
(2009) 07 DEL CK 0312

In the Delhi High Court

Case No : IA No. 706 of 2009 in CS (OS) No. 1857 of 2006 and IA No. 320 of 2008 in CS (OS) No. 761 of 2007

KSD Properties Pvt. Ltd.

APPELLANT

Vs

P.P. Design Estate
 P.P. Design Estate and Others Vs
Geeta Devi and Another

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 5, Order 12 Rule 6, Order 14 Rule 5, 151

Citation : (2009) 07 DEL CK 0312

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : J.P. Gupta and Rikky Gupta, in IA No. 706/2009 in CS OS No. 1857/2006 and Rahul Gupta, Gagan Gupta, Rajnish Mishra, Raman Kapoor and Aanchal Dhingra, in IA No. 320/2008 in CS OS No. 761/2007, for the Appellant; Rahul Gupta, Gagan Gupta, Rajnish Mishra, Raman Kapoor and Aanchal Dhingra, in IA No. 706/2009 in CS (OS) No. 1857/2006 and Deep Dhamija, for Def. No. 1, J.P. Gupta and Rikky Gupta for Def. No. 2 in IA No. 320/2008 in CS (OS) No. 761/2007, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—By this order I propose to decide two applications being I.A No. 706/2009 under Order XII Rule 6 read with Section 151 CPC in CS (OS) No. 1857/2006 filed by the plaintiff in this case for passing a decree of possession in favour of the plaintiff and against the defendant in respect of property bearing No. R-2, Green Park, New Delhi on the basis of admissions made by the defendant and IA No. 320/2008 u/s 151 CPC in CS (OS) No. 761/2007 filed by the plaintiff in that case for consolidation of the two connected suits.

2. Issues in CS (OS) No. 1857/2006 were framed on 6th August, 2007 and the same read as under:

1. Whether the tenancy of the defendant was terminated by way of abundant

caution by a legal and valid notice dated 31st August, 2005 and 23rd July, 2005, if so, to what effect? OPP

2. Whether the plaintiff is the owner of the property No. R-2, Green Park, New Delhi? OPP

3. Whether the defendant is an unauthorised occupant in respect of the suit property? OPP

4. Whether the plaintiff is entitled to a decree for possession? OPP

5. Whether the plaintiff is entitled for damages/mesne profits, if so, at what rate and for what period? OPP

6. Whether the plaintiff is entitled for interest, if so, on what amount, at what rate and for what period? OPP

7. Whether the suit has been instituted by a duly authorised person and verified in accordance with law? OPP

8. Whether the suit has been properly valued or the purpose of Court fees and jurisdiction for the relief of possession? OPP

9. Whether the suit is bad for non joinder of parties? OPD

10. Whether the defendant is in occupation of the suit property in part performance of an oral agreement to sell? If so to what effect? OPD

11. Relief.

3. After framing of the issues, directions were issued to lead evidence, however, the defendant filed an application being IA No. 10475/2007 under Order XIV Rule 5 read with Section 151 CPC for framing of additional issues. Pursuant to this application, an additional issue was framed on 12.09.2007 to the following effect:

12. Whether the suit of plaintiff is barred on account of Estoppel and Acquiescence as alleged by the defendant? OPD

4. While disposing of this application on 12th September, 2007 the court has specifically observed that as far as issue No. 1 is concerned, the burden to prove that the defendant has no right in the property and that the plaintiff is entitled to recover the possession from the defendant is on the plaintiff. Similarly, the court observed that as regards Issue No. 4 which contemplates whether the plaintiff is entitled to a decree for possession or not, the plaintiff will have to prove all the facts averred in the plaint for recovery of possession including the fact that there was a license for one month which was terminated by Smt. Gita Devi and the termination of tenancy by the plaintiff was by way of abundant caution.

5. It was further observed in para 11 of the order dated 12th September, 2007 that in order to establish that the plaintiff is entitled to recover the possession from the defendant, the plaintiff shall have to prove the averments made in the

plaint including the averment that Smt. Gita Devi had created a license in favour of the defendant. This application was partly allowed.

6. By order dated 12th October, 2007 it was recorded that the affidavit of evidence had been filed and the matter was put up for cross examination of plaintiff s witness PW 1 on 17th January, 2008.

7. It appears from the record that when the matter was again listed on 17th January, 2008, PW 1 Mr. K.S. Dhaka was present for cross examination and the defendant pointed out to the Joint Registrar that it had filed an application for consolidation of this suit with another suit being CS (OS) No. 761/2007 which is pending consideration. In light of this fact, the defendant did not cross examine PW 1.

8. The matter was listed on 27th February, 2008 when it was again sent to the Joint Registrar for cross examination of the plaintiffs witness on 12th March, 2007 and by this time also, the other suit had not been consolidated with the present suit. This order was challenged by way of appeal by the defendant being FAO(OS) No. 111/2008 which was disposed of with the direction that the proceedings in CS (OS) No. 761/2007 be expedited so that at a later stage both the suits can be taken up for final hearing and decided together. As far as the application seeking consolidation of the two suits is concerned, there was a direction by the Division Bench that the same shall be taken up for consideration and decided at an early date.

9. Thereafter, the present application under Order XII Rule 6 CPC was filed by the plaintiff.

10. The case of the plaintiff is that it had purchased the suit property by virtue of two registered sale deeds dated 17th May, 2005 from its erstwhile owner Smt. Gita Devi for valuable consideration. The defendant in the suit is in unauthorised occupation of the suit property to the detriment of the plaintiff. There is no document executed by either Smt. Gita Devi or by the defendant in the present suit and as such the defendant is in unlawful occupation of the suit property.

11. The contention of the plaintiff is that after purchasing the suit property legal notices dated 23rd July, 2005 and 3rd November, 2005 were sent calling upon the defendant to hand over the suit property else the defendant would be liable to pay damages. As the defendant did not reply to the said legal notices and retained the possession, therefore, the plaintiff had to file the present suit.

12. I have heard the learned Counsel for the parties in the pending application. Learned Counsel for the defendant has argued that there is no admission on the part of the defendant in the written statement. Rather, the defendant has contested the suit very seriously. Learned Counsel has referred to para 4, 5, 13, 26, 30 and 38 of the written statement as well as various paras of the written statement on merit.

13. As regards the present application under Order XII Rule 6 of the CPC, 1908, I

have gone through the submissions of both parties as well as the written statement of the defendant very carefully. I have also perused the decisions submitted by the parties.

14. I find no merit in the contentions of the plaintiff as I have not come across a single admission on part of the defendant in its written statement, contrary to all that has been averred by the plaintiff. The paragraphs cited by the plaintiff in its application as paragraphs of admissions by the defendant do not appear to be admissions at all.

15. There are many decisions wherein the meaning and scope of "admission" as regards Order XII Rule 6 CPC has been discussed. One such case is that of R Raj Kumar Chawla Vs. Lucas Indian Services, wherein it has been held as follows:

5. The expression "Admission" has been given a wider meaning and connotation so as to take within its ambit admissions made by a party in pleadings or otherwise, orally or in writing. These provisions thus are capable of liberal construction and without imposition of any unreasonable restriction, must be permitted to operate but the Courts have to be careful while passing a decree on admission. The Court essentially should look into the fact that all essential ingredients of an admission are satisfied before such a decree is passed in favour of any of the parties to the suit. Admission has to be unambiguous, clear and unconditional and the law would not permit admission by interference as it is a matter of fact. Admission of a fact has to be clear from the record itself and cannot be left to the interpretative determination by the Court, unless there was a complete trial and such finding could be on the basis of cogent and appropriate evidence on record.

7. Admission, understood in its common parlance still must be a specific admission. There is a very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission on the part of a party to the suit. The Court has to consider the need for passing a decree on admission under these provisions only in the cases of first category and normally should decline in the cases of the latter category.

16. Keeping in mind the scope of "admission" as given in the above cited judgment, I find that there is not a single instance in any pleadings or elsewhere where the defendant has admitted any such thing as claimed by the plaintiff. Further, evidence has already been submitted by the plaintiff in the present case. At this stage, considering all the above-stated facts, it would not be appropriate to allow the plaintiffs application. Application disposed of accordingly.

17. As regards I.A No. 320/2008 in C.S (OS) No. 761/2007 for consolidation of both connected matters, I find no valid reason on record as to why the suits should not be consolidated.

18. The suit referred was filed by the plaintiff P.P. Design Estate in CS (OS) No.

761/2007 for specific performance and mandatory injunction against the defendants Smt. Geeta Devi and M/s KSD Properties Pvt. Ltd. in respect of same property bearing number R-2, Green Park, New Delhi. Allegedly, defendant No. 1 sold the said property by oral contract to the plaintiff and then illegally executed two sale deeds in favour of defendant No. 2 with regard to the same property. The defendant No. 2 in this case is the plaintiff in C.S (OS) No. 1857/2006 wherein it has claimed absolute title and interest over the suit property on the basis of the said two sale deeds. In that case also, the plaintiff herein has filed its written statement unequivocally pleading the existence of an oral agreement with Smt. Geeta Devi as regards the suit property, with a total sale consideration of Rs. 1.50 Crore besides other terms.

19. A perusal of the pleadings in both the suits and the issues framed clearly show that both the suits are to be consolidated to avoid multiplicity of proceedings, delay and unnecessary expense. The issue of possession of the plaintiff as regards the suit property, rights of defendant No. 2 as regards the same and existence of oral agreement between plaintiff in the present case and Smt. Geeta Devi are all relevant questions for consideration in both the suits. Further, such consolidation shall relieve the parties of adducing the same evidence twice and shall ensure that all issues and matters are heard and tried at once and then decided.

20. I hereby allow this application and accordingly consolidate CS (OS) No. 761/2007 with CS (OS) No. 1857/2006 titled "K.S.D. Properties Pvt. Ltd. v. P.P. Design Estate" for trial and decision. It is directed that the evidence of the parties shall be recorded in earlier matter being CS (OS) No. 1857/2006.

CS (OS) No. 1857/2006 & CS (OS) No. 761/2007

List these matters before the Court on 7th October, 2009.