

(1999) 12 DEL CK 0119
In the Delhi High Court
Case No : FAO (OS) 89 of 1997

Kusum Sanghi and Others

APPELLANT

Vs

Shri Raj Kishan Das

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : (2000) 1 AD 810 : (2000) 83 DLT 327 : (2000) 52 DRJ 604 : (2001) 2 RCR(Criminal) 462 : (2001) 1 RCR(Rent) 475

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Pradeep Nandrajog, for the Appellant; Mr. Arun Mohan, Mr. Rajnish Ranjan, Mr. N.K. Kantawala and Ms. Vaishalei Mehra, for the Respondent

Judgement

S.K. Agarwal, J.—ADMIT. Learned counsel for the parties stated that as record is available final arguments be heard. Accordingly we are disposing of the appeal itself by this order.

2. This appeal is directed against an order passed on 2nd April, 1997 by learned Single Judge of this Court in is No. 4674/96 (in Suit No. 2968/95) allowing the application filed by plaintiff-respondent under Order 40 Rule 1 of the Code of Civil Procedure, 1908 (for short Code), appointing receiver to take possession of the basement and the ground floor of the premises No. 9 Western Avenue, Maharani Bagh, New Delhi (for short suit premises) from the defendants appellants; to lease out the same, and for depositing the money received every month in the court.

3. Facts giving rise to this appeal are that on 19th December, 1995 the respondent/plaintiff filed a suit for mandatory and permanent injunction, initially against his sister Kusum, (defendant no. 1). After the written statement was filed by the defendant No. 1 as per the orders of the court. Ms. Priya (daughter of defendant No. 1), her husband Vishal Gupta and Rajat Gupta, (son of defendant No. 1) were also imp leaded as defendant Nos. 2, 3 and 4 respectively. Amended

plaint was filed. In the suit it was alleged that the plaintiff is the owner of the suit premises being original allottee from Maharani Bagh Cooperative House Building Society. He had paid all the dues to the society, for allotment of the said plot. On behalf of the President of India, a lease of the said plot was executed in his favor as sub-lessee and society as lessee which was registered in the office of the Sub-Registrar, Delhi on 11.1.82. It was alleged that earlier he used to reside with his family at Pusa Road, New Delhi and his sister, Kusum (defendant No. 1) was residing with her in-laws house, at 4 Ring Road, Kirllokri, New Delhi. The plot was to be constructed, as per the terms of the lease, within a period of two years. He got the period of construction extended from time to time and ultimately on 28th October, 1994 plans were got sanctioned, and construction was started, as per the sanctioned plans after payment of stocking charges and other dues to the Municipal Corporation of Delhi (for short MCD) in Nov.-Dec. 94 : After inspection "C" and "D" forms were granted by the MCD on 23rd Sept. 1995 and 9th Oct. 1995 respectively. It was further alleged that as the premises in question were about 5 minutes walk from Ring Road. Kirllokri, New Delhi - i.e. matrimonial home of his sister (defendant No. 1) and he was living at a far of distance at Pusa Road, Therefore, when the property was near completion, he used to leave the keys of the suit premises with his sister in good faith, for better supervision. It was also pleaded that he had taken a loan of about Rs. 9 lakhs for construction of the said property and had planned to rent out the basement and ground floor, to enable him to pay off the loan and to himself live on the first floor and the second floor. However on 18th December, 1995 his sister (defendant no. 1) declined to give him the keys of the ground floor; only then he realised that the intentions of his sister were not honest. It was alleged that while the construction of house was in progress the defendants seemed to have created evidences, claiming some rights in the suit premises; and his sister (defendant No. 1) was setting up her daughter, Priya (defendant No. 2), who had started claiming half share, in the suit property on the basis of an alleged oral trust created in her favour, by Shri Jai Kishan Dass, her maternal grand father (plaintiff's father). On the basis of the above averments the plaintiff sought a decree of permanent prohibitory injunction restraining the defendants and their agents etc. from interfering with his possession in the suit premises and also a mandatory injunction to direct the defendants to hand over the keys of the ground floor and the basement of the suit premises to him.

4. Defendant No. 1, Mrs. Kusum Sanghi (plaintiff's sister), filed a written statement on 14th March, 1996 pleading therein that in 1981-82 her husband, O.P. Sanghi had suggested to her father Shri Jai Kishan Dass that there was an opportunity to invest in a residential plot of land in Maharani Bagh, New Delhi and pursuant to the same, a plot of land (suit premises) was applied for, in the name of the plaintiff, with an understanding that the plot would be acquired partly for the benefit of the plaintiff, and partly for the benefit of her children as and when they attain majority and that Jai Kishan Dass would designate one of her children who would be the beneficiary of the half share in the said property.

It was claimed that a sum of Rs. 8,000/- was paid by her out of the savings of her daughter Priya (Defendant No. 2) to said Shri Jai Kishan Das. It was further claimed that after Priya attained majority on 27th January, 1988 Shri Jai Kishan Dass, in the presence of near relations, declared that the half share of the suit property which was being held in trust, by the plaintiff shall thereafter be held by him for the benefit of Priya, (defendant No. 2), who would first construct a residential Building, on the said plot, against her half share i.e. basement and the ground floor, and thereafter the plaintiff could carry out further construction i.e. first floor and second floor against his half share.

5. It was alleged that Jai Kishan Dass and the plaintiff confirmed delivery of the suit plot to Priya, defendant No. 2, who in turn appointed Mr. H.V. Mahendru of M/ as Designs Atelier Architects, for drawing up plans of the residential building on the said plot and the expenses were borne by her. After getting the plans sanctioned in 1991, defendant No. 2 appointed M/s. Gannan Dunkerly & Co. for carrying out construction of her share of residential unit on the said plot. The contractors carried out the construction of the building and her total liability towards the cost of construction of the basement and the ground floor worked out to be Rs. 3,39,864, in addition she also incurred liability of Rs. 3,57,459/- towards electrical and plumbing work etc. It was further pleaded that Priya (defendant No. 2) moved into in the basement and the ground floor on 25th November, 1995 and started living with her husband, she got issued ration card on 18th December, 1995, she got domestic gas connection a telephone connection at the said address and also an insurance cover against the premium of Rs. 1,069/- and has been continuously in possession of the said property. Similar stand was taken by defendants 2 and 3 in their written statement. Defendant no. 4 did not file any separate written statement.

6. After pleadings were completed plaintiff-respondent filed an application under Order 40 Rule 1 of the CPC seeking appointment of a receiver in respect of the suit premises. Learned trial court vide the impugned order dated 2nd April, 1997 found it just and proper to appoint a receiver, empowering him to take possession of the suit property i.e. basement and the ground floor and to lease out the same and to deposit every month in the court the amount received. This order is under challenge in this appeal.

7. We have heard learned counsel for the parties and done through the record.

8. Perusal of the record shows that after the impugned order had been passed, when the suit came up for hearing learned trial court examined the plaintiff and defendants 1 and 2 under Order 10 Rule 2 of the Code with a view to elucidate the controversy in the suit. Their respective statements read as under :-

plaintiff Raj Kishan Dass states as follows :-

"In the year 1991, construction of one room on the land in suit was made in order to get away from the penal rules of DDA. There- after in the year 1994, the basement in the property in dispute was constructed. The construction were on

and the ground floor, first floor and bar sati of the property in dispute were completed by the end of December, 1995. I had engaged a labour contractor Zamir Ahmed, who provided labour, and the material was purchased by me in that purchase, I had taken the help of defendant no. 1 to get the material at the right price. The entire money was paid by me. The plans of the entire building on the property in dispute were prepared by architect Mahendroo to whom defendant No. 1 had taken me and helped me in getting the plans prepared. I took a loan of Rs. 9 lakhs from different financiers. The details of loans have been filed through documents."

RO & AC sd/- sd/- Judge Defendant No. 2 Ms. Priya Gupta states as follows :-

"The trust about which pleadings have been made in para 12 of the written statement filed by me was not written. It was only oral. I never paid any money to Maharani Bagh Cooperative House Building Society. Since the land of the property in dispute was in the name of plaintiff. The sanction plans were got in the name of plaintiff at the same could not have been in my name. Since under the trust right to construct the basement and the ground floor was with me and the right to construct the first floor was with the plaintiff. I never made any attempt to get the land in dispute partitioned."

RO & AC sd/- sd/- Judge Defendant No. 1 Ms. Kusum Sanghi states as follows :-

"The trust about which pleadings have been made in para 12 of the written statement filed by me was not written. It was only oral."

RO & AC sd/- sd/- Judge On 2nd February, 1999, on the basis of the pleadings, the learned trial court framed the following issues :-

1. Whether any trust was created in favor of defendant No. 2 as alleged in the written statement."
2. Whether a trust as alleged could be a valid trust in view of the provisions of Section 5 of the Indian Trusts Act?
3. Whether the defendant No. 2 has right, title or interest as owner in the basement and ground floor of the property in dispute and whether the plaintiff did not raise any claim adverse to any right, title and interest of defendant No. 2 in this case the same as well as in 1/2 share in the land in dispute?
4. In case the issues 1 and 2 are decided against the defendants, whether the defendants can still raise the plea of ownership of the basement and ground floor in the property in dispute?
5. Relief."

9. The suit has now been fixed for hearing and disposal of issue no. 2 as a preliminary issue.

10. It was argued by learned counsel for the appellant-defendant that learned court misapplied the principles for appointment of a receiver, as this power can

be exercised only for preservation of the suit properties pending final adjudication of the suit. It was argued that the plot in question was acquired in the year 1981-82 by the respondent-plaintiff at the suggestion of husband of defendant No. 1 to said Jai Kishan Dass (father of plaintiff) for the benefit of the plaintiff and for the benefit of her children: thus the plaintiff was holding the said plot in trust, for the benefit of her children. Defendant No. 2 was nominated by Shri Jai Kishan Das as a beneficiary after she attained majority on 27.1.88. There-after defendant No. 2 constructed the basement and the ground floor on the said plot of land towards her half share in the property during the years 1991-95 and that the stand taken by the respondent-plaintiff in the replication is at variance with the pleadings in the plaint. It was further argued that after defendant No. 2 had completed the construction of basement and the first floor in Nov.-Dec. 1995; she started living there along with her family members and that the parties were related to each and the law governing the family settlements has been totally ignored. Thus it was argued that the impugned order was not sustainable in law. Learned counsel for the respondent argued to the contrary.

11. At the outset it may be mentioned that the issue whether the trust as pleaded by the appellants in the written statement was created in favor of defendant No. 2 and whether such a trust would be valid, in view of Section 5 of the Indian Trust Act, is pending adjudication before the learned trial court, and any observation made by us in this regard is bound to prejudice the case of either party. Therefore, we are restraining ourselves in making any observation in this regard.

12. The averments made in the pleadings and the documents on record prima facie lead to the following conclusions :

(i) The plot bearing No. 9 Western Avenue, Maharani Bagh, New Delhi was acquired by the plaintiff by means of a perpetual sub- lease dated 7.1.82 duly registered with the Sub-Registrar on 11.1.82 executed on behalf of the President of India in his favour. The plaintiff had applied to the Maharani Bagh Cooperative Society for allotment of the plot on 10.4.66 and vide resolution dated 23.7.66 he was admitted to its membership. Further DDA vide communication dated 12.7.70 also approved this resolution of the society. The cost of the plot was made from the account of the plaintiff. Therefore the plea of the defendants that the plot in question was acquired in the year 1981-82 at the suggestion of O.P. Sanghi, husband of defendant No. 1 or that for the benefit of the plaintiff and for the benefit of her children is not sustainable.

(ii) The plaintiff, respondent is the sole owner of the plot in question as the defendant/appellants failed to place on record any document in support their claim for half share of the said plot or in support of their claim that after defendant no. 2 had attained majority on 27.1.88 and she was nominated to be the beneficiary of the said plot by said Jai Kishan Das in the so called family settlement.

(iii) With regard to the plea of defendant No. 2 that in 1991, she got constructed, the basement and the ground floor on the same through M/s. Gannon and Dunkerley & Co. contractors. It is curious to note that no payment is shown to have been made by any of the appellants to the contractors from 1991 to 1995. Their claim that the construction was carried out on 100% deferred payment basis prima facie appears to be inherently improbable and unworthy of credence. In addition, the file of correspondence between the defendant No. 2 and the contractors M/s. Gannon and Dunkerley & Co. is claimed to have been destroyed in a fire which is stated to have taken place on 16.10.96 in the kitchen i.e. about 10 months after filing of the suit.

(iv) Visual comparison of the typed words on the photocopies of the correspondence regarding construction of the basement and ground floor on the said plot, between the defendant No. 2 and her contractors M/s. Gannon and Dunkerley & Co. prima facie reveal striking similarities in the alignment, formation and combination of several letters, suggesting that these documents may have been typed on the same typewriter at same point of time.

13. Above circumstances prima facie suggest that the case put forth by the appellants-defendants with regard to their claim for half share of the plot and with regard to the construction of the basement and the ground floor on the said plot is not free of the basement and the ground floor on the said plot is not free from doubt. We propose to stop here as detailed evaluation of the various documents would prejudice the case of the parties during the trial of the suit, which is still pending.

14. In view of our above conclusions, arguments made on behalf of the appellants as to when the construction had actually started or the stand of the plaintiff in the plaint is at variance with their stand in the rejoinder are of no consequence. We are also not impressed by the argument of the learned counsel for the appellant that the parties are closely related to each other and the family arrangements are not governed by the principles, which are applicable to the dealings between the strangers, Therefore, a broader possible view to the matter should be taken. As observed above, no document has been placed on record by the appellants/defendants in support of their claim of ownership of the plot or the alleged family settlement.

15. As per the settled law, appointment of a receiver under Order 40 Rule 1 of the Code of Civil Procedure, in respect of an immovable property, is one of the harshest remedies. The court can appoint receiver only when it appears just and convenient to do so, but the discretion cannot be exercised arbitrarily, it must be exercised judiciously and with caution. The aim is merely to preserve the property and to preserve the benefits, if any, flowing from it. Normally a person in bona fide possession of the property should not be disturbed. plaintiff's own rights must be reasonably clear and beyond doubt and lastly the court by appointing receiver should not arrive at any final decision.

16. In consonance with the above principles and in view of our above noted observations and conclusions, we are of the view that possession of the appellants defendants on the suit property is prima facie not bona fide. There are substantial grounds justifying the appointment of the receiver to preserve the property and the benefits accruing from its use. If the same are not preserved, it would cause irreparable loss and injury to one of parties. Under these circumstances it is in the interest of justice to appoint a receiver to take possession of the basement and the ground floor of the premises No. 9, Western Avenue, Maharani Bagh, New Delhi (suit property) from Smt. Priya, appellant No. 2 or from anybody else occupying the same and to lease out the same at a suitable rent and to deposit the rent in court month by month.

17. The findings and the conclusions arrived at by the learned trial court are wholly justified and in accordance with law and do not call for any interference. Learned single Judge has rightly exercised the discretion on settled principles governing appointment of receiver. While sitting in appeal it will not be permissible for us to interfere with the exercise of discretion of learned single Judge in view of the decision of the Supreme Court in *Wander Ltd. and Another Vs. Antox India P. Ltd.*, , since it is not shown that discretion has been exercised arbitrarily, or perversely.

18. The appeal has no merit and is dismissed. No order as to costs. However, we make it clear that any observation made by us in this order or by learned single Judge in the impugned order, shall not be taken as observations on the merit of the case during the trial.