

(2017) 11 DEL CK 0790

In the Delhi High Court

Case No : Civil Revision Petition No. 135 Of 2017, Civil Miscellaneous No. 21491 Of 2017

Mohini Kohli

APPELLANT

Vs

Satish Kumar Kohli & Ors

RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Section 11, Order 1 Rule 8, Order 1 Rule 10, Order 7 Rule 11

Citation : (2017) 11 DEL CK 0790

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Adit S. Pujari, Surabhi Dhar, Tusharika Mattoo, C.S. Bhandari

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 27th March, 2017 in CS No.9791/2016 of the Court of Additional District Judge (ADJ)-01 (West), Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioner/defendant No.1 under Order VII Rule 11 of the CPC.

2. Notice of the petition was ordered to be issued. The counsel for the respondents appears. The counsels have been heard.

3. The suit, rejection of plaint wherein was sought, was filed by the respondent No.1 Satish Kumar Kohli and one G.R. Kohli being the predecessor-in-interest of the respondents No.3A & 3B Sandeep Kohli and Rajeev Kohli, against the petitioner and respondent No.2 Subhash Chander Kohli, as per the amended plaint verified on 21st September, 2011, (i) for declaration of the plaintiffs as joint owners of property No.H2/11, Krishna Nagar, Delhi on the basis of Wills of late Sh. O.P. Kohli and parents of plaintiffs; (ii) for permanent injunction

restraining the defendants and more particularly the petitioner/defendant No.1 from evicting the plaintiffs from the said property, alienating, encumbering or parting with possession of any part of the property; and, (iii) for declaration of the judgment and decree dated 19th July, 2006 in Suit No.10/2006 titled Mohini Kohli Vs. Subhash Chander Kohli as illegal, inoperative, non-est not enforceable and binding on the plaintiffs.

4. The petitioner/defendant No.1 sought rejection of the plaint on the ground of the suit being barred by Section 11 of the CPC since title of the property had been decided in favour of the petitioner/defendant No.1 in an earlier suit filed by the petitioner/defendant No.1.

5. The learned Additional District Judge, vide the impugned order, has dismissed the application of petitioner/defendant No.1 under Order VII Rule 11 of the CPC reasoning (a) that the earlier proceeding was a suit filed by the petitioner/defendant No.1 against the respondent/defendant No.2 Subhash Chander Kohli for recovery of possession of the property and which was decreed in favour of petitioner/defendant No.1; (b) that the plaintiffs had applied under Order I Rule 10 of the CPC seeking impleadment in the suit and which application was dismissed reasoning that no relief had been claimed by the petitioner/defendant No.1 in that suit against the plaintiffs and if the plaintiffs were impleaded then it would change the nature and character of the suit; (c) that the plaintiffs had filed this suit, after the dismissal of their application for impleadment in the suit filed by the petitioner/defendant No.1; (d) that the petitioner/defendant No.1 had applied under Order VII Rule 11 of the CPC after the plaintiffs had examined as many as five witnesses; and, (e) that the plaintiffs being not a party to the earlier suit filed by the petitioner/defendant No.1 were not bound by the findings therein.

6. The argument of the counsel for the petitioner/defendant No.1 is that the plaintiffs in the suit, from which this Revision Petition arises, i.e. respondents No.1, 3A & 3B herein are claiming title to the property on the basis of the same documents on the basis whereof the respondent No.2 had sought to establish his title in the earlier suit filed by the petitioner/defendant No.1 and in which the petitioner/defendant No.1 had succeeded. It is for this reason that it is contended that the suit is barred by Section 11 of the CPC.

7. However, the counsel for the petitioner/defendant No.1, while arguing so, forgets that for Section 11 of the CPC to apply, the persons against whom it is sought to be applied ought to have been a party to the earlier decided proceeding. The plaintiffs in the suit from, which this petition arises, were admittedly not a party to the earlier suit filed by the petitioner/defendant No.1. The mere fact that the plaintiffs in the suit, from which this petition arises, unsuccessfully applied for impleadment in the earlier suit filed by the petitioner/defendant No.1, will not make any difference. Thus, the findings returned in the earlier suit filed by the petitioner/defendant No.1 cannot bind the plaintiffs in the suit, from which this petition arises. A decision in an inter party suit binds only

the parties thereto and is a decision in personam as distinct from a decision or judgment in rem.

8. The counsel for the petitioner/defendant No.1 has also contended that the plaintiffs in the suit, from which this petition arises, filed objections in the Execution Petition filed by the petitioner/defendant No.1 for execution of the decree in her favour in the earlier proceeding.

9. Though order or judgment on the said objections would have qualified as a decree and a separate suit on the same plea would not be maintainable but it is not the plea of the petitioner/defendant No.1 that any such order on the said objections has been passed.

10. The counsel for the petitioner/defendant No.1 has relied on paras 19 & 20 of *Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu* (1977) 2 SCC 181 and on paras 13, 17 & 18 of *Saroja Vs. Chinnusamy*.

11. What prevailed with the Supreme Court in *Narayana Prabhu Venkateswara Prabhu supra* for accepting the contention that Explanation VI to Section 11 is not confined to cases covered by Order I Rule 8 of CPC but extends to include any litigation in which parties are entitled to represent interested persons other than themselves also, was that in a partition suit each party claiming the property to be joint, litigates under a title which is common to others who make identical claims. It was for this reason that it was held that if that very issue is litigated in another suit and decided, the others making the same claim will be held to be claiming a right in common with themselves and others.

12. The present is not a partition suit. The earlier suit was also not a partition suit. Thus, what has been held with respect to a partition suit, will not apply.

13. Similarly, the observations of the Supreme Court in *Saroja supra* relied upon by the petitioner/defendant No.1 are on a finding of the appellant therein litigating on the basis of the title acquired by her from the person against whom decree was passed in the former suit. The plaintiffs in the suit, from which the present petition arises, are not claiming title under the respondent/defendant No.2 against whom the petitioner/defendant No.1 obtained decree in the earlier suit filed by her.

14. I may notice that it is also the contention of the counsel for the petitioner/defendant No.1 that the Advocate who is appearing before this Court on behalf of the plaintiffs in the suit, from which this petition arises, was also the Advocate for the respondent No.3 who was the defendant in the earlier suit filed by the petitioner/defendant No.1 and that he should be asked to make a disclosure but the same is beyond the limits of the revisional jurisdiction of this Court and it will be open to the petitioner/defendant No.1 to seek such a relief in the suit.

15. No error can thus be found in the reasoning of the learned Additional District Judge in dismissing the application of the petitioner/defendant No.1 under Order VII Rule 11 of the CPC.

16. Dismissed. No costs.