(2009) 10 DEL CK 0044

In the Delhi High Court

Case No : C.S. (OS) No. 941 of 2002

Mr. Roop Lalwani and Others — APPELLANT

Vs

Sunita Lalwani and Others — RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4(1)
Specific Relief Act, 1963 — Section 6

Citation : (2009) 10 DEL CK 0044

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Dheeraj Malhotra, for the Appellant; Karuna Nandi, for the Respondent

Judgement

Manmohan Singh, J.—By this order I shall decide Issues 3, 4 and 5 of the present suit. The present suit has been filed by the plaintiffs for recovery of possession u/s 6 of the Specific Relief Act, 1963.

2. Brief facts as per plaint are that Mr. M.N. Lalwani was the owner of property No. R-719, New Rajinder Nagar, New Delhi (hereinafter referred to as the "suit property"). Mr. M.N. Lalwani died issueless and his wife Mrs. Radhika Lalwani predeceased him. plaintiff No. 1 is the brother of the deceased Mr. Lalwani and plaintiff Nos. 2 and

3 are his sisters. After his wife''s death on 26 December, 2001 the late Mr. M.N. Lalwali was brought to Mumbai on 10 January, 2002 by plaintiff No. 2, with whom he stayed till his death. On the day that he went to Mumbai, late Mr. Lalwani handed over the keys of the suit property to the plaintiff and after that, the plaintiffs have been in actual possession of the suit property. The defendants visited the suit property on 18 April, 2002 and without the plaintiffs'' consent, changed the locks and dispossessed the plaintiffs by force. Repeated requests to return the suit property yielded no result, and therefore the present suit was filed.

3. In their written statement, the defendants have stated that the present suit is not maintainable on two grounds. First, that the suit has not been properly valued as the suit property has not been valued per its market value. Second, that the suit u/s 6 of the Specific Relief Act, 1963 is not maintainable as such a suit cannot be filed against the owners of the relevant property. The facts of the case as submitted by the defendants are that father of defendant No. 1 and 2 and husband of defendant No. 4 late Mr. P.N. Lalwani, younger brother of late Mr. M.N. Lalwani, purchased the suit property out of his own funds vide a perpetual lease deed dated 28 December, 1961 executed by the President of India. After the death of Mr. P.N. Lalwani on 2 February, 1980, the suit property devolved upon his legal heirs being defendant Nos. 1, 2 and 4.

4. The late Mr. M.N. Lalwani at this point of time fraudulently got his name inserted in the perpetual lease deed of the suit property, i.e. he showed defendant No. 4 an unsigned Will of late Mr. P.N. Lalwani bequeathing the suit property entirely to him and convinced defendant No. 4 to sign a letter to the 1 & DO in the same regard and affix an affidavit thereon. Defendant No. 4 had no reason to disbelieve the older brother of her deceased husband, and in her state of shock over her husband''s premature death, did as she was asked. The names of defendant Nos. 1 and 2, being minors, were also added.

5. The defendants have further stated that when they attained majority, they were shown the Will of their late father by late Mr. M.N. Lalwani, who persuaded them to execute power of attorneys in his favour allowing him to sell the suit property. The said defendants were even made to sign blank stamp paper, stating that the same was to be used with regard to the 1 & DO department. On the basis of the power of attorneys and the stamp paper, the suit property was converted into a freehold property and a fresh conveyance deed dated 2 January, 2002 was executed in the names of defendant Nos. 1 and 2 and late Mr. M.N. Lalwani. In a suit for partition being CS (OS) No. 872/2002 filed by the plaintiffs, (which was later withdrawn) the plaintiffs have relied upon the said conveyance deed and are therefore aware that the defendants are co-owners in the suit property.

6. When late Mr. M.N. Lalwani''s wife expired, the former came to Mumbai where he met defendant Nos. 2 and 4. Allegedly, shaken by the deaths in the family, late Mr. M.N. Lalwani for the first time confessed to the said defendants that the Will had been a fabricated one and the attorneys, signatures etc. of the defendants were obtained on the basis of this fraud. Thereafter late Mr. M.N. Lalwani became unwell and expired on 24 February, 2002. Being issueless, his brother and sisters inherited his estate. The defendants brought late Mr. M.N. Lalwani''s confession to the plaintiffs'' notice and stated that they were the owners of the suit property, but to no avail.

7. The defendants have denied that the keys to the suit property were handed over to late Mr. M.N. Lalwani. It is submitted that there were two sets of keys, and only one was handed over to Mr. M.N. Lalwani who was allowed to reside

therein, while the other set was kept with late Mr. P.N. Lalwani. Further, it has been denied that late Mr. M.N. Lalwani gave the possession of the suit property to the plaintiffs. It is submitted that when he arrived at Mumbai on 10 January, 2002 he was in good health and there was no occasion to give the keys of the suit property to anybody. On 11 February, 2002 late Mr. M.N. Lalwani suffered a heart stroke and went into coma. In these circumstances, a son of the predeceased brother of late Mr. M.N. Lalwani and late Mr. P.N. Lalwani, namely Mr. Naresh Lalwani, took into his possession all the papers and belongings of Mr. M.N. Lalwani.

8. To avoid the usurpation of the suit property, defendant Nos. 2, 3 and 4 arrived at Delhi on 16 April, 2002 to stay therein. Mr. Naresh Lalwani then arrived with unsocial elements and demanded vacation of the suit property. A complaint was lodged by the defendants against the plaintiffs, and the conveyance deed was shown to the Assistant Commissioner of Police, after which the plaintiffs stated that they had been unaware of the defendants'' status and would not be any more trouble. However, visits from unsocial elements continued and then the plaintiffs filed a suit for partition and subsequently withdrew the same. As per the defendants, the present case has been filed only to harass them.

9. In the replication, the plaintiffs have submitted that the defendants never met late Mr. M.N. Lalwani during his stay in Mumbai and that they have concocted this fact to support their lie about the alleged confession of late Mr. M.N. Lalwani.

10. I have perused the rival contentions of both parties as well as the pertinent documents. By this Court''s order dated 9 May, 2002 an injunction was granted restraining the defendants from selling, alienating or transferring the suit property. On 18 March, 2003, this Court noted that as the suit property had been let out before passing of the restraint order, status quo would be maintained and the rent receipts and maintenance expenses would be filed quarterly. On 4 March, 2008 Issues were framed. As per order, Issue Nos. 3, 4 and 5 are to be treated as preliminary issues. I shall deal with each Issue separately.

11. Issue No. 3 being "Whether the plaint is liable to be rejected on account of deficiency of Court fee?" does not arise for consideration as it was not opposed by the Learned Counsel for the defendants during the course of hearing of the other two issues. This being the case, I shall now take up the other two preliminary issues.

12. ISSUE No. 5

Whether any claim can be made by the plaintiffs qua the suit property as a consequence of the unconditional withdrawal of CS (OS) No. 872 of 2002 "Roop Lalwani and Ors. v. Sunita Lalwani and Ors.?"

Counsel for the plaintiffs has submitted a copy of order dated 3 May, 2002, on which date CS (OS) No. 872/2002 was withdrawn. The said order is reproduced hereinbelow:

Learned Counsel for the plaintiff wants to withdraw the suit with liberty to file fresh suit. Suit is dismissed as withdrawn with liberty to file fresh suit.

13. No further submissions as regards this Issue are required to be considered in view of the above-stated order. The withdrawal of CS (OS) No. 872/2002 was not unconditional and liberty had been granted to file a fresh suit. This Issue is decided in favour of the plaintiffs and against the defendants.

14. ISSUE No. 4

Whether the suit as framed is not maintainable u/s 6 of the Specific Relief Act against the defendants?

Section 6 of the Specific Relief Act, 1963 provides as under:

6.1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought--

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

15. The case of the defendants is that the plaintiffs were never in actual possession of the suit property as claimed by them. Further, Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 has been referred to and the same is reproduced hereinbelow:

4(1). No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

As defendant Nos. 1 and 2 are the true owners of 2/3 of the suit property, no claim of possession is maintainable against them.

16. The actual possession of the suit property cannot by any stretch of imagination be said to have been with the plaintiffs. They were only in possession of the keys to the same. The plaintiffs" contention that they had posted a security guard at the suit property and were therefore in possession of the same is claimed to be unfounded and wrong as the security guard was hired on 23 March, 2002 and was posted for only about 26 days. Further, plaintiff''s

letter dated 22 March, 2002 to the Delhi Vidyut Board for charging basic charges clearly states that "no one is staying in the premises form January 2002 and hence there is no consumption of electricity."

17. Counsel for the defendants has referred to Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, wherein the following was observed:

9. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh case the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser.... The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession" (SCC p.527, para 12):

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would cultivable be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.

18. It is settled law that the question/existence of title in the suit property is immaterial as far as Section 6 of the Specific Relief Act is concerned. In view of the observation of the Supreme Court as stated above, and under the circumstances of the present case, it seems to me that it cannot be said that the plaintiffs were in "settled possession" of the suit property. The plaintiffs never actually resided in the suit property and are asserting their "actual possession" of

the same on the basis of the security guard deployed there for a mere 26 days. Though the defendants did not reside in the suit property for much time either, the onus of proving "settled possession" is on the plaintiffs and I believe that the same has not been satisfactorily discharged.

19. Such being the circumstances of the present suit, I find that the present suit is not maintainable u/s 6 of the Specific Relief Act, 1963. Thus issue No.4 is decided in favour of the defendants and against the plaintiffs. Consequently, the suit of the plaintiffs is dismissed. All pending applications, if any, also stand disposed of in view of the orders passed in Issue No. 4. No costs.

