

(2012) 08 DEL CK 0361

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 50 of 2010

Madhvi Mehra

APPELLANT

Vs

Kaushalaya Devi Educational Trust and Ors

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151, 92
Specific Relief Act, 1963 — Section 34
Trusts Act, 1882 — Section 19, 57, 61

Citation : (2012) 08 DEL CK 0361

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Bakshi Bikram Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—Mrs. Madhvi Mehra, appellant, has filed the present appeal against the order dated 23rd December, 2009 passed in I.A.No.7808/2006 in CS(OS)No.514/2006 whereby the application of the respondents No.2 and 3 under Order VII, Rule 11 CPC for rejection of the plaint was allowed and the suit of the plaintiffs Mrs. Koran Sibal and Mrs. Madhvi Mehra (appellant) was dismissed being barred by principle of res judicata as well as barred by limitation. Mrs. Kiran Sibal is the mother of Mrs. Madhvi Mehra. Both filed the suit for rendition of accounts of respondent No.1 trust managed by respondents No.2, 3 and 4 and for a decree of declaration against the 28 occupants of flats/apartments as existing on piece of land under Khasra Nos.373, 374, 694/375 admeasuring 8 bighas and 12 biswas of land bearing plot Nos.3, 4, 5 & 6 in an area known as Kaushalaya Park, Hauz Khas, New Delhi, be declared as properties of respondent No.1. The said occupants of the same were impleaded as parties in the suit as defendants No.5 to 33 and also to declare that all acts, deeds and things done by the respondents No.2, 3 and 4 are in respect of suit properties of respondent No.1.

2. Admittedly, Mrs. Kiran Sibal, who was plaintiff No.1 in CS(OS) No.514/2006 has not challenged the impugned order passed by the learned Single Judge.

3. Upon service, respondents No.2 and 3 filed an application under Order VII, Rule 11 read with Section 151 CPC, 1908 for rejection of the plaint, inter alia, on the following grounds:

a. The plaintiffs have no locus standi to institute the suit against the erstwhile trust as it is already held by a court of appropriate jurisdiction that they are not the beneficiaries of the trust and the said finding operates as res judicata.

b. It was in the knowledge of the plaintiffs that the respondent No.1 Trust stood dissolved as of 16th January, 1985 with further endorsement thereof made on 23rd November, 2005 and in any event, the corpus thereof, as delineated by the plaintiffs themselves, stood extinguished as of the year 1983-84, when all the flats that fell to the share of the Trust under the Builder's Agreement in respect of the lands that were entrusted by the Settler were disposed of under various Agreements-to-Sell and possession handed over to the prospective buyers.

c. At the time of disposal of the corpus of the trust all the beneficiaries thereof expressed a unanimous desire to be paid lump-sum towards their entitlement as deemed fit and proper by the trustees, who were authorized by the Settler to dissolve the trust and the trustees, acting in good faith for the benefit and in the interest of all concerned, acted under the Memorandum of Partial Dissolution dated 16th January, 1985 followed by the subsequent Deed of Dissolution dated 23rd November, 2005. The relevant clauses were referred in the application which are reproduced hereunder:

AND WHEREAS it has been impressed upon the Trustees by Mrs. Ashok Kapoor as well as by Mr. Ashok Kapoor that in the best interest of their children i.e. - Amit Kapur & Rishi Kapur they as their guardians would demand that they be paid a lump sum amount in lieu of their beneficial right in the income and corpus of the Trust. Similar wishes have been expressed by Mrs. Anuradha Kapoor w/o Shri Vivek Kapoor the guardian of their three children i.e. Sharawan Kapur, Shrutianjali Kapur & Smitianjali Kapur. Similarly, Mrs. Meenakshi Sarabjit Singh as guardian of her two children i.e. Karunanjali Singh, Manan Sarabjit Singh have also expressed similar views. The trustees have decided to act according to their wishes.

6. Keeping these considerations in mind and in accordance with the authority vested in the Trustees and especially vide clause 14 of the Trust Deed and in view of the legal understanding that "Partial Dissolution" is part of "dissolution" - the Trustees, hereby partially apportion a part of the assets and liabilities as per following particulars for the time being subject to the conditions contained in clauses 7 and 8 hereunder:

Serial No.

Name of beneficiary

Amount

1.

Amit Kapur

4,00,000

2.

Rishi Kapur

4,00,000

3.

Shrawan Kapur

4,00,000

4.

Shrutianjali Kapur

2,00,000

5.

Smritianjali Kapur

2,00,000

6.

Karunaanjali Singh

1,00,000

7.

Manan Sarabjit Singh

1,00,000

8. That the beneficiaries through their guardians further agree to relinquish their share in the Trust by a separate deed which forms a part of the present deed. The relinquishment is subject to the condition that in case of refund, only that portion will be refundable which is in proportion to the total refund to be made by the Trust.

d. That the factum of litigation filing of suit as well as the determination of right was not disclosed by the plaintiffs in the suit filed by them before this Court.

e. That the plaintiffs had sought a relief of declaration with regard to the suit properties belonging to the defendant No.1 trust which is barred by limitation as the same is hit by Article 58 of the Schedule to the Limitation Act, 1963.

f. The relief claimed by the plaintiffs could not be passed u/s 34 of the Specific Relief Act, 1963 inasmuch as it was imperative for the plaintiffs to seek additional relief of recovery of possession which was available to them because it was in their knowledge that the properties in question were not in possession of defendant No.1 but the other flat buyers who had been pleaded as parties in the action.

4. It was alleged by defendants No.2 and 3 that Mrs. Kiran Sibal, who was plaintiff No.1, had been separately allotted a plot of land by the Settler of the said Trust in her residential holding styled as Kaushalaya Park, Hauz Khas, New Delhi, and further from time to time had been granted additional benefits from the Trust Funds towards her marriage and maintenance/education of her children leading to her oral relinquishment of any rights of benefit from the said Trust either for herself or for her children.

5. The stand of the occupants of the flats arrayed as defendants No.4 to 33 was that no ad-valorem court fee was paid by the plaintiffs. In the earlier litigation they have been held not to be the beneficiaries. The trustees had always acted and worked in accordance with law as per the trust deed. The occupants were the bonafide purchasers of the flats and had paid the market price to the owner of the property and purchased different flats in their name in the year 1984-1985, almost 20 years back. The plaintiffs never objected at the time of sale after having full knowledge. No notice was served upon them at any point of time. Now, the right of the purchasers cannot be disturbed.

6. We have considered the submissions of the appellant. Admitted facts are that Mrs. Kiran Sibal, mother of the appellant, and another filed the suit, being Civil Suit No.560/1981 in the Court of Sh. Randhir Singh, Sub Judge Class - III, Karnal titled as Mrs. Kiran Sibal Vs. The Kushal Education Trust, Madhuban, Karnal amongst others, Kaushalaya Educational Trust (respondent No.1 herein). The following reliefs were claimed in the said suit:

(a) that the defendants be directed to tender full and complete accounts of sales or other disposal of Trust properties in each case;

(b) a complete account of the use and usage of the realizations from the disposal of the Trust properties in each case;

(c) permanent injunction restraining the defendants from alienating any Trust property during the pendency of the suit;

(d) a decree restraining the defendant (Smt. Sheila Kapoor) from operating upon Trust properties in view of the breach of obligations already incurred by her in her past administration of Trust properties.

7. The interim injunction was also prayed which was initially granted on 10th September, 1981 and receiver was also appointed by the Court. However, on filing of appeal, the same was set aside by the Appellate Court by speaking order dated 19th May, 1984. The said order was challenged by them before the Punjab

and Haryana High Court. The said appeal was dismissed vide order dated 31st May, 1985. The same relief was sought in a fresh suit filed before this court after 27 years by the same mother and daughter. In fact appellant's mother had pleaded the case on her children's behalf also and it was observed by the court that Mrs. Kiran Sibal and her two children are only three out of the fourteen beneficiaries of the Trust.

8. Second case, being Case No.1204/1982 under Sections 19, 57 and 61 of the Indian Trust Act, 1882 was filed by Kiran Sibal in the Court of Sh. V.S. Malik, Senior Sub Judge, Karnal, titled as Mrs. Kiran Sibal Vs. amongst others, Kaushalaya Educational Trust (respondent No.1 herein). The following reliefs were claimed in the said suit:

(1) to inspect and take copies of the accounts and vouchers of the Defendant Trust,

(2) to restrain the Defendant from spending Trust moneys on wasteful litigation and

(3) direction to the Trust to furnish full and accurate information as to the amount and state of Trust properties with details of realization, expenditure, etc.

9. In the said suit, issues were framed and after hearing, the suit was dismissed by judgment dated 4th January, 1989 in which finding of the court was that the plaintiffs were not beneficiaries of the trust.

10. The third civil suit was filed by Late Sh. R.P. Kapoor, father of Kiran Sibal and grandfather of Madhvi Mehra and another u/s 92 of the CPC in the District Courts, Delhi. The trial court had dismissed the said suit and the appellate court had also upheld the dismissal vide order dated 21st January, 1982. The said order was challenged before the Division Bench which was dismissed.

11. In view of the facts and circumstances as well as pleadings on record with regard to application filed by respondents No.2 and 3 under Order VII Rule 11 C.P.C., we hold that there is no merit in the appeal and the same is liable to be dismissed on the following reasons:

(i) Admittedly, the factum of earlier litigations decided by the earlier courts were not disclosed by the plaintiffs in the suit.

(ii) The appellant Mrs. Madhvi Mehra is the daughter of Kiran Sibal whose claim was already determined by the civil court in litigation at Karnal and the said judgment has attained finality between the parties. Thus, the appellant has no locus standi to seek the relief claimed in the suit which is already barred by the principle of res judicata.

(iii) The suit is also barred by limitation as it was in the knowledge of Kiran Sibal, mother of the appellant, that the respondent No.1 trust stood dissolved as on 16th January, 1985 with further endorsement thereof made on 23rd November, 2005 as well as Memorandum of Partial Dissolution dated 16th January, 1985

followed by subsequent Deed of Dissolution dated 23rd November, 2005.

(iv) All the flats were sold to different persons who have been made parties to the proceedings in the suit as well as in the present appeal who were the purchasers of the flats in their names in the year 1984-1985. The suit for injunction or declaration ought to have been filed within three years from the date of valid cause of action but the same was filed after a period of more than twenty years.

12. The only explanation given by the appellant with regard to earlier litigations and final decisions passed, is that since the suit property is situated in Delhi, Court at Karnal had no jurisdiction to adjudicate upon the rights qua immovable properties situated in Delhi. Thus, the decisions rendered by the earlier courts were non- est. The said submission is without any force as it is the plaintiffs who initiated various litigations at Karnal. Further, owing to the fact that the immoveable properties were not merely at Delhi but were also situated at Karnal. Even after the expiry of such a long time, the plaintiffs are not entitled to raise such plea. Further, all judgments and orders were delivered after hearing of parties on merit and in the presence of the parties. It appears to us that Kiran Sibal and Madhvi Mehra had been initiating litigations one after another in different courts through different person.

13. For the reasons as mentioned above, the appeal is dismissed. No order as to costs.