

(2010) 11 DEL CK 0068
In the Delhi High Court
Case No : FAO 169 of 2010

Rajiv Luthra

APPELLANT

Vs

Neena Luthra and Others

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10

Citation : (2010) 11 DEL CK 0068

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : P.P. Ahuja, for the Appellant; Pramod Kr. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This order shall dispose of an appeal filed by the appellant assailing the order dated 04.02.2010 passed by the learned ADJ, Delhi whereby while modifying the order directing maintenance of status quo of the suit property which was passed ex parte, the ADJ has observed as follows:

Although there is no denial that preserving the possessory and title status of the flat in question would be required to avoid complication in this suit but considering the unilateral cancellation of registered GPA, the blanket status quo order cannot be allowed to continue as it is. Hence that status quo order qua injuncting the defendant from selling, alienating, transferring or creating third party interest in the suit property is made absolute pending trial but with a rider that in case defendant No. 3 so desire, he can alienate the property with prior permission of this Court. The permission application as and when move, if so moved, shall accompany the full particulars of the prospective buyer apart from ensuring personal appearance of the buyer in the Court. This would ensure the prospective buyer, if any, who intends to get transposed in place of defendant No. 3 would be impleaded automatically under Order 22 r 10 CPC. This rider is also necessary because the suit in hand appears to be an offshoot and a spillage of the matrimonial dispute between the plaintiff and defendant No. 1. Application

under Order 39 (1)(2) CPC stands disposed of accordingly.

2. The appellant is the original plaintiff and is aggrieved by the aforesaid modification. Brief background of this case is that on the day when the suit was filed the appellant and respondent No. 1 were husband and wife but later on they were divorced by a decree of divorce obtained by mutual consent. The dispute in hand is qua flat No. C-304, Venus Apartment, H-4/5 Pitam Pura Delhi. Admittedly, the appellant and respondent No. 1 became joint members of respondent No. 2-society. The flat in hand was jointly allotted to them after consideration of Rs. 6.50 lacs was paid. Admittedly this flat was under possession of various tenants from time to time. Also, admittedly owing to matrimonial dispute, appellant herein admittedly executed a registered GPA registered with Sub Registrar, Jammu in favour of respondent No. 1 on 25.06.1999. Apart from this document an agreement and an affidavit was also executed upon which the appellant has also admitted his signature but has denied the text. As per the agreement the power of attorney was executed by the appellant in favour of respondent No. 1 after receiving consideration of Rs. 3 lacs from her. This GPA, as per appellant, was revoked on 06.10.2003 unilaterally at Delhi before Sub Registrar, Pitam Pura.

3. It is said that by virtue of power of the GPA dated 25.06.1999, despite its revocation on 06.10.2003, respondent No. 1 entered into an agreement for sale of the flat in question with respondent No. 3 on 31.03.2004 and handed him over the possession of the flat. Aggrieved of this transaction, the appellant approached the trial Court with the suit praying for cancellation of the agreement to sale apart from seeking possession of his undivided share in that flat and for permanent injunction.

4. In view of the aforesaid admitted facts which goes to show that with respect to the suit property, there is admission on behalf of the appellant that the first respondent was also a joint member of the respondent No. 2/society along with the appellant and the flat in question was jointly allotted to them after payment of Rs. 6.50 lacs. There is also an admitted fact that a registered power of attorney was executed by the appellant in favour of respondent No. 1, his wife on 25.06.1999 after receiving consideration of Rs. 3 lacs from her. It is FAO 169/2010 Page 2 of 3 based upon the aforesaid document, respondent No. 1 entered into an agreement to sell the property. However, she has not been able to execute the sale deed as the power of attorney stands revoked.

5. In these circumstances, unless evidence is recorded, it cannot be said that the appellant is the absolute owner of the property and thus, is liable to restrain the respondent from exercising any power of ownership with respect to the said property. The learned ADJ has protected the interest of both the parties by modifying the ex parte interim order passed in favor of the appellant on the date of filing of the suit. The order virtually amounts to restrain the first respondent from alienating the property in favour of the third party unless permission is obtained from the Court.

6. Taking all these facts into consideration, I find that there is no reason to set aside the impugned order passed by the ADJ in this appeal. Accordingly, the appeal is dismissed.

7. No Costs.

8. A copy of this order be sent to the trial Court concerned along with the

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Dismissed as having become infructuous.