

(2009) 12 DEL CK 0288
In the Delhi High Court
Case No : CM (M) No. 370 of 2008

Madhukar Rao Pimpalpure

APPELLANT

 V_S

Smt. Meena Pimpalapure and Another

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Constitution of India, 1950 — Article 227

Evidence Act, 1872 — Section 70

Citation : (2010) 114 DRJ 418

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.P. Kalra and Sanjay Kalra, for the Appellant; Neeraj K. Kaul R.N. Karanjawala, Akshay Makhija and Akhil Sachar, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This petition under Article 227 of the Constitution of India has been preferred by the plaintiff in the suit before the trial court and against the order dated 24th October, 2007 of the trial court allowing the application of the respondent/defendant No. 1 in the suit, under Order 6 Rule 17 of the CPC.

2. The petitioner/plaintiff had instituted the suit from which this petition arises pleading that he is the purchaser of a plot of land measuring 2403 sq. yds. situated at 5A, Metcalf Road, Civil Lines, Delhi-6; that he had constructed a ground floor, first floor and second floor thereon after obtaining the sanction from the MCD impleaded as defendant No. 2 in the suit; that the petitioner/plaintiff by a gift deed dated 21st August, 1974 transferred the first and second floor of the said property to the respondent/defendant No. 1 who is the wife of the brother of the petitioner/plaintiff; that the petitioner/plaintiff however continued to be the exclusive owner of the entire land ad measuring 2403 sq. yds. and the ground floor constructed thereon; that the respondent/defendant No. 1 had however been intending to erect additional construction on the open terrace of the first

floor. This suit was, therefore, filed to restrain the respondent/defendant No. 1 from raising any additional construction and/or to restrain the MCD from permitting the same.

3. The respondent/defendant No. 1 contested the suit by filing a written statement. In response to paras 2&3 of the plaint, where it was inter alia averred that vide deed the first and second floor had been gifted to the respondent/defendant No. 1 and the petitioner/plaintiff continued to be the exclusive owner of the entire land and the ground floor, reference was made to Clause 3 of the gift deed which reads as under:

3. That the Donee shall have all rights of passage and easement appurtenant to the property gifted and shall have full rights of construction over the property gifted. This gift is irrevocable.

It was also the plea of the respondent/defendant No. 1 that she was intending to only carry out repairs and improvements to the first and second floor of the property and could not be prevented from doing so; it was also pleaded that in fact it was the petitioner/plaintiff who had been locking the front gates of the property and obstructing the free passage of the respondent/defendant No. 1 and her family members.

4. The petitioner/plaintiff amended the plaint to also seek the relief of mandatory injunction directing the MCD to demolish the unauthorized construction on the first floor of the property. In response to the amended plaint, the respondent/defendant No. 1 filed a written statement and in which certain changes not relatable to the amendment in the plaint were made. The trial court deleted the unauthorized changes in the written statement with liberty to the respondent/defendant No. 1 to apply for amendment. Thereafter the application for amendment from the order allowing which this petition has been preferred was filed. The respondent/defendant No. 1 by way of said amendment sought to give the brief history of the family and to take the plea that the petitioner/plaintiff and the husband of the respondent/defendant No. 1 were joint in business; that the land underneath the property subject matter of the suit had been purchased by the husband of the respondent/defendant No. 1 in the name of the plaintiff; that after raising construction on the said property the families of the two brothers started residing therein; that the gift deed was executed in the circumstances aforesaid and even after the gift deed the respondent/defendant No. 1 kept on using the ground floor also of the property.

5. The trial court has however disallowed the said amendments holding the same to be irrelevant for adjudicating the matter in controversy. The trial court has however permitted certain other amendments. However, the senior Counsel for the petitioner/plaintiff has challenged only one part of the amendment allowed, where the respondent/defendant No. 1 has been permitted to plead.

It is clear from the Gift Deed that the answering defendant has a right of passage and easement appurtenant to the property gifted and shall have full

rights of construction over the gifted property. The present suit has been filed just to harass the answering defendant to compel them to bow to their demand. The plaintiff is interfering in the rights of the answering defendant, sometimes while parking vehicles in the area and also interfering in the rights of uninterrupted egress and ingress thereby locking the gates off and on. The answering defendant is the owner of 2/3rd share in the undivided land of the property bearing No. 5A, Metcalf Road, Civil Lines, Delhi.

6. The senior Counsel for the petitioner/plaintiff has urged that the petitioner/plaintiff is aggrieved by the order in so far as allowing the respondent/defendant No. 1 to take a plea of having rights in the ground floor also and of being the owner of 2/3rd share in the undivided land of the property. It is his contention that the said amendment ought not to have been allowed being in withdrawal of admission made in the written statement as originally filed, of the respondent/defendant No. 1 being the owner only of the first and second floor of the property.

7. The senior Counsel for the respondent/defendant No. 1 at the outset informed that the respondent/defendant No. 1 has also instituted a suit in this Court for declaration of her rights in the property i.e. of 2/3rd share in the land underneath the property, in the first and the second floor and to the passage, right of parking etc. on the ground floor. It was his contention that since the rights of the parties in the properties shall be adjudicated in the suit pending in this Court and since the suit from which this petition arises is merely for injunction, the matter could be disposed of leaving the said rights to be decided in the suit pending before this Court. However, the said course of action is not agreeable to the senior Counsel for the plaintiff. It is his contention that since the declaration of rights has been claimed by the respondent/defendant No. 1 in the suit in this Court, the respondent/defendant No. 1 should withdraw the application for amendment. This was not agreeable to the respondent/defendant No. 1. Arguments were heard on 18th November, 2008 and the petition ordered to be dismissed and the earlier order in these proceedings staying proceedings before the trial court was vacated, with reasons to follow which are given herein below.

8. I am unable to accept the contention of the senior Counsel for the petitioner/plaintiff that the amendment to which objection is being taken is in withdrawal of any admission. On a reading of the written statement as originally filed, it cannot be said that the respondent/defendant No. 1 has admitted having no share in the land underneath the property or having a right only in the first and second floor of the property. As noticed above, the respondent/defendant No. 1 in the written statement as originally filed has also referred to the paragraphs of the gift deed whereunder the respondent/defendant No. 1 is also entitled to rights of passage and easement appurtenant to the property gifted.

9. I would even otherwise be loath to hold that the rights, if any, of the respondent/defendant No. 1 in the land or on the ground floor could be held to have been given up/written off/abandoned merely because of lack of astute

drafting of her counsel. It is significant to note that the suit was only for relief of injunction restraining the respondent/defendant No. 1 from raising construction above the first floor. The suit was not for declaration that the petitioner/plaintiff alone was the owner of the entire land underneath the property or that the respondent/defendant No. 1 had no share therein. Undoubtedly, in paras 2&3 of the plaint it is claimed that under the gift deed the respondent/defendant No. 1 had become the owner of the first and second floor (super structure) and that the petitioner/plaintiff continued to be the exclusive owner of the entire land, and the response thereto is sketchy and not as would have been expected of a person steeped in law. However, for a litigant to be held to have admitted to a factual position and as important as rights/share in immovable property, it is essential that the said factual position should be the core issue in the suit. It is only then that it can be said that an admission can affect such rights. Otherwise, careless drafting, in response to a suit in which the share/rights in property are not the core issue or to be adjudicated, cannot be held to deprive a party of such property rights. The Supreme Court in *Fritiz T.M. Clement and Another Vs. Sudhakaran Nadar and Another*, has held that a party should not be penalized for the cryptic drafting of its advocate.

10. The Division bench of this Court in *Raj Kumar Chawla Vs. Lucas Indian Services*, while discussing as to what is an admission, referred to Section 70 of the Evidence Act and held that the essential feature of an admission is that it should be concise and deliberate; it must not be something which was not intended and was not the intention of the party. Reliance was also placed on the definition in the *Black's Law Dictionary* explaining the word admission as "statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true". Further the Supreme Court recently in *Sumesh Singh Vs. Phoolan Devi and Others*, has held that only a categorical admission cannot be resiled from; where the averments made in the plaint have merely been denied, there is no categorical or unequivocal admission as such and the question of resiling therefrom does not arise. The Supreme Court as far back as in *All India Reserve Bank Employees Association Vs. Reserve Bank of India*, has also observed that title cannot pass by a mere admission. The same view was also recently followed in *Roop Singh Vs. Murti Sri Radha Krishan Ji*, .

11. Thus, for an admission to be enforced it has to be shown that the party admitting was conscious of the effect of the admission. In the present case, it cannot be said that the respondent/defendant No. 1, at the time of signing the written statement was conscious that by a vague response to para 2&3 of the plaint she would be giving up her rights, if any, in the land or on the ground floor of the property.

12. It is to avoid such contingencies only that registration is mandatory for transfer of any rights in property; the same cannot be transferred by a non registered document. The intent was to provide a formal procedure by which

rights in immovable properties can be conveyed, surrendered, abandoned or transferred. However, if by casual traverse in pleadings in suits in which such rights are not in issue, the same be held to have been surrendered or abandoned, it would not serve the purpose of the statute. It has to be remembered that pleadings are drafted often by advocates who may not, owing to lack of experience or otherwise, be as careful as they ought to be. The courts have often commented on such practices. The rights to immovable properties cannot be allowed to be affected by such drafting of pleadings.

13. The senior Counsel for the respondent/defendant No. 1 has also urged that it was not even the plea of the petitioner/plaintiff before the trial court that there was any admission and the said argument has been taken in this Court for the first time. He has taken me through the reply filed by the petitioner/plaintiff to the amendment application and in which the amendments are opposed only on the ground of being irrelevant for adjudication of the matter in controversy. The order of the trial court also does not discuss any aspect of amendment being in withdrawal of an admission. Once it was the own case of the petitioner/plaintiff before the trial court that the amendments claimed were irrelevant for adjudication of the matter in controversy in the suit, it lends support to what has been observed herein above that the respective rights of the parties in the property were not to be adjudicated in the suit and hence there could be no admission by the respondent/defendant No. 1 of any such rights of the petitioner/plaintiff or of the respondent/defendant No. 1 having no such rights in land or on the ground floor.

14. The senior Counsel for the respondent/defendant No. 1 has also urged that even if there is any admission, the courts have held that the same can be explained; that the amendment of the written statement is more liberal; that the defendant is entitled to take inconsistent pleas. He has also handed over a compilation of judgments to support his arguments but in view of what has been observed herein above, I do not consider it necessary to cite the said judgments. Suffice, it is to state that if it were to be held that the right in immovable property can be abandoned/surrendered by treating admissions with respect thereto in the pleadings, the same would encourage a mode of transfer of immovable property hitherto unknown to law.

15. In the circumstances aforesaid, it cannot be said that the trial court in allowing the amendment of the written statement to the extent allowed has exercised jurisdiction with material irregularity.

There is no merit in the petition. The same is dismissed. The interim order made in these proceedings staying further proceedings before the trial court is vacated.

No order as to costs.