

(2009) 01 DEL CK 0023

In the Delhi High Court

Case No : IA No. 9109 of 2008 in CS (OS) 1213 of 1996

Narinder Singh

APPELLANT

Vs

Devinder Kaur

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Citation : (2009) 157 DLT 213 : (2009) 4 ILR Delhi 27 : (2010) 8 RCR(Civil) 1659

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

Bench : Single Bench

Advocate : I.C. Kumar, for the Appellant; Rohit Kumar, for D-1 to D-3 and S.N. Kumar, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.

IA No. 9109/2008

1. This application has been made by the applicant Rajinder Kumar Lamba under Order 22 Rule 10 read with Section 151 of CPC for substituting the name of applicant Rajinder Lamba in place of plaintiff Narinder Kumar.

2. Brief facts relevant for the purpose of deciding this application are that the plaintiff filed a suit for partition claiming 2/7th share in the property No. 72, Ring Road, Lajpat Nagar, New Delhi. Before filing the suit, he had entered into an agreement to sell with the applicant and had agreed to sell his undivided 2/7th share in the property to the applicant. The applicant filed a suit for specific performance against the present plaintiff and in that suit being CS(OS) No. 2100 of 1996, a decree for specific performance has been passed in favour of applicant and the applicant was directed to deposit the entire sale consideration in this Court. Same has been done. The applicant submits that a preliminary decree in the present suit was passed way back on 3rd March 2005 defining shares of the respective parties. However, after passing of the preliminary decree, for the last

three years, no effective steps have been taken by the parties for partition of the property by metes and bounds or by other alternative mode in order to harass the applicant and to see that with the passage of time, applicant loses interest or gets tired.

3. It is submitted by the applicant that in view of the fact that a decree for specific performance for the share of the plaintiff has already been passed by this Court and the entire consideration has been deposited by him in the Court, the plaintiff's interest of 2/7th shares in the property has practically devolved upon the applicant and the applicant should be impleaded in place of plaintiff under Order 22 Rule 10 CPC.

4. The application is opposed by the plaintiff submitting therein that the applicant has no title or interest to be impleaded in the suit and he was not a proper party. An application under Order 1 Rule 10 CPC, earlier made by applicant was dismissed. The right of the applicant in the property would only be there when the sale deed is executed in favour of the applicant pursuant to the decree. Since no sale deed has been executed, no title or interest got devolved upon the applicant. The applicant has no locus standi and he has no right. He should file an independent suit for partition after getting the sale deed executed in his favour. It is also disputed that full consideration has been paid. It is submitted that some of the charges payable to L and DO have not been paid by the applicant. However, it is not disputed that the applicant has deposited the consideration amount as directed by this Court and the same was lying deposited with this Court. It is submitted that unless the amount was released in favour of the plaintiff and sale deed was executed, the application made by the applicant was pre-mature.

5. The counsel for other defendants, who have 5/7th share in the suit property took the same plea. Reliance has been placed on Jiwan Das Vs. Narain Das, wherein this Court observed as under:

12. Now in the present case, a sale deed already stands executed and registered in favour of Jiwan Dass Rawal. Narain Dass and Smt. Jassi Devi have not been so far allowed a decree for specific performance. In such circumstances, can it be said that till these persons are able to obtain such decree and get a sale deed executed in their favour, Jiwan Dass Rawal should be prevented from enjoying the fruits of the sale in his favour, or possession of the property. Perhaps Narain Dass and Smt. Jassi Devi have a good cause to feel aggrieved that the commitment made to them under the agreement of sale was not honoured by Khushal Chand. Perhaps Narain Dass and Smt. Jassi Devi may assert that the so-called arbitration agreement is too vague and uncertain, and they being not parties to the agreement are not bound by the same. These controversies, however, are not within the purview, of the present revision as appropriate issues have already been framed, and they will receive adjudication in due course. Suffice, however to say at this stage that till Narain Dass and Smt. Jassi Devi are able to obtain a decree for specific performance and also get the sale deed executed in their

favour, no title or interest in the property can be assumed to have passed to them. They, therefore, cannot prevent Jiwan Dass Rawal for getting the sale mutated in his favour with the Land and Development Office and take possession of the property or plot. This being the legal position of the rights of Narain Dass and Smt. Jassi Devi under the agreement of sale in their favour, the revision is allowed and the impugned order vacated. This will, however, be without prejudice to the rights which they may ultimately establish in the case pending in the trial court.

6. It is apparent from the record that after passing of preliminary decree, the parties have lingered the case and have shown least interest for partition of the suit property by metes and bounds or by other mode. plaintiff does not seem to be interested in having separate physical possession of his 2/7th share. Since one of the terms of the agreement to sell with the applicant is that the physical possession of this 2/7th share shall be handed over to, the effort of the plaintiff seems to be to prolong the suit and to tire-out the applicant. After plaintiff having agreed to sell his share and after this Court having passed a decree in favour of the applicant directing plaintiff to execute a sale deed, the execution of the sale deed can be enforced upon the plaintiff through the court dictates. Since the applicant has deposited the entire sale consideration and has obtained a decree, though the applicant has not become the absolute owner of his 2/7th share in the property in question but the 2/7th share of the plaintiff practically stands assigned to the applicant. The plaintiff cannot be allowed to frustrate the rights of the applicant by prolonging the instant suit and by not taking steps for actual partition. It is quite possible that parties may not agree to partition by metes and bounds and may agree to other modes of partition just to frustrate the decree obtained by the applicant.

7. Under these circumstances, the execution of the sale deed for actual physical possession of 2/7th share in the property may not be available to the applicant and the applicant may only have to reap the fruits of sale of 2/7th share through public auction or inter se parties auction. Since plaintiff had already suffered a decree, it can safely be presumed that he has lost interest in the partition to adversely affect the applicant. There can be collusion with his brothers and sisters who are defendants herein. I, therefore, consider that the applicant has a right to be impleaded as plaintiff in this case in place of Mr. Narinder Singh.

8. The application, in the result, is hereby allowed and the applicant Rajinder Lamba is impleaded in place of plaintiff Narinder Kumar.

9. The application stands disposed of.