(2011) 02 DEL CK 0218

In the Delhi High Court

Case No : Regular First Appeal No. 243 of 2001

Dr. P.K. Chakravarty APPELLANT

Vs

Smt. Debika Banerjee (Formerly Chakravarty) RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96
Limitation Act, 1963 — Article 58

Citation : (2011) 02 DEL CK 0218

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : None, for the Appellant; P.D. Gupta and Abhishek Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This case is on the Regular Board of this Court since 3.1.2011. Today, it is effective item No. 4 on the Regular Board. It is 2.30 P.M. No one appears for the Appellant. I have therefore gone through the record and have heard the counsel for the Respondent and am proceeding to dispose of the appeal.

2. The challenge by means of the present Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 23.2.2001 whereby the suit for declaration and injunction filed by the Appellant/ plaintiff was dismissed.

3. The disputes between the parties pertain to the property being flat bearing No. 303, Harsh Bhawan, 64-65, Nehru Place, New Delhi. The Appellant laid down the case in the plaint that he was the owner of the property and the Respondent, who was his ex-wife, was only a benamidar. The trial Court by the impugned judgment and decree has disbelieved the case of the Appellant and has held that the Appellant failed to show that any monies were paid by him for the purchase of the flat and that even the monies which were allegedly paid for the flat, came

from the payments made by one company M/s. Tractel Tirfor India Pvt. Ltd. directly to the Respondent/Defendant and it could not be said from any evidence on record that those payments were made towards the purchase of the flat in question on behalf of the Appellant/plaintiff.

4. Though the Respondent was proceeded exparte in the trial Court yet the suit was dismissed on the basis of the evidence led being insufficient to prove the case of the Appellant.

5. The trial Court has rightly analyzed the relevant issues in this case in para 5 of the impugned judgment and which reads as under:

5. In the plaint it is pleaded that the Defendant had taken away the documents of the properties which are in her name. However, plaintiffs deposed that original agreement for purchase of the property is in custody of the plaintiff.

Normally, the document of title is found in possession of the actual owner of the property. It is not mentioned in agreement Ext. PW1/3 for purchase in flat in question that the payments of the sale consideration was made by the plaintiff to the vendor. The certificate Ext. PW1/4 issued by the Chartered Accountant only certifies that the plaintiff has made some payments to the Defendant during the years 1978 to 1983. Similarly, certificate Ext.PW1/5 issued by Chartered Accountant certifies some payments made by the Tractel Tirfor India Pvt. Ltd. to the Defendant. The certificate Ext.PW1/6 issued by the Chartered Accountant only certifies some payments made to the Defendant by M/s. Kanak Engineer Pvt. Ltd. The certificate Ext.PW1/7 issued by Canara Bank only certifies some payments made to the Defendant by Tractel Tirfor India Pvt. Ltd. The certificate Ext.PW1/8 issued by the Canara Bank certifies some payments made by the plaintiff to the Defendant during the year 1978 to 1983. The certificate Ext.PW1/9 only certifies some payments made by the M/s TTIP to the Defendant. The payments certified vide Ext.PW1/5, Ext.PW1/7 and Ext.PW1/9 only certifies some payments made by Tractel Tirfor India Pvt. Ltd., to the Defendant. M/s Tractel Tirfor India Pvt. Ltd. is a corporate body and the plaintiff is an individual and if he is the managing director of this company, he cannot take benefit of payments in individual capacity made by Co. to the Defendant. Similarly, the payment certified vide Ext.PW1/6 with regard to M/s Kanak Engineer Pvt. Ltd. another company to the Defendant. The payment mentioned are on behalf of a corporate body and not on behalf of plaintiff and hence can not make sale transaction to be benami one. The certificate Ext.PW1/4 and PW1/8 showing some payments to the Defendant by the plaintiff does not mean that these payments were made to the Defendant for purchase of the flat in question. The computation of income tax of the Defendant for the year 1976-77, 1977-78 vide Ext.PW1/10 and Ext.PW1/11 do show income of the Defendant but the balance sheet of the Defendant is not produced to show as to whether the Defendant was in financial position to purchase the first in question. The burden to prove that the transaction was benami in the name of Defendant has been upon the plaintiff who is claiming so. The plaintiff has not adduced any evidence as to whether the payment of the flat in question was directly made by him to the vendor of the flat. He has also failed to adduce evidence that he made payment to Defendant for purchase of flat in question. Hence, plaintiff failed to prove that he purchased the flat in question Benami in the name of Defendant. Moreover, the limitation to file the suit for declaration is provided as three years in Article 58 of the Limitation Act 1963. The plaintiff has himself pleaded in para No. 17 of the plaint that the cause of action arose to him in 1988 when the Defendant filed Eviction Petition No. 144/88 against him. The flat is allegedly purchased in the year 1978 b the plaintiff in the name of Defendant. The matrimonial dispute has arisen between the parties and divorce decree was passed on 26/9/84. In these circumstances, the cause of action first arose to the plaintiff to file the present suit in 1978 when the flat in question was purchased by him. The plaintiff should have taken steps when there were dispute between the parties and divorce decree was passed on 26.9.84 Subsequently, when the Defendant filed eviction petition No. 144/88 on 4.7.88, plaintiff has contesting the eviction petition as managing director of M/s. Tractel Tirfor India Pvt. Ltd., and he should have immediately file the suit for declaration that the Defendant is the benami owner and he is the real owner of the property in question. Thus, the cause of action at least arose to the plaintiff on 4.7.88 on filing of eviction petition. The present suit having been filed by the plaintiff on 23.9.99 is thus grossly time barred under Article 58 of the Limitation Act 1963. In view of this discussion, the suit of the plaintiff fails and the same is hereby dismissed with no order as to cost. Decree Sheet be prepared accordingly and file be consigned to R.R.

(emphasis added)

6. I completely agree with the findings of the trial Court as the Appellant failed to prove that monies were paid by the Appellant for the purchase of flat and also that the suit was hopelessly time-barred as being filed in 1999 when the cause of action arose in 1988 when the Respondent sued the Appellant for eviction from the suit property.

7. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this Court. Merely because two views are possible, this Court is not entitled to interfere with the impugned judgment and decree unless the findings of the trial Court are wholly illegal or perverse or cause grave injustice. I do not find that any of the aforesaid ingredients exist to persuade to this Court to interfere with the impugned judgment and decree. The appeal being without merit is therefore dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.