vs

Raj Kumari Gupta

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17

Citation : (2009) 12 DEL CK 0345

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sanjay Goswami, for the Appellant; Pankaj Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—plaintiffs filed this suit for specific performance of an agreement to sell dated 7th July, 1998 entered between plaintiffs and defendant qua ground floor of commercial property bearing number 23, Defence Colony Market, New Delhi-110 024 and for damages. After filing of the suit, issues were framed on 2nd August, 2005 and evidence of plaintiffs started on 1st October 2005. Defendant has now made this application on 19th March, 2008 under Order 6 Rule 17 of CPC to amend the written statement which was filed by defendant on 16th February 2005. By way of this amendment, defendant wants to bring on record a fact of a family settlement dated 11th July 1974 arrived at between late Lala Ram, Shyam Bihari, Bhagwan Dass, Balkrishan and Smt. Kalawati on this ground that this family settlement was first time discovered by defendant in the documents kept in one of the many files, only in March, 2008 when the defendant was searching the Janampatri of her son in the house. The husband of defendant had also forgotten about this family settlement and did not inform the defendant. Thus, defendant wants to make additions in the written statement about family settlement and effect thereof.

2. The application is opposed by the plaintiffs on the ground that the amendment

being sought by the defendant was not only highly belated but defendant has falsely stated that the family settlement came to her knowledge only in 2008. It is submitted that all the facts were fully within the knowledge of defendant at the time of filing written statement. Family settlement, if any, could not have been washed of the memory. In November, 2005 son of defendant Mr. Deepak Kumar Garg on the basis of same family settlement now being relied upon by defendant had filed an application under Order 1 Rule 10 before this Court to be impleaded as defendant in the present suit. The said application was pending for disposal. The defendant was fully aware of the application moved by her son, Mr. Deepak Kumar Garg. It is further stated that if alleged family settlement had been in existence, it cannot be believed that her brother and other family members had no knowledge of the alleged family settlement or the defendant did not know of the family settlement either at the time of filing suit or at the time of entering into the agreement to sell with the plaintiff who was a bonafide purchaser of the suit premises on the basis of mutation in favour of defendant in the record of L&DO. The present additional plea qua family settlement cannot be allowed to be incorporated.

3. The plea taken by defendant to amend the written statement on the ground that she recently discovered a document of family settlement, in my view is untenable. The law requires that the defendant while filing written statement is not only supposed to disclose all facts within his/her knowledge but is also supposed to conceal not fact from the Court and has to come out with clean hands. She was supposed to file all documents in her power and possession and also to file a list of these documents which were not in her power and possession but were relied upon by her. The alleged family settlement, according to defendant was entered into 1974. There is no reason as to why the defendant could not have mentioned the family settlement in the written statement and could not have brought these facts to the notice of the Court. Moreover, even with the present application only a copy of alleged family settlement has been filed and the original family settlement allegedly entered into has not been brought on record. One has to ponder why law requires that a party is not only supposed to file documents in its power and possession but also supposed to file a list of those documents which are not in its power and possession but are available with someone else. This provision is made so as to rule out a possibility of manufacturing documents, which has become one of the biggest menaces today and strikes at the very root of justice. Some litigants with the help of professionals get the document manufactured and try to sneak them into a case at a subsequent stage of litigation, when they find that the litigation was not going the way they liked. It is for this reason that statute provided that all documents must be filed along with written statement. There is no reason to believe the averment of defendant that she suddenly discovered a family settlement lying in the papers while she was searching the Janampatri of her son. If she could remember about the Janampatri of her son, there is no reason that she could not have remembered about the family settlement. I feel that the

plea taken by defendant of discovering the alleged family settlement is false and frivolous plea. The present application has been made by the defendant after commencement of trial, just to delay the proceedings and to introduce new facts.

4. I, therefore, dismiss the present application with costs of Rs. 10,000/-.

CS(OS) 68 of 2005

List this matter before the Joint Registrar for completing evidence on 18th January, 2010.