

(2013) 04 DEL CK 0132

In the Delhi High Court

Case No : I.A. No. 9328 of 2011 in CS (OS) No. 2147 of 2010 and I.A.No. 9229 of 2011 in CS (OS) 2818 of 1989

Motian Devi Lamba

APPELLANT

Vs

Chet Ram Gupta and Others
 Sh. Chet Ram Gupta Vs
Smt. Motia Devi Lamba

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2013) 6 AD 729 : (2013) 199 DLT 655

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : P. Choudhary in I.A. No. 9328/2011 in CSOS No. 2147/2010, Mr. Ashok Gurnani with Mr. S.K. Chaturvedi, in I.A.No. 9229/2011 in CSOS 2818/1989 and Mr. Ameit Andley and Mr. Arun K. Sharma, in I.A.No. 4029/2013, for the Appellant; Ameit Andley and Mr. Arun K. Sharma, Advocates for Applicant in I.A.No. 4029/2013, Ashok Gurnani, for D-1, Mr. V.K. Tandon and Mr. Ajay Sethi, Advocates for Delhi Police along with SI Gyaneshwar Singh, PS-EOW Crime Branch in I.A. No. 9328/2011 in CS(OS) No. 2147/2010, Mr. Ashok Bhasin with Ms. Nandni Sahni, Advocate for Defendant Nos. 2 to 4 in I.A. No. 9328/2011 in CS(OS) No. 2147/2010 and in I.A.No. 9229/2011 in CS(OS) 2818/1989 and Mr. P. Chaudhary, Advocate for Defendant No. 1 in I.A.No. 9229/2011 in CS(OS) 2818/1989, for the Respondent

Judgement

P.K. Bhasin, J.—By this common order I shall dispose of two applications under Order I Rule 10 CPC filed in these two suits by one Mr. Joginder Lamba, who claims himself to be the son of Smt. Motian Devi, who is the plaintiff in suit no. 2147/2010 and defendant no. 1 in suit no. 2818 of 1989, seeking his own impleadment as also of all his brothers and sisters in both the suits in which many persons are allegedly trying to usurp one plot in Greater Kailash, New Delhi which stands registered in the name of applicant's mother who is permanently settled in United Kingdom as an NRI. CS(OS) No. 2818/1989 was filed by one Chet Ram, who died during the pendency of the suit and is now

being represented by his legal representatives, for specific performance of an agreement allegedly entered into between him and defendant no. 1 Motian Devi in London in September-October, 1986 whereby she had agreed to sell to him her plot of land no. W-73, Greater Kailash-II, New Delhi. The deal was allegedly finalized with the involvement of defendant no. 3 in the said suit of Chet Ram, namely, Shri S.P. Gupta. Since she failed to execute the sale deed thereafter this suit came to be filed in which the deceased plaintiff had claimed that he had been handed over physical possession of the suit plot in pursuance of the agreement to sell.

2. Defendant no. 1 is contesting the suit for specific performance through her attorney V.P. Gupta, inter alia, on the ground that she had never agreed to sell the suit plot to the deceased plaintiff Chet Ram and when he had visited her in London In September, 1986 with defendant no. 3 for purchase of the suit plot she had told them that she had decided to transfer the suit plot to defendant no. 2 who was her family doctor. Then she had executed a power of attorney in favour of the deceased Chet Ram only for the purpose of effecting transfer of the suit plot in favour of defendant no. 2 but since after leaving London Chet Ram did not do anything she had revoked the power of attorney given to him and on 6th April, 1987 she executed a gift deed in respect of the suit plot in favour of defendant nos. 2 and 4. in Chet Ram's suit, both of whom are also now dead and are being represented by their legal representatives.

3. Chet Ram's suit is being contested on behalf of defendant nos. 2 and 4 also relying upon the gift deed allegedly executed in their favour by defendant no. 1 on 6th April, 1987.

4. In Chet Ram's suit issues were framed on 9th November, 1994 but evidence has not been concluded so far.

5. During the pendency of Chet Ram's suit Smt. Motian Devi also filed a suit (being suit no. 2147 of 2010) through her attorney and son-in-law Shri Maninder Singh Shah for a declaration that the documents which the deceased Chet Ram was relying upon in his suit for seeking specific performance were null and void, forged and fabricated and similarly the gift deed dated 6th April, 1987 allegedly executed by her in favour of deceased G.S. Gupta (defendant no. 2 in Chet Ram's suit and defendant no. 4 in Motian Devi's suit) and Ravi Prakash (who was defendant no. 4 in Chet Ram's suit and in Motian Devi's suit is being represented by his legal heirs) in respect of her plot in Greater Kailash-II were also forged and fabricated. She also claimed a decree of possession in respect of her plot against the legal heirs of late Shri Chet Ram. She is claiming in her suit that she had never agreed to sell her plot to anyone and late Chet Ram and S.P. Gupta had conspired to cheat her and when differences arose between them Chet Ram had filed the suit. She also claimed that she never gifted the suit plot to anyone and further that she had also not authorized anyone to contest Chet Ram's suit about which she was in fact not even aware and upon coming to know that some persons were conspiring to deprive her of her plot and were

parties to Chet Ram's suit she appointed her son, the present applicant Shri Joginder Singh Lamba, as her attorney in March, 2010 to pursue Chet Ram's suit and he in turn appointed her son-law Shri Maninder Singh Shah as attorney on 16th March, 2010 and he then filed the present suit on her behalf for the aforesaid reliefs. She also claimed that she had not authorised anyone to contest Chet Ram's suit. This suit of Smt. Motian Devi is being contested by the legal heirs of late Shri Chet Ram and legal heirs of late G.S. Gupta and Ravi Prakash who were during their life time claiming themselves to be the donees of the suit plot by virtue of gift deed dated 6th April, 1987 allegedly executed by Smt. Motian Devi. In her suit Shri V.P. Gupta who was earlier contesting Chet Ram's suit on her behalf as her attorney has also been impleaded as defendant no. 2.

6. Now, Shri Joginder Singh Lamba, son of Smt. Motian Devi has filed separate applications in both these suits under Order 1 Rule 10 C.P.C. alleging that suit plot is an HUF property since it was purchased by Smt. Motian Devi from HUF fund. Therefore, the applicant and his brothers and one sister named in the application are all co-parceners and which fact stands admitted also by the defendants and so they, all of whom are also permanent residents of U.K., being joint owners of the suit plot have a right to be impleaded in both the suits even though Smt. Motian Devi is claiming that she had not sold or gifted the suit plot to anyone.

7. The two impleadment applications are being opposed by the legal heirs of late Shri Chet Ram, who was claiming that the suit plot had been agreed to be sold to him by Smt. Motian Devi late Dr. G.S. Gupta and late Ravi Prakash who were claiming that the suit plot had been gifted to them by Smt. Motian Devi.

8. I had heard the counsel for the applicant and the contesting parties in the two suits.

9. From the aforesaid narration of facts leading to the filing of the two suits in respect of a plot of land which is common in both the suits is clear that the controversy which this Court is going to resolve is whether Smt. Motian Devi, who admittedly had a registered conveyance deed in her name only in respect of the suit plot had been agreed to be sold by her to late Shri Chet Ram Gupta and/or whether she had gifted the same to late Dr. G.S. Gupta and late Shri Ravi Prakash. As noticed already, she is denying that she had agreed to sell the suit plot to anyone and also that she had executed any gift deed. To resolve these controversies between the existing parties in the two suits presence of the applicant and his brothers and sister is not at all necessary as parties in any of the two suits. The applicant by seeking his impleadment in the two suits alongwith his brothers and one sister is trying to introduce an altogether new controversy as to whether the suit plot is the exclusive property of Smt. Motian Devi or is an HUF property. That controversy has nothing to do with the adjudication of the disputes between the existing parties in the two suits. The applicant himself has also admitted in his applications that his mother is already seriously contesting that she had agreed to sell the suit plot to late Shri Chet

Ram or that she had gifted the same to Dr. G.S. Gupta or Shri Ravi Prakash. Learned counsel for the applicant had only contended that even though Smt. Motian Devi is contesting the rival claims of sale agreement as well as gift but in case this Court returns a final verdict against her and holds that she had either agreed to sell the suit plot to late Shri Chet Ram or that she had gifted the same to late Dr. G.S. Gupta and late Shri Ravi Prakash then in that event the applicant and his brothers and sister would be seriously prejudiced as they would stand deprived of their shares in the suit plot as joint owners/coparceners. In my view, even for this reason the applicant and his brothers and sister are not necessary parties in the present suit. In case they feel that their mother has wrongly dealt with the suit plot as its exclusive owner they can initiate separate legal proceedings against her. The fact that the applicant is trying to introduce in these suits the controversy about the status of the suit plot being HUF property and his mother having no right to sell/gift the entire suit plot and for no other purpose is evident from the fact that if at all there was no inter se dispute between him and his mother he could take the plea in her suit, in which she has claimed that she had appointed the applicant herein as her attorney and he in turn had appointed her son-in-law as attorney to file suit on her behalf and which fact the applicant is not disputing, he could while taking the plea that she had never agreed to sell or gift the suit plot to anyone also have taken an alternative plea in her suit that she in any case could not have sold or gifted the suit plot since it was an HUF property but no such plea was taken.

These applications of Shri Joginder Singh Lamba are, therefore, dismissed but making it clear that if at all this applicant has any dispute with his mother in respect of the suit plot and he initiates any legal battle against her the dismissal of these applications filed by him shall not come in his way and also that whatever has been observed in the present order was for the purpose of denying his impleadment in these suits.

A copy of this order shall be kept in the file of suit no. 2818 of 1989.