
(2011) 04 DEL CK 0306

In the Delhi High Court

Case No : I.A. No. 5001 of 2010 in CS (OS) No. 734 of 2010

Mrs. Perminder Kaur

APPELLANT

Vs

Mr. Harbans Singh Gulati and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0306

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : V.K. Sharma and Bharat Deepak, for the Appellant; Kirti Uppal, for D-1, Atul Kumar, for D-2, N.S. Jain, for D-3 to D-5 and Abhishek Goyal, for D-6, for the Respondent

Judgement

V.K. Jain, J.—This is a suit for partition and injunction. Late Dr. Prabh Dayal Singh Gulati was the lessee of land comprised in plot No. 19/6, Kalkaji, New Delhi admeasuring about 200 sq.yds. having been leased out by Land & Development Office (L&DO). A residential house was constructed on the aforesaid plot of land by late Dr. Prabh Dayal Singh Gulati, who expired on 27th December, 1990 leaving four sons and one daughter as his legal heirs, his wife having predeceased him. Defendant Nos. 1 and 2 are the surviving sons of late Dr. Prabh Dayal Singh Gulati. Mr. Kuldeep Singh Gulati is one of the three surviving sons of late Dr. Prabh Dayal Singh Gulati and his fourth son, Dr. Iqbal Singh Gulati has died. The case of the Plaintiff is that in his life time, Dr. Iqbal Singh Gulati had bequeathed his share in the suit property to Smt. Sushil Kaur, who has also expired leaving Defendant Nos. 3 & 5 and Plaintiff as her legal heirs. This is also the case of the Plaintiff that Shri Kuldeep Singh Gulati had gifted his share in the suit property to her and Defendant Nos. 3 and 4.

2. The suit has been contested by Defendant Nos. 1 and 2. Mr. Kirti Uppal, who appears for Defendant No. 1, states that they are disputing the Will alleged to have been executed by late Dr. Iqbal Singh Gulati in favour of Smt. Sushil Kaur as also the Gift Deed alleged to have been executed by Mr. Kuldeep Singh Gulati in

favour of Plaintiff and Defendant Nos. 3 and 4. This is also the case of Defendant Nos. 1 and 2 that there was an oral partition allocating various portions of the suit property amongst legal heirs of late Dr. Prabh Dayal Singh Gulati and in that allocation, ground floor came to Defendant Nos. 1 and 2, first floor came to Iqbal Singh Gulati and Kuldip Singh Gulati whereas future rights in the yet to be constructed basement alleged to have come to the share of Defendant Nos. 1 and 2. Future rights in the 2nd and 3rd floors which do not exist as yet alleged to have come to the share of all the four sons of deceased Dr. Prabh Dayal Singh Gulati in equal proportion.

3. I.A. No. 5001/2010 has been filed by the Plaintiff seeking injunction against creation of third party rights as well as against making any unauthorized construction in the suit property and making any structural change and/or additions, alternations etc. therein. She has also sought an injunction against misuse of the suit property besides seeking an injunction against L&DO from taking any coercive action with respect to the suit property.

4. It is agreed, in Court, between the parties that they will maintain status quo with regard to status and title of the suit property during pendency of the suit. It has also been agreed between the parties that none of them will make any addition, alteration and structural changes during pendency of the suit without prior permission of the Court. It is ordered accordingly.

5. The main dispute between the parties, as far as this application is concerned, is with respect to a takeaway restaurant, which is being run by the son of Defendant No. 1 on the ground floor of the suit property under the name and style of M/s Shekaza Restaurant. The case of Defendant No. 1 is that such a user is permitted under the mixed land use provisions of master plan and they have already deposited requisite charges in this regard with the MCD. A perusal of the lease deed executed by the L&DO in respect of plot No. 19/6, Kalkaji, Delhi would show that the building which is constructed on the demised land can be used only for residence. No use for any trade or business is permitted without prior permission of the Lessor. Clause I (vi) of the lease deed is relevant in this regard and reads as under:

I(vi) not without the written consent of the Chief Commissioner, Delhi, to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a single storeyed building consisting of one or two residential flats in all, with a barsati on top, as may be approved for the locality or as provided in the building already erected on the said land.

6. Clause (II) of the lease deed provides for determination of the lease deed in case there is any breach of the covenants or conditions contained therein, and reads as under:

II. If the yearly rent hereby reserved or any part thereof shall at any time be in

arrear and unpaid for one calendar month next after any of the said days whereon the same shall have become due, whether the same shall have been demanded or not, or if there shall have been in the opinion of the Lessor or the Chief Commissioner of Delhi whose decision shall be final, any breach by the Lessee or by any person claiming through or under him of any of the covenants or conditions herein before contained and on his part to be observed or performed then and in any such case it shall be lawful for the Lessor or any person or persons duly authorized by him notwithstanding the waiver of any previous cause or right of re-entry upon any part of the premises hereby demised or of the building thereon in the name of the whole to re-enter and thereupon this demise and everything herein contained shall cease and determine and the Lessee shall not be entitled to any compensation whatsoever, nor to the return of any premium paid by him.

7. It would thus be seen that terms of the lease deed prohibit the lessee or any person deriving title through him from using the building, which has been constructed at plot No. 19/6, Kalkaji, Delhi or any part thereof for carrying any trade or business of any nature without prior permission of the Lessor. Business of running a takeaway restaurant cannot be said to be a use for residential purpose and, therefore, is not permissible under the terms of the lease deed. Even if such a user is permissible under the mixed land use provisions of the Master Plan, nothing in law prevents the Lessor from determining the lease on account of breach of the lease on account of use of a portion of the building for carrying a business or trade. The terms and conditions of the lease deed would still bind the parties to the Deed or their successors in interest, as far as compliance with them is concerned and Master Plan provisions do not override the terms and conditions of the lease deed. The lessee is required not only to observe the provisions of the Delhi Development Act and the Master Plan notified under the Act but also the covenants of the lease deed under which the land underneath the building has been demised to him. Mere permission from the Lessor would not give him a license to contravene the provisions of Delhi Development Act or the Master Plan/Zonal Plan notified under that Act. Similarly, the enabling provisions of Master Plan/Zonal Plan will not permit a lessee to contravene the terms of the lease deed. Any activity by the lessee or a person acting under him needs to conform to Master Plan provisions as well as the terms of the lease deed. Admittedly, no permission of the Lessor has so far been obtained by Defendant No. 1 or any other person for running a takeaway restaurant on the ground floor or any portion of the suit premises. Defendant No. 1, therefore, has no right to run a business in the ground floor of the suit property without prior permission of the Lessor.

8. In its written statement, Defendant No. 6 L&DO has emphatically stated that the lease deed can be cancelled in accordance with the terms and conditions stipulated therein, on account of commercial use of the property. If the lease is determined on account of user of the ground floor for running a takeaway restaurant, that would prejudicially affect not only Defendant No. 1 but also the

other co-lessees of the property. Therefore, they have a vested right to ensure that no part of the suit property is used for a non-residential purpose lest the lease is cancelled by the Lessor on account of such a use.

9. For the reasons given above, Defendant No. 1 is restrained from using or allowing use of any part of the suit property for a non-residential purpose without prior permission of the Lessor. In order to ensure that the business of the son of the Defendant does not suffer all of a sudden on account of this order, it will come into force with effect from 7th May, 2011, but will not affect the right of the lessor to take any action in terms of the Lease Deed.

10. This application stands disposed of.

CS(OS) No. 734/2010

The following issues arise on the pleadings of the parties:

(i) Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP.

(ii) Whether late Dr. Iqbal Singh Gulati had bequeathed his portion in the suit property to late Smt. Sushil Kaur? OPP.

(iii) Whether Mr. Kuldip Singh Gulati has gifted his share in the suit property to the Plaintiff and Defendant Nos. 3 and 4? OPP.

(iv) Whether there was an oral agreement/settlement between the parties, as alleged in the written statement of Defendant Nos. 1 and 2? OPD 1 & 2.

(v) Whether the suit is bad for non-joinder of necessary parties? OPD.

(vi) Whether the Plaintiff is entitled to damages? If so, from whom and to what amount? OPP.

(vii) Whether the Plaintiff is entitled to injunctions sought by her? OPP.

(viii) Relief

No other issue arises or is framed.

Affidavit by way of evidence be filed within four weeks. The parties shall appear before the Joint Registrar on 26th May, 2011 for fixing dates for cross-examination of Plaintiff's witnesses.