

(2013) 12 DEL CK 0122

In the Delhi High Court

Case No : CS (OS) No's. 1113 of 2007 and 556 of 2008

Janak Datwani

APPELLANT

Vs

C.N.A. Exports Pvt. Ltd. and Others
 Jamna Datwani
and Another Vs Anand Datwani and Others

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

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

Citation : (2013) 12 DEL CK 0122

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Amit Sibhal, Mr. Ayush Agrawal, in CS OS No. 1113 of 2007 and Ms. Tara Ganju in CS OS No. 556 of 2008, for the Appellant; P.K. Bakshi, Rajat Navet, Advocates for Defendants 1 and 2, Ms. Tara Ganju, Advocate for Defendant No. 5 in CS (OS) No. 1113 of 2007, Ms. Diya Kapur, Advocate for Ms. Nitya Bharaney in CS (OS) No. 1113 of 2007 and 556 of 2008, Mr. Vivek Sharma, Advocate for Defendant No. 2 and 6 and Mr. Nikhil Rohatgi, Advocate for Defendant No. 5 in CS (OS) No. 556 of 2008, for the Respondent

Judgement

Dr. S. Muralidhar, J.

IA Nos. 10597 of 2011 & 2347 of 2011 in CS (OS) No. 556 of 2008

1. IA No. 2347 of 2011 is an application under Order I Rule 10 CPC filed by Ms. Sushma Ravidass praying for deletion of her name from the

array of parties. IA No. 10597 of 2011 is an application seeking withdrawal of IA No. 2347 of 2011. The background to these applications is

that CS (OS) No. 556 of 2008 has been filed by Smt. Jamna Datwani and CNA Exports Private Limited ("CNAEPL"), Plaintiffs 1 and 2

respectively, against Shri Anand Datwani (Defendant No. 1), Shri Kishan Datwani (Defendant No. 2), Shri Janak Datwani (Defendant No. 3),

Ms. Nitya Datwani nee Bharaney (Defendant No. 4), Smt. Sushma Ravidass

(Defendant No. 5), Mrs. Asha Devi Moolchandani (Defendant No.

6) and five others for a declaration that Mrs. Jamna Datwani and Defendants 2 to 6 continue to be the owners of 85% of the share holding of

CNAEPL; for a further declaration that the gift deed dated 10th January 1998 and the transfer forms dated 23rd March 1998 in relation to

CNAEPL are null and void on the ground that they are forged and fabricated; to restrain Mr. Anand Datwani from acting on the basis of the above

documents and representing himself to be owner of 99% share of CNAEPL. Another relief sought was for an injunction to restrain the Defendants

from dealing with two properties i.e. land and building at Plot No. 4, Sector-18, Gurgaon ("the Gurgaon property") and the 38% share in the land

and building at 6, Friends Colony (West), New Delhi ("the Friends Colony property").

2. The case of the Plaintiffs is that CNAEPL was incorporated on 7th August 1975. It was promoted by Mr. Ramesh Manikram Savlani and

Defendant No. 5. In 1978, Mr. Jamna Dass Datwani took over the company. The majority shareholders were Mrs. Jamna Datwani, wife

(22.7%), Mr. Kishan Datwani, son (13.33%), Mr. Janak Datwani, son (13.33%), Mr. Anand Datwani, son (13.33%) and Mrs. Nitya Bharaney,

daughter (22.21%). Mr. Tikam Dass Mulchandani, J.B. Overseas (Sales) Pvt. Ltd. and Mrs. Sushma Ravi Dass (Defendant No. 5) held 13.33%.

3. In the application IA No. 2347 of 2011, Defendant No. 5 stated that on 20th March 2008 she gifted her 1500 equity shares in CNAEPL to

Mr. Janak Datwani for US\$10. She enclosed a copy of the share transfer forms. She also stated that on 6th December 2010 she executed an

absolute and irrevocable power of attorney in favour of Mr. Janak Datwani. She acknowledged that in view of the disputes between the parties in

relation to CNAEPL, the said shares had not yet been transferred in the records of the company. She further stated that she had never gifted,

transfer or alienated the shares in favour of Mr. Anand Datwani or signed any transfer form or denied allegations to the contrary. In the

circumstances, Defendant No. 5 prayed that her name may be struck off from the array of parties, as after the transfer of the said shares to Mr.

Janak Datwani she was no longer a necessary and a proper party.

4. In the subsequent application IA no. 10597 of 2011 the case pleaded is that in

January 1998 itself Defendant No. 5 had gifted her entire share holding to Mr. Anand Datwani. It is stated that after she had filed IA No. 2347 of 2011, Mr. Anand Datwani contacted her and informed her that she could not have executed any gift deed or transfer forms in favour of Mr. Janak Datwani as she had already gifted her shares to Mr. Anand Datwani. It is claimed that after realising the above position, Defendant No. 5 on 18th March 2011 executed deeds of cancellation whereby she cancelled the gift deed and other forms and the power of attorney dated 6th December 2010 executed by her earlier in favour of Mr. Janak Datwani. The deeds of cancellation have been enclosed with the application.

5. It is significant that IA No. 10597 of 2011 has not been signed by Defendant No. 5 but by Mr. Anand Datwani describing himself as PoA of Defendant No. 5. I.A. No. 10597 of 2011 has been vehemently opposed by Mr. Janak Datwani who has enclosed with his reply documents in support of his allegation that the application was in fact filed without the knowledge of Defendant No. 5 who according to Mr. Janak Datwani has reiterated the contents of IA No. 2347 of 2011. Mr. Janak Datwani has in his reply adverted to the effect that on 10th December 2009, Mrs. Jamna Datwani and Mr. Anand Datwani entered into a compromise agreement pursuant to and as a consequence of a report dated 17th September 2009 of the Central Forensic Sciences Laboratory ("CFSL") which had found that the signatures of Ms. Nitya Bharaney (Defendant No. 4) on the share transfer instruments as submitted by Mr. Anand Datwani to be forged. In terms of the compromise agreement, Mrs. Jamna Datwani had agreed to withdraw the present suit in lieu of payment of Rs. 50,000 per month. Defendants 2, 3, and 4 had filed applications for being transposed as Plaintiffs. However, on 23rd February 2012 during the course of hearing a statement was made by learned counsel for Mrs. Jamna Datwani that she did not wish to withdraw the suit. This prayer was allowed by the order dated 3rd January 2013. By the same order the Court permitted Defendant No. 3 to be transposed as Plaintiff No. 1. However, that part of the order was set aside by the Division Bench by its order dated 30th July 2013 in FAO (OS) No. 60 of 2013. The net result is that Mrs. Jamna Datwani continues as Plaintiff No. 1 and CNAEPL as Plaintiff No. 2.

6. The above highly contested facts would require examination of the evidence of the parties. It is not possible to permit Defendant No. 5 to

withdraw at this stage. At the same time the facts pleaded in the applications and the documents placed on record by the parties would be relevant

for the issues to be decided in the suit.

7. Instead of entertaining these applications at this stage, the better course would be to direct that the pleadings and documents in these

applications shall form part of the record of the suit and the parties will be permitted to rely upon them as such. The applications are accordingly

disposed of in the above terms. It is clarified that Defendant No. 5 will continue as such and further that no opinion is expressed by the Court on

the averments by the parties in either application.

CS (OS) No. 1113 of 2007 & CS (OS) No. 556 of 2008

8. The Court now proposes to address the question of putting in place an interim arrangement for the convenience of Mrs. Jamna Datwani, the

Plaintiff in CS (OS) No. 556 of 2008 and Defendant No. 5 in CS (OS) No. 1113 of 2007.

9. The Court has heard the submissions of Mr. Amit Sibal and Mr. Ayush Agrawal, learned counsel for Mr. Janak Datwani, Mrs. Tara V. Ganju,

learned counsel for Mrs. Jamna Datwani, Mr. P.K. Bakshi, learned counsel for CNAEPL and Mr. Anand Datwani, Mr. Vivek Sharma, learned

counsel for Mr. Kishan Datwani and Ms. Diya Kapur, learned counsel for Ms. Nitya Bharaney.

10. Mrs. Jamna Datwani is about 76 years old. She is the mother of Defendants 1 to 4 in CS (OS) No. 556 of 2008. Her case is that CNAEPL is

a closely held family company. She holds 2555 shares constituting more than 22% of the shareholding. From 1975 to 1990, CNAEPL was in the

business of garments export. It was managed by the late Mr. Jamna Dass Datwani and his wife, Plaintiff No. 1. Thereafter CNAEPL became

dormant. It owned two properties i.e. the Gurgaon property and 38% share in the Friends Colony property. The other co-owners of the Friends

Colony property are Mrs. Jaskirat Datwani, the ex-wife of Mr. Janak Datwani who owns 38% and IN Exports Pvt. Ltd. (IEPL) which owns

24%. The rough site plan of the Friends Colony property shows that the portion falling to the share of CNAEPL has not been built up. The built up

part of the Friends Colony comprises two distinct portions and corresponding servants' quarters. One portion belongs to Mrs. Jaskirat Datwani, and the other to IEPL. The present order concerns the portion belonging to IEPL and the corresponding servant quarters.

11. At the hearing on 1st November 2013, the Court took note of the fact that Mrs. Jamna Datwani was not staying in the Friends Colony property and did not have any place of residence in Delhi. She admittedly was staying in the Friends Colony property till 2009. The parties stated that they would all like to ensure that she was comfortable and in the circumstances, the Court required her to file an affidavit setting out what her current needs were. Pursuant thereto, on 7th November 2013 Mrs. Jamna Datwani filed an affidavit. She also appeared in Court on that day and was heard. In response to the said affidavit, Mr. Janak Datwani filed an affidavit on 11th November 2013. On 9th December 2013, the Court reserved orders on this aspect. There is a typographical error in the name of Mrs. Jamna Datwani in the order passed on that date. It stands corrected by the present order.

12. On 6th December 2013 the Court found that there was agreement on many aspects of the matter. The only question was whether Mr. Janak Datwani would agree not to stay in the Friends Colony property for a temporary period to enable Mrs. Jamna Datwani to feel comfortable. The Court made it clear to counsel that this was a temporary arrangement that was reviewable. However, on 9th December 2013 learned counsel for Mr. Janak Datwani stated that he was not agreeable to the suggestion and considered it as his being "thrown out" of his own property. He claimed to have no other place in Delhi whenever he visited India with his family. Learned counsel for Mr. Janak Datwani also raised the plea that this issue was beyond the scope of the two suits as they concerned only the share holding of CNAEPL.

13. As regards the second submission of Mr. Janak Datwani, it is seen that although the suits concern the shareholding in CNAEPL, they do concern the properties of CNAEPL which include the Friends Colony property. Also, the matter has to be viewed in the context of the litigation involving the members of the same family. The Court has even earlier passed orders on this aspect. Therefore, the above plea of Mr. Janak

Datwani should not come in the way of the Court putting in place a temporary arrangement for the shelter and comfort of Mrs. Jamna Datwani.

Accordingly, the objection raised by Mr. Janak Datwani in this regard is negatived.

14. Mrs. Jamna Datwani expressed her concern about being permitted ingress and egress to the portion in the Friends Colony property belonging

to IEPL. She wanted her own key for the gate and permission to deploy her own guard. In response thereto Mr. Janak Datwani denied that there

had been any difficulty in this regard at any time. He submitted that it was not necessary to have a separate gate or a separate guard and that the

present guard is sufficient. When she appeared in this Court on 7th November 2013, Mrs. Jamna Datwani expressed a desire to live by herself.

She mentioned her past discomfort and unease when Mr. Janak Datwani stayed in the said portion when he visited India. The Court then asked

the parties to explore the possibility of Mrs. Jamna Datwani living in a separate flat that might be taken on rent in the same area for her comfort.

Mr. Janak Datwani did bring to the Court details of flats that might be available in the area for rent for the convenience of Mrs. Jamna Datwani.

However, learned counsel for Mrs. Jamna Datwani, on instructions, stated that she would prefer staying in Friends Colony as she had some

sentimental value attached to it. At her age, and in light of past experience, she did not want to feel insecure with either a new landlord or with the

apprehension of any of the children defaulting in the payment of rent.

15. This was one issue where there was a deadlock. Mr. Janak Datwani expressed apprehension that it was Mr. Anand Datwani who was

instigating his mother to take the above stand and wanted to somehow re-enter the property. Learned counsel for Mr. Anand Datwani, however,

denied this suggestion and stated on instructions that Mr. Anand Datwani would undertake to not visit his mother at the Friends Colony property

during her stay there. If she wanted to meet Mr. Anand Datwani, she could do so outside the said property. The Court is of the view that this

undertaking should allay the apprehension of Mr. Janak Datwani as regards the intentions of Mr. Anand Datwani.

16. The Court was informed that Mr. Janak Datwani might be visiting India with his family in the last week of December 2013. His counsel stated

that they only had the Friends Colony property to live in. He submitted that given

the difficulties expressed by Mrs. Jamna Datwani, the better course would be to take on rent a separate two-bedroom flat for her in the same area, the expenses of which should be borne equally by her children. He alternatively submitted that "all living expenses of my mother including the two-bedroom rented flat can be paid from Rs. 21 crores pertaining to CNAEPL siphoned off by Anand Datwani". The latter submission is obviously contentious and is not going to be able to be decided at this stage in these proceedings.

17. Having considered the options, the Court is of the view that some accommodation will have to be made by Mr. Janak Datwani, even though it might subject him to some inconvenience. Admittedly, he and his family are living in Paris. They visit India for about three months in a year. While it is true that during such visits they usually stay in the portion of the Friends Colony property belonging to IEPL, it might not be too much to expect them to live elsewhere for a temporary period till such time Mrs. Jamna Datwani feels confident and comfortable living in the said portion. As a son interested in his mother's welfare, this is not too much of an inconvenience for Mr. Janak Datwani to bear. This gesture by him will go a long way in allaying his mother's sense of physical and emotional insecurity. His protest that he is being "thrown out" from the Friends Colony property is misplaced. At the cost of repetition, it is clarified that this arrangement is for a temporary period with a view to ensuring that Mrs. Jamna Datwani feels physically and emotionally secure in the property. The position will be reviewed after two months.

18. The Court declines to express any opinion on the allegations and counter allegations by one party against the other. The Court expects the parties to move forward especially on the strength of the good intention of Defendants 1 to 4 in making their mother comfortable. This order is without prejudice to the rights and contentions of the parties or as to the right, title and interest of IEPL or CNAEPL or Mr. Janak Datwani or any other party in the Friends Colony property. It is further made clear that the offer by Mr. Janak Datwani to locate for Mrs. Jamna Datwani a separate flat in the same area is kept open and will be considered if the temporary arrangement put in place by this order is found not to be feasible.

19. There was an issue concerning the servants' quarters. The report of Receiver Ms. Sonia Singh who was appointed by the Division Bench by

its order dated 26th July 2010 was referred to by the parties. It appears that there is a garage portion that can be made available to the cook to be

employed by Mrs. Jamna Datwani with access to a bathroom and toilet shared by the occupants of the other servant quarters.

20. The next question concerns the amount required by Mrs. Jamna Datwani for her monthly needs. In her affidavit dated 7th November 2013 she

has stated that she would require Rs. 1.25 lakhs per month. Through her counsel Mrs. Tara Ganju, she has conveyed that the said sum would take

care of the expenses of a cook, maid, driver and sweeper apart from groceries, maintenance of car, medical and other miscellaneous expenses.

Counsel for Defendants 1 to 4, on instructions, stated that they were willing to contribute equally for the upkeep of the mother. However,

Defendant No. 3 Mr. Kishan Datwani, who lives in US, stated through his counsel that due to his financial constraints he may be able to contribute

his share in instalments and not in one go.

21. As regards the car, the Court was informed that although the Division Bench had in its order dated 4th February 2011 in CM No. 21127 of

2007 in FAO (OS) No. 60 of 2013 noted that the keys of a car were being handed over to counsel for Mrs. Jamna Datwani, the said car has

remained parked and is presently unusable. The Court is of the view that Defendants 1 to 4 should contribute equally for the purchase of a new car

for their mother Mrs. Jamna Datwani.

22. The Court is aware of the number of orders passed earlier by the learned Single Judges as well as the Division Benches of the Court in these

and other connected cases on the issue of making arrangements for Mrs. Jamna Datwani. In particular, the Court would like to refer to order

dated 18th November 2011 in Contempt Case No. 555 of 2010, the order dated 1st February 2008 in IA No. 7048 of 2007 in CS (OS) No.

698 of 2003, the order dated 26th July 2010 by the Division Bench in FAO (OS) No. 152 of 2008 and the order dated 4th February 2011 of the

Division Bench which has been referred to earlier. The present order should be seen in continuation of the said orders.

23. Accordingly, the Court puts in place the following interim arrangement which

will continue till the next date of hearing when the said arrangement will be reviewed:

(i) Effective from 10 a.m. on 20th December 2013, Mrs. Jamna Datwani will reside in the portion belonging to IEPL in the Friends Colony

property exclusively. She is permitted to employ a cook, maid and a sweeper of her own choice at the said premises.

(ii) Mr. Janak Datwani will during his visit to India in December 2013 or at any time till the next date of hearing not stay in the Friends Colony

property in the portion belonging to IEPL. The statement of Mr. Anand Datwani that he will not visit the Friends Colony property during the stay

there of Mrs. Jamna Datwani taken on record and he is bound by it.

(iii) The guard at present in the premises will continue and shall be paid for by Mr. Janak Datwani. Since there is going to be no one else in the

property, a new lock will be purchased for the gate and the keys thereof will be with Mrs. Jamna Datwani.

(iv) While the maid is permitted to reside with Mrs. Jamna Datwani in the premises, the cook to be employed by her will reside in the garage

portion of the servants quarters which is identified in the rough sketch enclosed with this order and marked as "A". The two servants of Mr. Janak

Datwani, Hari and Puran will move into one portion and make available the garage portion for the exclusive use of the cook. The cook will have

access to the bathroom and toilet at a location nearest to the said garage. A new lock will be placed on the door of the garage the keys of which

will be handed over to Mrs. Jamna Datwani when she moves into the premises at 10 am on 20th December 2013.

(v) The CCTVs wherever found in the portion of the Friends Colony property belonging to IEPL is permitted to be removed by Mrs. Jamna

Datwani and handed back to Mr. Janak Datwani or his authorised representative after she moves in to the premises.

(vi) Mrs. Jamna Datwani will be free to install inverters/power back-up and have a telephone connection in the premises at her own expense. She

can also install, at her own expense, any kitchen and other essential equipment for her own use.

(vii) Mr. Janak Datwani, Mr. Anand Datwani, Mr. Kishan Datwani and Ms. Nitya Bharaney will, within a period of one week from today, each

transfer a sum of Rs. 1,50,000 into the savings account of Mrs. Jamna Datwani (the details of which will be provided by her counsel Mrs. Tara

Ganju to them forthwith through counsel) to enable Mrs. Jamna Datwani to purchase a new car of her choice in her name. Mrs. Jamna Datwani

will employ a driver of her choice.

(viii) Mr. Janak Datwani, Mr. Anand Datwani, Mr. Kishan Datwani and Ms. Nitya Bharaney will further transfer a sum of Rs. 5 lakhs each, i.e. an

aggregate of Rs. 20 lakhs to the savings account of Mrs. Jamna Datwani within a period of two weeks from today and in any event not later than

1st January 2014.

(ix) In the event Mr. Kishan Datwani is unable to contribute his entire share of Rs. 5 lakhs, he will deposit the said amount in two instalments i.e.

Rs. 2,50,000 each on or before 1st January 2014 and the balance on or before 1st February 2014.

(x) Of the monies deposited by Defendants 1 to 4 under clause (ix) above, Mrs. Jamna Datwani will retain a sum of Rs. 2,50,000 in her savings

account and keep the balance amount in an fixed deposit (FD) initially for a period of one year with instructions to the bank concerned to transfer

from the said FD, on the 1st of every month beginning March 2014 a sum of Rs. 1,25,000 into her savings account. The directions for renewal of

the FD if necessary can be sought by the parties closer to the expiry of the FD.

(xi) Mrs. Jamna Datwani will pay the wages of the cook, maid, sweeper and driver and also for petrol and maintenance of the car and her

miscellaneous expenses from the aforementioned sum.

(xii) Counsel on behalf of each of the parties, along with Ms. Sonia Singh, Receiver, will remain present at 10 a.m., on 20th December 2013 at the

time of Mrs. Jamna Datwani being put in possession. Proceedings will be drawn up and signed by the parties and their counsel, and be placed on

record immediately thereafter.

24. The Court reiterates that it has not expressed any opinion on any of the allegations or counter-allegations made by the parties in their pleadings

as well as in the two affidavits referred to in the present order. Further, this order does not decide the right, title and interest of Mr. Janak Datwani

or of IEPL or CNAEPL in Friends Colony property or in the servant quarters therein. This order puts in place an interim arrangement which will

be reviewed after two months.

25. List on 17th February 2014. Order be given dasti to learned counsel for the parties. A certified copy of this order be delivered forthwith to

Ms. Sonia Singh, Receiver.