

(2011) 08 DEL CK 0109
In the Delhi High Court
Case No : CS (OS) 765 of 2010

Nripendra Kumar Aggarwal		APPELLANT
	Vs	
S.L. Aggarwal and Others		RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Limitation Act, 1963 — Section 5
Partition Act, 1893 — Section 3

Citation : (2011) 08 DEL CK 0109

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

Bench : Single Bench

Advocate : K.R. Chawla, for the Appellant; Rajat Aneja, for D. 14 to 17, Jaya Tomar, Babli Kaur for D. 9 to 13, Rishabh Jain, proxy for D. 14 to 17 S.S. Parashar, for D. 1, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.

IA 7266/2011 (for review of orders dated 23.02.2011) & 7292/2011(Under Section 5 of Limitation Act) & RP No. 366/2011

1. Vide these applications, Defendant No. 1 is seeking review of the order dated 23.02.2011 whereby Defendant No. 1 was allowed to continue in possession of the suit property bearing No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi, subject to his giving undertaking to the Court that in the event of the Court ultimately deciding that his possession to the exclusion of other co-owners of the property was not lawful, he would pay 5/6 of the current market rent of the aforesaid premises to the other co-owners of the property, he will maintain status quo with respect to the aforesaid possession, will not part with its possession in favour of any other person, will not create any third party interest therein and will not carry out any addition, alteration, renovation or any repair whatsoever therein without prior

permission of the Court. He was also required to ensure that the above-referred portion was properly maintained and does not get damaged in any manner. The undertaking was directed to be filed within one week.

2. The learned Counsel for the applicant states that only the first and second floor of property No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi, is the subject matter of this suit and, therefore, the undertaking should be confined to only those two floors of the property and should not cover the ground floor which is the exclusive property of Defendant No. 1. A bare perusal of the order would clearly show that the undertaking sought from Defendant No. 1 is confined to property which is subject matter of the suit. It is, in any case, clarified that the undertaking to be furnished by Defendant No. 1 in terms of the order of this Court dated 23.02.2011 would be confined to the first and second floor of property No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi.

3. The learned Counsel for the applicant/Defendant No. 1 states that there is No. justification for requiring him to give undertaking to pay 5/6 of the current market rent of the aforesaid premises to the other co-owners since the applicant/Defendant No. 1 is not actually occupying the aforesaid portion of the property and is holding only the keys of those premises. Since it is Defendant No. 1 alone who continues to hold the keys of the aforesaid portions, it is he who is deemed to be in possession of the aforesaid portions and there is No. reason why he alone should continue to enjoy the possession of the aforesaid joint property.

At this stage, the learned Counsel appearing for Defendant No. 1 states that Defendant No. 1 is ready to deposit the keys of the first and second floor of the property, during pendency of the suit. The learned Counsel representing other parties state that they would not insist on an undertaking for payment of 5/6 of the current market rent of the aforesaid premises to the other co-owners of the property in case the keys of the first and second floor, including the staircase leading to the first and second floor of the suit property No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi, are deposited by Defendant No. 1 in the Court. Hence, a consent order is passed directing Defendant No. 1 to deposit the keys of the first and second floor and the staircase of property No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi, in the Court within a week. The undertaking to be furnished by Defendant No. 1 will not include an obligation to pay 5/6 of the current market rent of the aforesaid premises to the other co-owners of the property. If Defendant No. 1 wants the keys of the staircase temporarily for the purpose of cleaning it, he will be entitled to apply to the Court for this purpose.

These applications stand disposed of in terms of this order.

IA 11089/2011(O.12 Rule 6 Code of Civil Procedure)

4. Vide this application, Defendant No. 1 is seeking permission to file written statement. This is a suit for partition and, the Plaintiff as well as Defendants No. 1 & 5 are practising Advocates. When this matter was taken up by Hon"ble Mr. Justice J.R.Midha, on 20.05.2010, Defendants No. 1 & 5 were present in the Court along with their counsel and they admitted that Smt. Kailash Wati was the owner of suit property bearing No. No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi. It was also admitted that the Plaintiff has one-sixth share in the suit property. The shares of the parties as mentioned in para 10 of the plaint were also admitted. It was also submitted that Defendants No. 1 & 5 had No. objection to the preliminary decree being passed in terms of the order made in the plaint. It was also submitted to the Court that a Local Commissioner be appointed for examining whether the suit property can be partitioned by metes and bounds. When this matter was taken up by the Hon"ble Judge on 31.05.2010, Defendant No. 1 sought to withdraw the admissions made on 20.05.2010 and submitted that he wanted to contest the suit. Defendant No. 5, however, stuck to her statement made before the Court on 20.05.2010. The Court was of the view that this was a fit case for exercising power under Order 12 Rule 6 of the Code of Civil Procedure, in view of the unequivocal statements made by Defendants No. 1 & 5 before the Court on 20.05.2010 and passed a preliminary decree declaring that the Plaintiff has one-sixth share, Defendant No. 1 has one-sixth share and Defendant No. 5 has 1/42nd share in the suit property. Defendant No. 2 had already filed written statement by that time. Defendants No. 3, 4, 6 to 18 were granted thirty days time to file the written statement. An appeal was preferred by Defendant No. 1 against the order dated 31.05.2010. The Appellant stated before the Division Bench that he proposed to file an application before this Court praying for leave to file written statement. The appeal was dismissed as withdrawn. Pursuant to the statement made before the Division Bench on 27.05.2011, Defendant No. 1 has now filed the application seeking leave to file the written statement.

5. Since a preliminary decree for partition has already been passed against Defendant No. 1, there is No. occasion for him to file a written statement at this stage. On passing of preliminary decree, the Court needs only to ascertain whether the property is capable of partition by metes and bounds or not and in case the property is capable of partition by metes and bounds, a final decree of partition is to be passed, thereby partitioning the properties by metes and bounds. In case the property is incapable of metes and bounds, the Court is to pass an appropriate order with respect to its sale, on the request of one or more of its co-owners.

6. Since a decree based on admission before the Court has already been passed by this Court and an appeal preferred against that order has also been dismissed, there is No. question of allowing Defendant No. 1 to file written statement at this stage. If Defendant No. 1 has any submission to make with respect to passing of final decree, he will get an opportunity to make such submissions, as and when, the Court takes up the passing of the final decree.

7. The application being devoid of any merit is hereby dismissed. CS(OS) 765/2010 7. Defendants No. 5, who is an Advocate and represents Defendants No. 2 to 4 and 6 to 8, Ms. Jaya Tomar, Advocate, who represents Defendants No. 9 to 13 and Mr. Rajat Aneja, Advocate, who represents Defendants No. 14 to 17 admit, on instructions, that property No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi, was owned by late Smt. Kailash Wati who died on 07.02.1980 leaving behind six legal heirs, namely, Plaintiff - Shri Nripendra Kumar Aggarwal, Defendant No. 1 - Shri Surinder Lal Aggarwal, late Jitender Kumar Aggarwal, late Shri Ravi Aggarwal, late Shri B.M.Aggarwal and Mrs. Veena Gupta. They also admit that all the six legal heirs of Smt. Kailash Wati referred above became entitled to one-sixth share in the suit property, i.e. first and second floor of property No. 61/30, Ramjas Road, Karol Bagh (towards house No. 61/29, Ramjas Road, Karol Bagh), New Delhi. They also request that a preliminary decree for partition of the suit property be passed in the aforesaid ratio. It has also been pointed out that Defendant No. 18 - Mrs. Veena Gupta, has also admitted the aforesaid facts in the written statement filed by her.

8. In view of the aforesaid statements and the admission made in the WS of Defendant No. 18, a preliminary decree for partition is hereby passed declaring that the parties to the suit have the following share in the suit property:

Party to the suit

Name

Share

Plaintiff

Nripendra Kumar Aggarwal

1/6th

Defendant No.1

Surinder Lal Aggarwal

1/6th

Defendants No.2 to 8

Gayatri Devi Neelam Aggarwal Deepak Aggarwal Poonam parashar Sunita Aggarwal Manjushree Anjali Aggarwal

1/42nd each

Defendants No.9 to 13

Usha Aggarwal Kiran Aggarwal Ritu Singhal Seema Gupta Rajeev Aggarwal

1/30th each

Defendants No.14 to 17

Manju Aggarwal Sonia Daga Ankush Aggarwal Ankur Aggarwal

1/24th each

Defendant No.18

Veena Gupta

1/6th

9. All the parties present and/or represented before the Court state that the suit property is incapable of partition by metes and bounds. Since the parties admit that the property is incapable of partition by metes and bounds, the only course of action left for the Court is to sale the suit property, as is provided u/s 3 of the Partition Act, on the request of one or more co-owners. The learned Counsel present before the Court, except Defendant No. 1, do make a request for sale of the suit property.

List the matter for hearing on 27th January, 2012, to work-out the modalities for the sale of the suit property.