
(2013) 01 DEL CK 0069
In the Delhi High Court
Case No : CS (OS) 2585 of 2012

K.L. Garg

APPELLANT

Vs

Rajesh Garg and Others

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0069

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjay Aggarwal, for the Appellant; G. Kumar, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff has instituted this suit for recovery of possession of a portion consisting of two bedrooms, common drawing-dining, kitchen and bathroom of flat on the second floor of property No. 21/13, Old Rajinder Nagar, New Delhi and for mesne profits/damages for use and occupation. It is the case of the plaintiff, that he is the owner of the said flat vide registered Sale Deed dated 18th October, 2004 copy whereof is filed along with the plaint; that the defendants no. 1 to 4 are the son, daughter-in-law and grandchildren of the plaintiff; that the plaintiff on account of the said relationship had allowed the defendants to reside with him in the said flat; however the relationship between the plaintiff and the defendants has soured and the plaintiff does not want the defendants to reside in his flat and though called upon the defendants to vacate the same, the defendants failed to do so. Summons of the suit and notice of the application for interim relief to restrain the defendants from parting with the possession of the said flat to any other person were issued though no interim relief granted.

2. The defendants have filed the written statement pleading, that the suit has been filed merely to harass them; that no cause of action has accrued to the plaintiff against the defendants; that the plaintiff has not approached the Court with clean hands and has concocted the story of the defendants ill treating or harassing the plaintiff; that the defendants no. 1 and 2 had contributed to the

purchase consideration of the flat and the defendant no. 1 also used to pay the electricity bills of the said flat; that the plaintiff is a habitual litigant and had also lodged a complaint against another son namely Shri Pankaj Garg and with whom he subsequently compromised; that similarly earlier disputes had arisen between the plaintiff and the defendants and which have subsequently been compromised; that the suit is undervalued; that in fact the defendants had started living in the flat only at the instance of the plaintiff and that the defendants are looking after and caring for the plaintiff. The defendants however do not dispute the receipt of legal notice from the plaintiff demanding possession but allege the same to be false.

3. The suit was listed on 14th January, 2013 when finding that the defence of the defendants in the written statement of having contributed to the purchase consideration of the said flat while admitting the Title Deed with respect thereto to be in the name of the plaintiff only did not constitute any defence in law to the claim of the plaintiff for possession, the counsel for the defendants was asked to argue. On his request the matter was adjourned to today.

4. The counsel for the defendants, who states that he is the new counsel though has filed his Vakalatnama, has argued that the plaintiff has not approached the Court with clean hands. He has drawn attention to para 4 of the plaint and contended that the plaintiff has falsely stated that the defendants had harassed the deceased wife of the plaintiff. It is argued that the relationship of the defendants with the deceased wife of the plaintiff, being the mother of the defendant no. 1 and mother-in-law of the defendant no. 2 was very good.

5. It has been enquired from the counsel for the defendants as to whether the said argument even if were to be accepted constitutes a defence to a suit for possession; a decree for suit for possession is not a discretionary one; if the plaintiff is found entitled to possession of a property, relief cannot be denied to him/her merely because he may have on some other aspects not relatable to possession, lied.

6. No reply is forthcoming.

7. This argument, also does not constitute any defence to the claim for possession.

8. Though the defendants have not filed any documents whatsoever, the counsel for the defendants has during the course of hearing handed over photocopy of a letter purported to be written by the plaintiff to the Editor of Veer Arjun Newspaper on 19th December, 2003 withdrawing the earlier advertisement disinheriting the defendants and stating "Shri Rajesh Garg and my grand children has full legal rights for moveable/immoveable property stands in my name i.e. K.L. Garg". A right in the property, on the basis of the said document is claimed.

9. The said document is taken on record.

10. Even though the procedure adopted by the defendants of handing document

across the bar is not in consonance with the prescribed procedure but I am afraid even the said document does not show that the defendants have any right to retain possession of the flat aforesaid. All that the said document purports to do is to recall the earlier notice disinheriting the defendants. However, such inheritance can happen only on the demise of the plaintiff and not prior thereto.

11. A contributor to the purchase consideration for immovable property, only has rights if any, to recover the said purchase consideration from the purchaser and does not acquire any rights in the immovable property or any right to retain possession thereof. The only defence thus raised in the written statement is not a material one so as to invite framing of an issue and the plaintiff has become entitled to a decree for possession and mesne profits.

12. The dispute raised in the written statement of under valuation of the suit is a vexatious one, bereft of any particulars. Nothing is stated, as to on the basis of which sale/purchase transaction, the valuation given by the plaintiff is incorrect.

13. Faced with the aforesaid, the counsel for the defendants states that a Memorandum of Understanding (MoU) was entered into between all the family members and the original thereof is in the custody of the plaintiff though a copy thereof is in the custody of the sister of the defendant no. 1 and who is out of station and owing where to the counsel could not bring the said MoU to the Court today.

14. There is no plea also in the written statement to the said effect.

15. The counsel for the defendants then seeks adjournment by seven days to amend the written statement.

16. The aforesaid request cannot be entertained. Suits cannot be kept pending after they have been heard and to allow parties to amend their pleadings.

17. The suit is thus decreed for possession in favour of the plaintiff and against the defendants no. 1 and 2 for possession of flat aforesaid on the second floor of property No. 21/13, Old Rajinder Nagar, New Delhi. As per Bhagwati Prasad Vs. Shri Chandramaul, and R.S. Madanappa and Others Vs. Chandramma and Another, , a decree for mesne profits follows a decree for possession. However an inquiry under Order 20 Rule 12 has to be held to determine the rate of mesne profits. Considering the nature of the dispute, it is not deemed appropriate at this stage to order such inquiry in as much as the suit has been decreed within six months of institution thereof. Liberty is however given to the plaintiff to apply for such inquiry if the defendants no. 1 and 2 resist the execution of the decree. The plaintiff shall also be entitled to costs equivalent only to court fee of Rs. 25,785/- paid on the plaint. Decree is confined against defendants no. 1 and 2 since the defendants No. 3 and 4 are minors and no steps were taken for appointment of their guardian. The decree sheet be drawn up.

18. The counsel for the defendants at this stage states that he has instructions from the defendants to state that they are willing to give an undertaking to

vacate the said flat after the examination of the children (defendants no. 3 and 4) scheduled in March-April, 2013 are over. Liberty is granted to the defendants No. 1 and 2 to file affidavits of undertaking to the said effect and on filing whereof this request shall be considered.