
(2015) 11 DEL CK 0290

In the Delhi High Court

Case No : FAO(OS) 303/2015 and CM Nos. 10923/2015 and 11767/2015

Saira Hafeez and Others

APPELLANT

Vs

Praveen Rehman and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 22 Rule 3, Order 7 Rule 11

Citation : (2015) 153 DRJ 335

Hon'ble Judges : Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Shahid Azad, Anubhav Mehrotra and Aslam, Advocates, for the Appellant; Rajiv Duggal and Bharat Kumar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J.—The appellants/plaintiffs have filed the present appeal impugning the order dated 15.04.2015 whereby the plaint has been rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

2. The respondent No. 1 is the wife of late Ata-ur-Rehman and respondent Nos. 2 & 3 are the sons of late Ata-ur-Rehman. The appellants, who were the plaintiffs in the suit, claim to be the successors of late Ata-ur-Rehman based on a Will dated 28.02.2002. The appellant No. 1 is the niece (sister's daughter) of late Ata-ur-Rehman and the appellant No. 2 is the husband of the appellant No. 1.

3. The appellants being plaintiffs filed the present suit seeking a decree of declaration thereby declaring the judgment and decree dated 02.07.2005 passed in CS(OS) 96/2002 by the Court of Additional District Judge as non-operative and not binding on the plaintiffs and declaring the plaintiffs as owners in respect of property bearing No. D-190-A, Abul Fazal Enclave, Part-I, Okhla, New Delhi by virtue of Will dated 28.02.2002 registered in favour of the plaintiffs by late Ata-ur-Rehman. The plaintiffs further sought a decree of mandatory injunction restraining the defendants from acting upon or enforcing the judgment and

decree dated 02.07.2005 and a decree of permanent injunction thereby restraining the defendants from alienating, creating third party interest or creating any restrictions, reservations, obstructions and hurdle in the rightful and peaceful enjoyment of the suit property.

4. The learned Single Judge by the impugned order dated 15.04.2015 has rejected the plaint.

5. For examining the pleas raised by the appellant while impugning the order dated 15.04.2015, we may need to note the brief history of the various litigations between the plaintiffs, defendants and late Ata-ur-Rehman.

6. As noted above, respondent No. 1 Praveen Rehman was the wife of late Ata-ur-Rehman. However, it appears that there were strained relations between them. Praveen Rehman filed a suit for possession against Ata-ur-Rehman contending that he was a licensee in the property and his licence had been terminated. The suit was decreed on 02.07.2005 holding that the Praveen Rehman the respondent No. 1 was the owner of the property and Ata-ur-Rehman was mere a licensee and his licence had been terminated. By the said judgment, a decree of possession was passed against Ata-ur-Rehman in favour of the respondent No. 1. Ata-ur-Rehman thereafter filed a Regular First Appeal being RFA No. 25/2006 before this Court. Ata-ur-Rehman died on 25.02.2008. Respondent Nos. 2 & 3 being the legal heirs of late Ata-ur-Rehman sought impleadment in the appeal and thereafter withdrew the appeal on 05.05.2008.

7. After withdrawal of the appeal filed by late Ata-ur-Rehman, an execution petition being Execution Petition No. 189/2008 was filed by the respondent No. 1. Objections under Order XXI Rule 97 were filed by the appellants. The objections were dismissed on 14.03.2014. The appellants thereafter impugned the order dated 14.03.2014 by filing a Civil Miscellaneous Main petition being CM(M) 314/2014 before this Court. CM(M) 314/2014 was dismissed by order dated 14.08.2014. No further proceedings were initiated impugning the order dated 14.08.2014 and, as such, the said order became final. It may also be noted that the appellants had filed an application for impleadment in the RFA filed by late Ata-ur-Rehman, however the application for impleadment was dismissed on 07.07.2010.

8. The appellants have filed the present suit for declaration on 20.08.2014 based on the alleged Will dated 28.02.2002 of late Ata-ur-Rehman. As noted above, the suit seeks a declaration that the decree dated 02.07.2005 is non-operative and not binding on the plaintiffs and a declaration that the plaintiffs are owners by virtue of Will dated 28.02.2002 of late Ata-ur-Rehman.

9. The suit for possession has been decreed in favour of the respondent No. 1 by decree dated 02.07.2005 holding that the respondent No. 1 is the owner of the property and late Ata-ur-Rehman was a mere licensee whose license had been terminated. The appellants are not the natural legal heirs of late Ata-ur-Rehman. The respondent Nos. 2 & 3 being the sons of late Ata-ur-Rehman and his legal

heirs sought their impleadment under Order XXII Rule 3 in the appeal filed by late Ata-ur-Rehman. Thereafter, as legal representatives, as they did not wish to proceed with the appeal, they withdrew the appeal. The appellants are not the natural legal heirs of late Ata-ur-Rehman and claim title based on alleged Will dated 28.02.2002. The appellants had filed an application seeking impleadment in the appeal which application was dismissed on 07.07.2010. Thereafter the appellants did not file the present suit for over four years. The present suit for declaration has been filed on 20.08.2014. The Judgment/Decree that is challenged by the present suit filed in the year 2014 was passed on 02.07.2005. The present suit has been filed after a passage of nine years from the date of decree and at least four years from the date of dismissal of the impleadment application. Admittedly, the suit for declaration has been filed after the expiry of three years from the date of alleged knowledge of the appellants of the passing of the decree. The objection petition filed by the appellant in the execution proceedings initiated by the respondent No. 1 was dismissed on merits on 14.03.2014. The appeal against the dismissal of the objections has also been dismissed and from which no further proceedings have been initiated and as such, the order has become final. The decree dated 02.07.2005 has attained finality as the appeal filed against the said decree has been withdrawn and the objections filed by the appellant in execution petition have also been dismissed and the appeal challenging the dismissal of the objections has also been dismissed. It may be noted that in the execution petition issues were framed and the execution petition has been dismissed by a speaking order on merits. In the objections filed by the appellants, the appellants had raised the plea of the alleged Will left behind by late Ata-ur-Rehman dated 28.02.2002. The appeal against the dismissal of the objections was also dismissed by a learned Single Judge of this Court noticing as under-

"This Court is of the view that the petitioners were fully aware of the suit. They participated in it. They defended it. The Will would come into effect only after the demise of the JD. However, in his lifetime itself the JD had been declared an unauthorized occupant of the suit premises hence devoid of any right, title or interest in it. He possessed nothing apropos the suit property which he could transfer or bequeath in a Will hence nothing would flow to the petitioners by virtue of the Will. Even the appeal filed before this Court by the Judgment Debtor against the judgment and decree was withdrawn, thus stamping a finality to the judgment and the decree. Once there is finality by the judgment apropos the ownership of the suit premises the issue cannot be reopened at the behest of parties claiming through Judgment Debtor. The petitioners too do not have any right in the suit premises. The impugned order does not suffer from any material irregularity nor has the Trial Court failed to exercise the jurisdiction vested in it or otherwise exercised jurisdiction not vested in it. There is no merit in this petition. Accordingly it is dismissed."

10. The learned Single Judge has noticed that the executing Court had reaffirmed that late Ata-ur-Rehman had been declared as an unauthorized occupant in the

suit property during his lifetime on 02.07.2005 and the decree had become final. Late Ata-ur-Rehman had no right, title or interest in the suit property and, as such, he could not have, by any Will, bequeathed non-existent rights, title or interest in favour of the appellant. Not only would the suit filed by the appellants be hit by the bar of limitation but also be barred on the ground of issue estoppel. The findings that late Ata-ur-Rehman was a mere licensee and that the respondent No. 1 was the owner of the property have become final. Not only have the findings become final between the respondent No. 1 and late Ata-ur-Rehman but the same have also attained finality between the respondent No. 1 and the appellants by the dismissal of their objections filed to the execution petition filed by the respondent No. 1 and the further dismissal of the CM(Main) against the order of dismissal of the objections.

11. In view of the above, we find no infirmity in the order passed by the learned Single Judge rejecting the plaint under Order VII Rule 11 CPC. The appeal and the pending applications are accordingly dismissed leaving the parties to bear their own costs.