
(2006) 01 DEL CK 0148

In the Delhi High Court

Case No : CS (OS) 538 of 2005 and IAs No"s. 7167 and 7168 of 2001 and 7885, 7888, 7889 and 7890 of 2005 and is 2917 of 2005

Mr. Raj Kishan Das

APPELLANT

Vs

Mrs. Kusum Sanghi and Others

RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Trusts Act, 1882 — Section 5

Citation : (2006) 01 DEL CK 0148

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Arun Mohan, Arvind Bhatt and Kunal Sinha, for the Appellant;
Anusuya Salwan and Monica Sharma, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Kishan Kaul, J.

CS(OS)538/2005

1. The plaintiff has filed a suit for mandatory and permanent injunction against defendants in respect of property bearing No. 9, Western Avenue, Maharani Bagh, New Delhi, admeasuring about 233.31 square yards. The plaintiff claims to be the original perpetual sub lessee in respect of the plot of land in pursuance to a sub lease deed executed in favor of the plaintiff. The perpetual lease was in favor of the society dated 06.01.1982. The sub lease dated 07.01.1982 is in favor of the plaintiff.

2. The plaintiff and his family members are stated to be residing at 3, Pusa Road, New Delhi. The defendant No. 1 is the elder sister of the plaintiff who was married to Sh. O.P. Sanghi and is stated to be residing at 4, Ring Road, Kilokri, New Delhi at the matrimonial home. The defendants No. 2 and 4 are the daughter and son respectively from the said wedlock while defendant No. 3 is the son in law being married to defendant No. 2. Sh. O P Sanghi is stated to have

passed away in 1982.

3. The plan in respect of the construction on the property is stated to have been sanctioned vide sanction letter dated 28.09.1994 and the construction is stated to have started in November-December 1994. The C and D forms were issued in September and December 1995 respectively.

4. The plaintiff claims that since 4, Ring Road, Kilokri, New Delhi, residence of defendant No. 1 and her son, was in proximity to the suit property, the keys used to be left by the plaintiff with his sister.

5. The plaintiff has also taken loans for construction on the property and thus wanted to partly let out the property. The plaintiff shifted into the first floor to enable him to complete the basement and other finishing work. It is stated that the intention of the defendants became dishonest and the defendants attempted to create some evidence for seeking rights in the property. These rights are stated to be claimed on the basis of the fact that defendant No. 2 is having half share in the property by virtue of a trust created in her favor by the plaintiff and his father Sh. Jai Kishan Das. It is stated that defendants do not have any right title or interest in the property and are not handing over the keys of the ground floor and basement and further threatening to induct third persons in the property. In view of the aforesaid facts, a decree of permanent/prohibitory injunction has been prayed for to restrain the defendants from interfering with the possession of the plaintiff in the property in suit. A further decree of mandatory injunction has been prayed for handing over the keys of the ground floor and the basement to the plaintiff.

6. In the written statement, it is stated that Sh. O P Sanghi in the year 1981-82 mentioned to Mr. Jai Kishan Das that an opportunity was available to invest in a residential plot of land at Maharani Bagh, New Delhi and Mr. Das had expressed his desire that the plot of land be acquired partly for the benefit of his son and partly for the benefit of the children of the defendant No. 1. It is in view thereof, it is claimed that the plaintiff was a trustee of the property and one half share in the property should be given to the children of defendant No. 1. A further plea was raised that a sum of Rs 8,000 was paid from the amount of defendant No. 2 to Sh. Jai Kishan Das.

7. The written statement also states that defendant No. 2 became major on 27.01.1988 and at a family gathering held immediately thereafter, it was declared by Sh. Das that one half share in the property was being held in trust by the plaintiff for the benefit of defendant No. 2. The building plans for construction are stated to have been made at the initiative of defendant No. 2, though the plans were signed by the plaintiff. M/s Gannon Dunkerly and Co was stated to have been engaged as a construction company for construction of dwelling units and the construction was so made. The defendant No. 2 is said to have incurred liability for payment and other such incidental matters while the plaintiff did not incur any expenses. On 25.11.95 defendant No. 2 is stated to

have moved into the property and began living with her husband in the basement and the ground floor. Certain contemporaneous documents like gas connection and ration card were obtained at that stage of time.

8. Defendant No. 2 requested for necessary rectification to be made in the records of the society and for recording of her title, but the plaintiff failed to oblige and has instead filed this suit. On the pleadings of the parties, the following issues were framed on 02.02.1999:

i) Whether any trust was created in favor of defendant No. 2 as alleged in the written statement?

ii) Whether a trust as alleged could be a valid trust in view of the provisions of Section 5 of the Indian Trust Act?

iii) Whether the defendant No. 2 has right, title or interest as owner in the basement and ground floor of the property in dispute and whether the plaintiff did not raise any claim adverse to any right, title and interest of defendant No. 2 in this case the same as well as in half share in the land in dispute?

iv) In case the issues No. 1 and 2 are decided against the defendants, whether the defendants can still raise the plea of ownership of the basement and ground floor in the property in dispute?

v)Relief.

9. It may be noticed that the plaintiff had filed an application for appointment of a receiver and the said application was decided by the order dated 02.04.1997 whereby a receiver was appointed to take possession from the defendants of the basement and ground floor. This order was upheld in appeal by the order of the Division Bench dated 09.04.1997 and the SLP against the said order was dismissed on 18.02.2000.

10. On the framing of issues on 02.02.1999, issue No. 2 was directed to be treated as a preliminary issue. The said issue was decided in favor of the plaintiff by the order dated 17.07.01 and it was held that the trust set up by the defendants is legally not a valid trust. However simultaneously it was observed that any observations made in the order that may have any effect or bearing in respect of the facts pertaining to the remaining issues will not tantamount to expression of opinion on merits. This order has not been challenged further.

11. It is in view of the aforesaid facts that when the matter was taken up for hearing on 15.09.2005, it was prima facie found that if a valid trust was not created, other issues would not survive for consideration for the reasons that issue No. 1 refers to the creation of the trust. Issue No. 3 refers to the rights in favor of defendant No. 2 to flow from the creation of the trust while issue No. 4 is a consequential issue. Thus time was given to the learned counsel for the defendants to satisfy this court as to whether other issues really survive for consideration when the nature of the suit is one of injunction. It may be noticed

that a prayer is also made in is 7167/2001 by the plaintiff for variation of the order earlier passed appointing the receiver as the plaintiff should be permitted to deal with the portion of the property which has been locked up by the receiver and has not been let out.

12. Learned counsel for the defendants submits that defendants have filed even an application to bring on record documents to show that they were following up the matter in respect of construction with the DDA and other authorities. Learned counsel further states that if issue No. 1 was the only issue to be considered, there would have been no occasion to frame issue No. 3.

13. I am unable to persuade myself to agree with this submission of learned counsel for the defendants. It must be appreciated that all the rights of the defendants' claim arise from the preliminary plea of there being a trust created in favor of defendant No. 2 by the father of the plaintiff and defendant on.1 The written statement is replete with these averments. The written statement goes on to state that after defendant attained majority, father of the plaintiff in a family function put forth this creation of trust. It is in pursuance thereto that in para 19 of the written statement averments have been made that the basement and ground floor of the premises were created and used for occupation of defendant No. 2 and her family members.

14. Once issue No. 1 itself is decided against the defendants and the said decision is accepted, it is obvious that there is no creation of any valid trust in favor of defendant No. 2. The defendant No. 2 thus cannot claim any rights in the property.

15. The defendants have not file any counter claim in respect of any monies spent on construction or otherwise. The suit is one of implicate injunction filed by the plaintiff and in view of decision on issue No. 1, the defendants cannot claim any right in the property, whatever be the other claims of the defendants. In respect of such other claims, which may be for recovery of any amount spent or otherwise, it will be for the defendants to establish the same in appropriate proceedings to be instituted by the defendants. Issues no 2 to 4 are thus answered against the defendants.

16. I am thus of the considered view that a decree of permanent injunction is liable to be passed in favor of the plaintiff and against the defendants restraining the defendants from in any manner interfering with the possession of the plaintiff in respect of the property bearing No. 9, Western Avenue, Maharani Bagh, New Delhi.

17. Insofar as the second prayer for a decree of mandatory injunction is concerned, there being no rights established in favor of the defendants which were claimed through the creation of a trust, the possession of the property being taken by the receiver should result in the receiver handing over the possession to the plaintiff. The receiver will thus release the keys in favor of the plaintiff and hand over the possession to the plaintiff. The receiver to do the

needful within a week of the receipt of the order. A copy of the order be sent to the receiver.

18. The suit is accordingly decreed leaving parties to bear their own costs.

19. Decree sheet be drawn up accordingly. IAs No 7167/2001, 7168/2001, 7885/2005, 7888/2005, 7889/2005, 7890/2005 and is 2917/2005 No orders are called on these applications in view of the suit being decreed. Applications are accordingly disposed of.