(2013) 07 DEL CK 0622

In the Delhi High Court

Case No : I.A. No. 8841 of 2005 in CS (OS) No. 2607 of 1990

Satish Anand APPELLANT

Vs

Deep Chand Anand and Others RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2013) 07 DEL CK 0622

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Rajshekhar Rao, for the Appellant; Sunil Gupta, Mr. Sushil Dutt Salwan and Mr. Aditya Garg, Advocates for D-1 to D-3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—By way of this application filed under Order VII Rule 11 CPC, defendant nos. 1 to 3 sought rejection of the plaint in this suit for declaration, partition and possession etc. on more than one ground but during the course of hearing the only ground pressed into service by the learned senior counsel for the defendants at present was that the plaint is grossly undervalued for the purposes of court fees and jurisdiction. Other grounds were left to be urged at the final stage in case the plaint is not rejected now. Initially the present suit was filed by five sisters against their four brothers and one sister for a declaration that they were owners of 1/10th share in the assets left by their parents. Subsequently, on an objection being taken by the defendants that the suit for declaration simplicitor was not maintainable the plaintiffs amended the plaint and claimed the relief of partition as well as possession on various properties, movable as well as immovable, allegedly belonging to their parents. The plaint was valued, at that time, for the purposes of Court fee and jurisdiction at Rs. 23.05 lakhs for the relief of partition being the value of half share of the plaintiffs in the entire properties of their parents. The defendants contested the suit.

3. During the pendency of the suit, all the plaintiffs arrived at some settlement

with the defendants on different occasions and as a consequence thereof they walked out of this legal battle and defendant No. 4, Mr. Satish Anand, who is now the sole plaintiff, was permitted to be transposed as a plaintiff. At that stage, he had adopted the plaint of his sisters as well as his own written statement in which one of his pleas was that one of the properties which his sisters had included in the plaint for partition did not belong to their parents and, in fact, it was acquired and owned by one Company in which he as well as his father were partners. As a result of some family settlement in respect of that partnership firm, that property, which was in Bombay, came to his share in lieu of his walking out of the partnership firm and, therefore, his sisters could not have included that property in this suit for partition.

4. The remaining three brothers had filed the present application for rejection of the plaint and, as noticed already, the rejection of the plaint at the time of hearing of the present application was sought only on the ground that the plaint as filed originally by the sisters was highly undervalued as far as the relief of partition of various immovable properties of the parents of the parties was concerned and therefore, the plaint was liable to be rejected in case the plaint was not correctly valued.

5. Mr. Sunil Gupta, learned senior counsel for the applicants-defendants had submitted that original plaint itself was undervalued is more than evident from the fact that after transposition of defendant No. 4 as the plaintiff he had entered into some Memorandum of Understanding (MOU) with one Company in respect of the property in Bombay and in that document executed sometime in the year 2007 the value of that property was shown to be Rs. 25 crores. It was further contended that since the present plaintiff, Mr. Satish Anand, was transposed as a plaintiff in the year 2004 he was supposed to amend the plaint by giving the valuation of the assets of the parents of the parties as on the date of his being transposed as a plaintiff and consequently he should be called upon to give a correct valuation of all properties and particularly of Bombay property keeping in view the valuation of Rs. 25 crores fixed by himself while entering into a Memorandum of Settlement for construction/development of that property with a Company and upon his failure to do so the plaint should be rejected.

6. This application has been opposed on behalf of the plaintiff.

In my view, the plaintiff at this stage cannot be called upon to amend his plaint and that plaint cannot be rejected under Order 7 Rule 11 CPC for the reasons being pressed into service by the applicants-defendants. It would be a question to be decided during the trial as to whether a defendant who is transposed as a sole plaintiff in a suit for partition is required to give a fresh valuation of the properties sought to be partitioned as per the market value prevalent on the date of his/her transposition as a plaintiff or whether the old valuation given by the outgoing plaintiff would continue to form the basis of valuation of the suit. Similarly, whether or not the plaint was originally undervalued for the purposes of court fee and jurisdiction is a question which can be decided only after evidence is adduced by the parties and just because plaintiff has entered into a Memorandum of Settlement in the year 2007 for construction of a property of Rs. 25 crores in Bombay it cannot be said, without evidence, that the plaint, initially filed in the year 1990, was undervalued. All this would be a matter of evidence and it cannot be said hypothetically that if the value of the property in Bombay in the year 2007 was Rs. 25 crores its value in the year 1990 would have been more than the valuation given in the plaint filed originally by the sisters. Valuation of any property cannot be fixed by guess work and particularly when the property is not in Delhi. This application is, therefore, dismissed and since it appears to have been filed to derail the proceedings it is dismissed with costs of Rs. 10,000/-.