

(2015) 11 DEL CK 0258

In the Delhi High Court

Case No : CS(OS) 3315/2015 and I.A. 23296-97/2015

Manju Anand and Others

APPELLANT

Vs

Geeta Chopra and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Succession Act, 1925 — Section 213, 372, 57

Citation : (2016) 1 AD 68 : (2015) 225 DLT 273

Hon'ble Judges : Hima Kohli, J.

Bench : Single Bench

Advocate : Sunil Agarwal, Advocate, for the Appellant

Judgement

Hima Kohli, J.—The present suit has been instituted by two plaintiffs against their sister (defendant No. 1) and deceased brother's widow and children [defendant No. 2 (a) to (c)], praying inter alia for a decree of partition in respect of premises No. E-29, Rajouri Garden, New Delhi. Further, the plaintiffs seek a decree of declaration for cancellation of the mutation letter dated 22.04.2013, issued by the civic authorities mutating the suit premises in favour of the defendants No. 2 (a) and (b) and for declaring the Sale Deed dated 24.03.2015, executed by the defendants No. 2(a) and (b) in favour of defendant No. 3, as null and void.

2. Brief facts of the case as stated in the plaint are that Shri Mohan Lal Sahni, father of the plaintiff, defendant No. 1 and Lt. Jitender Sahni was the owner of the suit premises, which has been described as his "self-acquired property". Sh. M.L. Sahni had expired at New Delhi on 21.06.1995, leaving behind four class I heirs, i.e., three daughters, namely, the plaintiffs No. 1 and 2, defendant No. 1 and Shri Jitender Sahni, [predecessor-in-title of the defendants No. 2 (a) to (c)]. Sh. M.L. Sahni's wife had predeceased her husband, having expired on 21.6.1979. Prior to his demise, Shri M.L. Sahni had executed a will dated 17.12.1993, whereunder he had bequeathed the suit premises in favour of his daughter-in-law and grandson, i.e., defendants No. 2 (a) and (b) while

authorizing his son, Shri Jitender Sahni to act as a caretaker, till the defendant No. 2(b) would attain majority. Apart from the suit premises, the deceased had bequeathed another immovable property in favour of his son, and all his movable assets jointly in favour of his son and daughter-in-law [defendant No. 2(a)]. It has been specifically stated by the testator in the captioned will that his three daughters, who were already married, had been well provided for by way of dowry given to them at the time of performing their marriages and he did propose to bequeath anything else to them.

3. Based on the aforesaid will, Shri Jitender Sahni and his wife, [defendant No. 2(a)] had filed a joint petition under Section 372 of the Indian Succession Act in the trial court for grant of a succession certificate in respect of the debts and securities of late Shri Mohan Lal Sahni, registered as Petition No. 831/1995. Initially, the plaintiffs herein, (impleaded as respondent No. 2 and 4 there) and the defendant No. 1 (impleaded as respondent No. 3 there) had given their NOC for grant of a succession certificate in favour of the petitioners therein. Subsequently, the plaintiffs did a flip flop and made a statement before the concerned court that they wished to withdraw their consent. Thereafter, the plaintiffs once again turned turtle and moved an application under Section 151 CPC on 12.10.2001, stating inter alia that the earlier statement made by them wanting to withdraw their NOC, was on account of some misunderstanding and now that the said misunderstanding had been clarified, they wished to abide by the no objection given by them for grant of a succession certificate in favour of their brother and sister-in-law.

4. A perusal of the said application filed by the plaintiffs in the petition for grant of a succession certificate and enclosed with the documents filed with the plaint reveals that they had categorically stated in the supporting affidavits that they were withdrawing all the objections raised by them and had given their consent to grant of a succession certificate in favour of their brother and sister-in-law, "of their own free will, without any force, threat and undue influence." Further, the plaintiffs had confirmed in para 6 of the application that their father had executed the will dated 17.12.1993 during his lifetime and gone on to state that it was a genuine document and could be acted upon. Thereafter, the statement of both the plaintiffs was recorded separately by the learned Administrative Civil Judge on 15.10.2001, and they had reiterated before the Court that they had no objection to grant of a succession certificate in favour of their brother and sister-in-law. They had also admitted to the execution of the will dated 17.12.1993 by their father and sought permission to withdraw the objections filed by them initially. After recording their statements, the objections filed by the plaintiffs were dismissed as withdrawn. Subsequently, vide order dated 09.07.2002, a succession certificate was granted in favour of the brother and sister-in-law of the plaintiffs and the defendant No. 1. This ought to have put a lid on the litigation between family members, but that is not so.

5. Shri Jitender Sahni brother of the plaintiffs and defendant No. 1 expired on

10.05.2003 and he was survived by his widow and two children, the defendants No. 2(a) to (c). For twelve long years after his demise, the plaintiffs kept quiet and did not claim any share in the suit premises and nor did they initiate any legal proceedings against the legal heirs of their brother for claiming a share therein. The present suit for declaration and partition has been instituted by the plaintiffs at a stage where the defendants No. 2(a) and (b) have executed a Sale Deed in respect of the suit premises in favour of defendant No. 3. For justifying their claim for seeking partition of the suit premises and to overcome the no-objection given by them in the captioned probate petition, the plaintiffs claim that the said no objection was only to enable their brother and sister-in-law to get the money lying in his bank account, but this did not mean that they had not given up their right in their father's property.

6. The plaintiffs have further averred in the plaint that even if they had admitted to the contents of their father's will, defendant No. 2 (a) - (c) ought to have obtained a probate from the competent court or got a Release Deed executed by all the other legal heirs of Late Sh. M.L. Sahni in respect of the suit premises. It is thus canvassed on behalf of the plaintiffs that the defendant No. 2(a) to (c) could not have got the suit premises mutated in their names in the records of the M.C.D. or proceeded to dispose of the same by executing a Sale Deed in favour of the defendant No. 3 without following the due process of law. The plaintiffs assert that they had never granted any no objection with regard to the suit premises and therefore, they are entitled to claim a share therein as co-owners of a joint family property.

7. Before proceeding further, it may be relevant to note here that in para 9 of the plaint, the plaintiffs have specifically stated that the suit premises is a "self-acquired property" of late Shri M.L Sahni. However, in para 18 of the plaint, they have sought to describe the very same premises as a "joint family property" and themselves as "coparceners/co-owners". However, the plaintiffs have not laid any foundation in the plaint to demonstrate the circumstances in which the suit premises can be treated as a joint family property when the plaint is bereft of any material particulars to the effect that there ever existed a Hindu undivided family with Sh. M.L. Sahni as its Karta and if so, then who were the coparceners of the HUF. In this context, learned counsel for the plaintiffs has been requested to clarify from the pleadings in the suit as to how can the suit premises be treated as a joint Hindu family property. It has also been enquired from learned counsel for the plaintiffs that in view of the categorical admissions made by the plaintiffs with regard to execution of the will by their father and its contents in judicial proceedings arising out of the captioned probate petition, why should the present suit not be dismissed under Order VII Rule 11 CPC as being devoid of cause of action and on account of absence of locus standi in the plaintiffs to institute the same.

8. Counsel for the plaintiffs has no explanation to offer as to how and why has the suit premises been described as a "joint Hindu family property" at one place

in the plaint, particularly, in the light of the categorical averments in para 9 of the plaint that the said premises was a self-acquired property of the deceased father of the plaintiffs. The only lame explanation sought to be offered for instituting the present suit is that the no objection given by the plaintiffs for grant of a succession certificate was in respect of the debts and securities owned by the father, which cannot act as a bar on them for instituting a suit for partition for the reason that the said no objection was not given in respect of his immovable assets.

9. The aforesaid submission files in the teeth of the categorical admissions made by the plaintiffs in the application filed by them before the Administrative Civil Judge in the proceedings for grant of a succession certificate, where they had admitted to the genuineness of their father's will and had unequivocally withdrawn the objections filed by them to grant of a succession certificate in favour of their brother and sister-in-law. Having waived their right to challenge the will of their father, and having categorically stated that they had given their no objection out of their own free will, without any force, threat and undue influence and had expressed their desire to withdraw their objections filed earlier, the plaintiffs are barred from reneging from their statements recorded before the Administrative Civil Judge on 15.10.2001.

10. In the light of such unambiguous and explicit admissions, learned counsel for the plaintiffs cannot be heard to state that the no-objection given by the plaintiffs was a qualified one and was given only in respect of a part of the will which related to the securities of the deceased and not in respect of his immovable properties. The plaintiffs had not reserved their right to claim a share in the immovable properties of their father at any point in time. Having unequivocally accepted the will and its contents as a whole and waived their objections to the same, no such segregation of rights in the movable and immovable assets of the deceased can be permitted, as sought to be urged by the plaintiffs.

11. Even otherwise, it has been held in a host of decisions that it is not mandatory for parties to obtain a probate in respect of an immovable property situated in the NCT of Delhi, before acting on the will. In this context, reference may be made to the judgments in the case of Behari Lal Ram Charan Vs. Karam Chand Sahni and Others, , Prithipal Singh Sabharwal Vs. Jagjit Singh Sabharwal, , Murli Dhar Dua and Others Vs. Shashi Mohan, , Santosh Kakkar and Others Vs. Ram Prasad and Others, , Om Prakash Kohli Vs. Ravi Prakash Kohli and Others--> , Sh. Rajan Suri and Anr. v. The State and Anr. reported as , AIR 2006 Delhi 148 and Kanchan Batheja Vs. Pramod Batheja and Others--> . In the case of Mrs. Winifred Nora Theophilus Vs. Mr. Lila Deane and others, , it was held as below:--

"11. On interpretation of Section 213 read with Section 57 (a) and (b), the Courts have opined that where the will is made by Hindu, Buddhist, Sikh and Jaina and were subject to that Lt. Governor of Bengal or within the local limits of

ordinary original civil jurisdiction of High Courts of Judicature at Madras and Bombay or even made outside but relating to immoveable property within the aforesaid territories that embargo contained in Section 213 shall apply. From this it stands concluded that if will is made by Hindu, Buddhist, Sikh or Jaina outside Bengal, Madras or Bombay then embargo contained in Section 213 shall not apply. This is what the various judgments cited by the learned counsel for the defendants decide. Therefore there is no problem in arriving at the conclusion that if the will is made in Delhi relating to immoveable property in Delhi by Hindu, Buddhist, Sikh or Jaina, no probate is required."

(emphasis added)

12. Therefore, it cannot be urged by the plaintiffs that Sh. J.S. Sahni, brother of the plaintiffs and the defendant No. 1 or his legal heirs were ever under any legal obligation to approach a competent Court of law for seeking probate of the will of Sh. M.L. Sahni in respect of the suit premises before getting it mutated; nor were the defendants No. 2(a) and (b) required to obtain any Release Deed from the other legal heirs of Shri M.L. Sahni. Once they had waived their objections to the will of their father as recorded in the judicial proceedings for grant of a succession certificate, the plaintiffs are estopped from raising a plea to the contrary in the suit.

13. In the given facts and circumstances of the case, it is apparent that Shri Jitender Sahni and his wife were well entitled in law to deal with the suit premises, subject matter of the will dated 17.12.1993 executed by Sh. M.L. Sahni and the defendants No. 2(a) and (b), who were the beneficiaries of the suit premises under the captioned will, were equally entitled to deal with the same as they would deem fit in terms of the bequest that included a right to sell the suit premises, which they have done by virtue of the Sale Deed dated 24.03.2015, executed in favour of the defendant No. 3.

14. Having regard to the fact that the plaintiffs had waived their no objection and admitted to the execution of the will of Shri M.L. Sahni in judicial proceedings arising out of the petition filed by Sh. J.S. Sahni and the defendant No. 2(a) for grant of a succession certificate that had culminated in the order dated 09.07.2002, they are estopped in law from questioning the inheritance flowing under the said will. This is evidently a case, like many others of the same ilk, where conscious of the spiraling value of real estate in Delhi, the plaintiffs have decided that they too want their pound of flesh and have thus instituted the present vexatious suit against the widow and children of their deceased brother, after the passage of two decades from the date of their father's death and twelve years after their brother's death, apparently in the fond hope that once the defendants are dragged into litigation, they would be compelled to settle the dispute by paying a substantial amount to the plaintiffs, only for the sake of buying peace and lifting any lingering cloud on the title of the suit premises, sought to be cast by the plaintiffs.

15. Once the plaintiffs have admitted to the execution of the will dated 17.12.1993 by their deceased father and to the fact that the suit premises was his self-acquired property, then there does not exist any cause of action in their favour to institute the present suit and nor do they have the locus standi to do so. For all the aforesaid reasons, this Court is not inclined to entertain the present suit, which is accordingly dismissed as not maintainable under Order VII Rule 11 CPC.

16. The suit is additionally held to be patently vexatious, misconceived and nothing but a deliberate attempt on the part of the plaintiffs to reopen issues that have long since attained finality. Guided by the decision of the Supreme Court in the case of T. Arivandandam Vs. T.V. Satyapal and Another, , where it had been held that if on a meaningful, and not formal reading of the plaint, it is found to be manifestly vexatious and meritless, in the sense of not disclosing a right to sue, the Court ought to exercise its powers under Order VII, Rule 11 CPC, this Court deems it fit to dismiss the suit alongwith the pending applications as a gross abuse of the process of law with costs of Rs. 20,000/- imposed on the plaintiffs, to be deposited with the Delhi High Court Legal Services Committee within four weeks and proof of deposit placed on record.