
(2008) 03 DEL CK 0240

In the Delhi High Court

Case No : IAs No. 12738/06, 365/06 and 5285/07 in CS (OS) No. 1813 of 2006

Mrs. Meenakshi Gupta

APPELLANT

Vs

Mr. Naveen Mahajan

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, Order 12 Rule 6, Order 6 Rule 12, Order 7 Rule 11

Citation : (2008) 03 DEL CK 0240

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Amrita Sanghi and Mr. Devendra Singh, for the Appellant; Sanjeev Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Justice Shiv Narayan Dhingra

1. This application has been filed on behalf of the Defendant under Order 7 Rule 11 CPC for rejection of the suit that Plaintiff has not paid the requisite Court fee and has paid Rs. 20/- as Court Fee while the Plaintiff admittedly was not in possession of the suit property. It is stated that the market value of the property exceeded Rs. 2 crore. In reply to this application, Plaintiff has stated that Plaintiff was not required to pay ad valorem Court fee on the suit property as she was in constructive possession of the suit property. A perusal of the plaint would show that Plaintiff in para 6 of the plaint has stated that the suit property was being solely enjoyed by the Defendant. A complaint was also made against the Defendant even before National Commission for Women for ill treatment and turning out his mother and National Commission for Women summoned him to appear on 16th July, 2001, but he did not appear and the matter was hushed up by the Commission. In para 9 of the plaint, Plaintiff had again stated that Defendant had been solely enjoying the benefit of the property, although Plaintiff had a vested right and was entitled to 2/3rd share in the property. In para 14 of

the plaint, she stated that Plaintiff was entitled to share not less than Rs. 75 lac in the suit property. She claimed that property was in her constructive possession, she was a co-owner and she affixed a fixed Court fee of Rs. 20/-.

2. This Court in AIR 1991 Del 48 Smt. Prakash Wati v. Smt. Dayawanti and Anr. observed that when it was clear from the pleadings that Plaintiff was not in physical possession of any portion of the property and was not being allowed to even visit the property, it cannot be inferred that the Plaintiff was in joint possession of any portion of the property. It was observed by the Court that the Plaintiff was to pay Court fee on the value of her share for seeking relief of the partition and for possession of her separated share of the property. When a Partition Suit is brought to the Court by a joint owner who has been excluded from the joint ownership of the property to which he is entitled, he is liable to pay Court fee on ad valorem basis on the value of the property claimed by him. This view was upheld by this Court in Rani Devi v. Ashok Kumar Nagi AIR 1999 Del 109 also. In the present case, the Plaintiff has valued her share in the property, for the relief of the partition at Rs. 75 lac, she has to pay ad valorem Court fee on the value of her share. I, therefore consider that the suit is liable to be rejected on this ground. However, an opportunity is given to the Plaintiff to pay ad valorem Court fee within a period of 02 weeks from the date of this order failing which this suit shall be rejected for want of Court fee. IA No. 365/2007 This application has been made by the Plaintiff under Order 12 Rule 6 read with Section 151 CPC for passing a decree on the basis of admission made by the Defendant. It is stated that Defendant has admitted in paras 10 and 11 of the WS that Plaintiff was entitled to 50 % share in the property and in the light of this admission a decree to the extent of 1/2th share of the suit property be passed in favour of the Plaintiff and no hardship or prejudice would be caused to the Defendant if this Court passes a decree. 2. This suit is for partition of the property. In this suit a preliminary decree determining the shares of the parties is to be passed and thereafter a final decree earmarking and dividing the property by metes and bounds has to be passed. There is no doubt that Defendant in the WS has stated that the he has half share in the property and half share is that of the Plaintiff. A preliminary decree on the basis of this admission can be passed by the Court. However, by an order on application under Order 7 Rule 11 CPC, this Court has observed that Plaintiff is liable to pay ad valorem Court fee and unless the Court fee is paid by the Plaintiff even preliminary decree cannot be passed on the basis of admission against the Defendant. As and when the Plaintiff pays the Court fee, this Court shall pass a preliminary decree to the extent of admission made by the Defendant in the WS. The application is disposed of with these directions. IA No. 5285/07 This application on behalf of the Defendant under Order 11 Rule 12 and 14 CPC has been made for making certain discoveries from the Plaintiff and producing certain documents by the Plaintiff. Defendant has sought production of following documents: (i) Statement of Account/Pass Book of the bank account jointly in the name of Smt. Janak Dulari and Plaintiff at UCOBank, Canara Bank and Bank of

India, Hauz Khas, Delhi for last 3 years preceding to the death of Smt. Janak Dulari. (ii)Statement of Account / Pass Book account jointly in the name of Smt. Janak Dulari and Plaintiff in bank at Yamuna Nagar for last 3 years preceding to the death of Smt. Janak Dulari. (iii)Fixed deposit receipt in the name of Smt. Janak Dulari either jointly and singly. (iv)Title documents of property jointly in the name of in the name of Smt. Janak Dulari at Village Teeka Ngrota, Post Office Bhadwar, Tehsil Nurpur, District Kangra, Himachal Pradesh (v)Title Document of property jointly in the name of in the name of Smt. Janak Dulari at Kangra, Himachal Pradesh. 2. It is one of the objections of the Defendant that suit was not maintainable since Plaintiff has sought partition only of one property and there were other joint properties. Defendant has neither filed any counter claim in respect of partition of other joint properties nor listed other joint properties. In absence of any counter claim by the Defendant of partition of other joint properties either movable or immovable, I consider that seeking discovery of documents in respect of movable and immovable properties does not lie. The application is hereby dismissed.