
(2011) 08 DEL CK 0403

In the Delhi High Court

Case No : FAO No. 344 of 2010 and CM No's. 7263 of 11 and 16173 of 10

Ram Yash

APPELLANT

Vs

Pushpa Malik

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
General Clauses Act, 1897 — Section 27

Citation : (2011) 08 DEL CK 0403

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : None, for the Appellant; S.S. Mishra and A.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—No. one appeared for the Appellant on the first call. No. one has appeared for the Appellant even on the second call. I have therefore heard the counsel for the Respondent and am proceeding to dispose of the appeal.

2. Challenge by means of this Appeal is to the impugned order of the Trial Court dated 17.7.2010 which dismissed the application under Order 9 Rule 13 CPC of the Appellant/Defendant No. 1. I may note that the Defendant No. 2, Sh. Kamal did not apply for setting aside of the decree for possession and in fact the Appellant has for unexplained reasons not made the said Defendant No. 2, Sh. Kamal as party to this appeal.

3. The disputes between the parties pertain to property No. C-17, New Acharya Kriplani Marg, Adarsh Nagar Extension, Delhi. The case of the Appellant/Defendant No. 1 was that the said property was donated by Sh.Jeevan Dass, Smt. Kalawanti, Sh.Heman Dass and Sh. Mohan Dass to one Sh. Sadanandji Maharaj. The Defendant No. 2, Sh. Kamal Das had also claimed accordingly and in fact had filed an injunction suit and which injunction suit was however disposed of observing that the Defendant No. 2, Sh. Kamal Dass will not be

dispossessed without due process of law. The Respondent is the transferee of the property from the original owners Sh. Jeevan Dass and others. The Respondent/Plaintiff had purchased the property by means of registered sale deed. Since the Appellant/Defendant No. 1 and also Sh. Kamal Dass failed to vacate the property, the subject suit for possession was filed.

4. Summons in the suit were issued to the Appellant/Defendant No. 1 and Sh. Kamal Dass for two dates of hearings i.e. 28.8.2008 and 30.9.2008. Notices were issued both in the ordinary method through process server and also through AD post. AD cards have been received back, however, for some strange reason initials/signatures did not appear in the AD cards. However, AD cards admittedly show that summons were sent to the correct address. The process server has also noted that summons were not taken because though initially one lady came out from the house, however after going inside when again came said that summons will not be taken.

5. Considering the aforesaid facts, the Trial Court has given the following observations, and with which I agree, for dismissing the application under Order 9 Rule 13 Code of Civil Procedure. of course, I may note that the Trial Court has wrongly noted that the AD cards are initialed, however, even if the AD cards are not initialed, it would not make any difference because the AD cards in fact show that the summons were in fact sent to the correct address. Paras 5 to 8 of the impugned order read as under:

5. The perusal of the record shows that process was issued to the Defendant/applicant through Process Server as well through Registered Post. Admittedly, the address mentioned in the registered post is correct. It is not the case of the Defendant/applicant that he was out of station or was in any manner incapacitated from receiving the processes. Reports on AD Card available on record shows that one AD card pertaining to the applicant Sh. Ram Yash was received back duly initialed. Similarly, the other Ad card was personally received by Defendant No. 2. Defendant No. 2 was also served personally through process server. However, applicant's family members did not receive the summons despite repeated attempts by the process server on two different dates.

6. Section 27 of General Clauses Act, 1892 runs as under:

27. Meaning of service by post- Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of these expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

7. It goes without saying that as per Section 27 of General Clauses Act, once a process is sent by pre-paying at the correct address, it is deemed to be served in

law. In case C.C. Alavi Haji Vs. Palapetty Muhammed and Another, it has been observed by Hon"ble Supreme Court that:

Notice demanding payment sent by payee through registered post on correct address of drawer of cheque - There is presumption of service - Principle Incorporated in Section 27 of General Clauses Act would be attracted.

8. In the case in hand, the factum of pre-payment and correctness/genuineness of address is not at all in question. AD card duly initialed is received back on record. The mere disowning of initial on the AD card in my considered view is insufficient to discard the due service.

6. I may note that the Respondent and her predecessor-in-interest strenuously disputed that there was any donation of the property to Sh. Sadanandji Maharaj as was alleged. It is therefore cleared that the Respondent/Plaintiff was entitled to possession of the property and if the Appellant/Defendant No. 1 chooses not to contest the proceedings in spite of summons having been sent he has to take the necessary consequences. The Respondent has already taken physical possession of the property in execution of the decree.

7. In view of the above, there is No. merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Interim orders are vacated and the CM Nos. 7263/11 & 16173/10 are therefore disposed of. Trial Court record be sent back.