

(2006) 05 DEL CK 0227
In the Delhi High Court
Case No : C.R.P. 316 of 2004

Satyawati Sharma (Decd) through LRs	APPELLANT
Vs	
Indian Overseas Bank and Others	RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 22 Rule 3, Order 22 Rule 3(1), Order 22 Rule 3(2)
Transfer of Property Act, 1882 — Section 6

Citation : (2006) 130 DLT 128 : (2006) 3 RCR(Civil) 556

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Pawan Behl and Ajay Kumar, for the Appellant; V.P. Singh and Ramesh Khatri, for Respondents 6 to 11 and Mansi Chadha, for Respondents 4 and 5, for the Respondent

Judgement

Sanjiv Khanna, J.—The present revision petition raises an interesting question relating to interpretation of Order XXII of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short), the rights of legal representatives of the deceased plaintiff and the rights of persons who claim themselves to be assignees i.e. person who have been allegedly assigned and transferred right, title and interest in the suit property by the deceased plaintiff during the pendency of the suit.

2. Brief facts relevant for adjudication of the controversy may be elucidated.

3. One, Ms. Satyawati Sharma was owner of property No. 70, Golf Links, New Delhi. The ground floor of the said property was rented out to Indian Overseas Bank, respondent No. 1 herein under a lease deed dated 5.11.1970, which was subsequently renewed for a period of three years ending on 31.12.1997 on monthly rent of Rs. 10,000/- per month.

4. On 30.6.1995, Ms. Satyawati executed six sale deeds at Kolkatta in favor of six different companies who are respondent Nos. 6 to 11 before this Court.

Consequent to the execution of the sale deeds, respondents 6 to 11 became sole and absolute owners of the aforesaid property, which was earlier owned by Ms. Satyawati Sharma. The ownership of the said respondents 6 to 11 is not disputed before me by the respondent No. 1 or by the legal heirs of Ms. Satyawati Sharma who are the petitioners.

5. Smt. Satyawati Sharma expired on 29.9.2003. However before her death on or about 25.9.1997 she filed a suit for possession, recovery of rent, mesne profits and injunction against the bank, the respondent No. 1 and it's Managing Director and Manager, the Secretary, Government of India and Land and Development Officer. In the said suit, the six companies who had purchased the property vide sale deed dated 30.6.1995 were also made parties as defendants 6 to 11. It is however conceded before me and also stated in the revision petition that the suit for recovery of possession was/is not maintainable as on the date of filing of the suit, as Ms. Satyawati Sharma was not the owner of the property. It was however submitted and argued that the respondent No. 1 was in arrears of rent and was also liable to pay damages for use and occupation of the property till 30.6.1995 and Ms. Satyawati Sharma was entitled to file the suit and recover the arrears of rent/damages from the respondent No. 1.

6. The respondents 6 to 11 on or about 2.4.2002 moved an application under Order XXII Rule 10 and Order 1 Rule 10 read with Section 151 of the Code for substitution of their names as plaintiffs in place of Ms. Satyawati Sharma. In this application it was further stated that the respondents 6 to 11 had further sold and transferred property No. 70, Golf Links, New Delhi in favor of Master Nitish Sarda, Mr. Aditya Sarda, Master Preetesh Sarda and Master Siddesh Sarda. It was stated that the said respondents 6 to 11 and the subsequent purchasers should be transposed as plaintiffs and the name of Ms. Satyawati Sharma should be deleted.

7. This application as already noticed was filed during the lifetime of Ms. Satyawati Sharma who expired on 21.9.2003, but was not decided during her life time.

8. After death of Ms. Satyawati Sharma, an application was moved by her legal heirs under Order XXII Rule 3 read with Section 151 of the Code. Respondents 6 to 11 filed a reply to the said application and in the reply for the first time it was stated that Ms. Satyawati Sharma had executed documents dated 22.12.2001 including an agreement by which she had sold, transferred and assigned all her residuary rights, title and interest including her right/claim as prayed for in the Suit together with costs, charges, interest and other money coverable in favor of respondents 6 to 11. Copy of those documents including the deed of agreement was enclosed with the said reply. It was also stated in the reply that Ms. Satyawati Sharma had also executed a registered General Power of Attorney in favor of Mr. Aditya Sarda and Ms. Neeta Sarda. The deed of agreement and the power of attorney are registered.

9. The legal heirs of Ms. Satyawati Sharma however disputed the execution of the said documents and have also relied upon a deed for cancellation of the General Power of Attorney executed by Ms. Satyawati Sharma on 17.4.2003. The said cancellation deed is also duly registered.

10. Ms. Satyawati Sharma had filed the above suit in the Delhi High Court. However due to change in pecuniary jurisdiction, it was transferred to the Court of District Judge, Tis Hazari, Delhi. The application under Order XXIII Rule 3 filed by the petitioners as legal representatives of Ms. Satyawati Sharma and the application under Order XXII Rule 10 of the Code filed by respondents 6 to 11 and the subsequent purchasers has been disposed of by the impugned order dated 10.3.2004. The learned District Judge after hearing the parties held that Ms. Satyawati Sharma having executed the sale deeds dated 30.6.1995 was left with no right, title and interest in the property and the suit filed by her was not maintainable. It was further held that she had subsequently executed documents assigning her rights in respect of arrears of rent in favor of respondent 6 to 11. Accordingly, the respondents 6 to 11 were directed to be transposed as plaintiffs. Application under Order XXII Rule 3 of the Code filed by the petitioners herein was dismissed. However, no direction was given in respect of subsequent purchasers who wanted to be also imp led as co-plaintiffs. The subsequent purchasers have also not made any application or filed any petition against the order dated 10.3.2004 rejecting their request for being imp led as co-plaintiffs. In these circumstances I need not examine this aspect.

11. Order XXII of the Code deals with situations where a plaintiff or defendant dies during the pendency of proceedings before the Court. Order XXII further states that a suit, on death of a plaintiff shall not abate where cause of action survives and provided the legal representatives of the plaintiff move an application for being imp led as party.

12. The term legal representative has been defined in Section 2(11) of the Code. The said definition reads as under: 2(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

13. The expression "legal representatives" is very wide. A person who in law represents the estate of the deceased or a person on whom the said estate devolves on the death of the deceased is entitled to be imp led as a legal representative. "Legal representative" as used in the Code is a person who in law represents the estate of the deceased and may even include a person who intermeddles with the estate of the deceased. However, cases of intermeddling must involve an assumption of a representative capacity in relation to an estate, and not an assertion of a claim or a right adverse to the estate of the deceased. (See observations of Madras High Court in U. Abdul Jabbar and Another Vs. Manonmani Pictures and Others, .

14. A legal representative as a matter of right can ask for his impleadment on the death of the plaintiff. The Court has no discretion in this regard. On an application being moved under Order XXII Rule 3 of the Code it is mandatory for a court to implead the legal representatives and continue with the proceedings. This is clear from the word "shall" used in Order XXII Rule 3 of the Code, which is reproduced for the sake of convenience: 3. Procedure in case of death of one of several plaintiffs or of sole plaintiff:

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under Sub-rule(1) the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

15. The purpose and object of Order XXII Rule 3 of the Code is to allow legal representatives to carry on proceedings in the suit. Any order under Order XXII Rule 3 does not confer any right of heirship upon the legal representative. In case of any dispute as to whether a person is entitled to be impleaded as a legal representative, a Court is required to decide the matter under Order XXII Rule 4 of the Code by adopting and following a summary procedure. In-depth enquiry is not required to be held under Order XXII Rule 4 and an order passed in the aforesaid Section does not operate as res judicata.

16. Order XXII Rule 10 of the Code on the other hand deals with transfer, inter vivos by the plaintiff during the pendency of the suit. It operates in cases where the plaintiff has assigned his rights, title and interest and the same has devolved upon another person during the pendency of the suit. Order XXII Rule 10 of the Code does not apply where a person claims his right as a legal representative. An assignee as successor in interest is not a legal representative under Order XXII Rule 3 read with Section 2(11) of the Code but a person on whom the interest has devolved within the meaning of Order XXII Rule 10 of the Code. In any case in the present matter, the rights claimed by the respondents 6 to 11 are adverse to the estate of the deceased plaintiff. The respondents 6 to 11 are not legal representatives of Ms. Satyawati Sharma.

17. Order XXII Rule 10 of the C.P.C is reproduced below: 10. Procedure in case of assignment before final order in suit:

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2)The attachment of a decree pending an appeal there from shall be deemed to be an interest entitling the person who procured such attachment to the benefit of Sub-rule(1).

18. A bare reading of the said provision shows that it is only an enabling provision that permits and allows a transferee to move an application for being imp leaded as a party because of the pendente lite transfer. However, it is not mandatory for a person to move any application under Order XXII Rule 10 of the Code in case of transfer/assignment, unlike Order XXII Rule 3 of the Code where legal representatives must move an application or the suit will abate. There is no penal provision under Order XXII Rule 10 or in the entire Code in case a transferee/assignee does not move an application. Suit does not abate and cannot be dismissed on the ground that the transferee or assignee has not been brought on record. A transferee Therefore need not always be imp leaded and made a party. The law permits the original plaintiff to continue the proceedings against the defendant. However the transferee or the person who acquires rights under the assignment is bound by the decree, judgment or order passed by the Court unless the original plaintiff i.e the transferor has played a fraud. Reference in this regard may be made to the observations the Punjab High Court in Sukhdip Singh Vs. Arjan Singh Mihan Singh and Another, wherein it has been observed as under:

After going through the judgments cited, it seems to me to be clear that each one of them proceeded on its own peculiar facts. It is incontrovertible that the scope of Order XXII, Rule 10 is enabling the underlying principle of which is that the progress of a suit or an appeal should not be arrested merely by reason of a devolution of the interest of a party in its subject-matter with the leave of the Court.

The person acquiring the interest of a party to legal proceedings may continue the same, but it does not by itself incapacitate the original party from continuing the proceedings and the former is both bound by and can enjoy the benefit of the steps taken by the latter. In this view of the matter, the appellant would, obviously be bound by the compromise effected between Shrimati Sukhdev Kaur and Arjan Singh, unless he were to be permitted by the Court to reopen the settlement and show that the compromise was a fraud on his right.

19. In the same judgment, the Punjab High Court has referred to the earlier judgments of Madras High Court in the case of Nanjammal v. Eswaramurthy AIR 1954 Mad 592 , Joti Lal Sah and Others Vs. Sheodhayan Prashad Sah and Others, & Ibrahim Mullah Raswalji v. Chitra Singh AIR 1954 Sau 20. Relying upon these decisions it has been held that whether or not an assignee should be imp leaded under Order XXII Rule 10 depends upon the discretion of the Court but the same has to be exercised judicially and not arbitrarily. It was further held that when an application under Order XXII Rule 10 of the Code is made, the Court should be prima facie satisfied that the assignee has been able to establish the validity of transfer. However, the request under Order XXII Rule 10 should

not be unreasonably refused especially where the assignee is the only person who is really interested in the conduct of the suit.

20. Kerala High Court in its Full Bench decision in the case of Goutami Devi Sitamony Vs. Madhavan Sivarajan, has endorsed the above view and has held as under:

Rule 3(1) or Order XXII provides that where one or two more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. If no application is made within the time provided for making such an application under law the suit shall abate in so far as the deceased plaintiff is concerned. This is the provision in Rule 3(2), Order XXII of the Civil P.C. Similarly there is provision as to abatement in the case of death of a defendant and failure to seek to implead the legal representative so as to continue the proceedings. Apart from the provisions for impleading parties by reason of the right to sue surviving on the death of parties provision is made in O.XXII, R.10 to cover cases of devolution of any interest during the pendency of a suit. That rule provides that in other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or developed. The provision indicates that the right of the assignee to seek to continue the suit is not absolute as it is for the court to consider whether leave is to be granted. In appropriate cases the court may grant leave to continue the suit. Such an assignee is bound by the previous proceedings in the suit and his right is only one of further prosecution of the suit.

21. It may be relevant to state here that the Supreme court in the case of Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, has held that though after a decree is passed, an application under Order XXII Rule 10 of the Code is not maintainable, the assignee can file an appeal u/s 146 of the Code as person claiming under a party. Similarly, reference may also be made to the decision of the Supreme Court in Shri Rikhu Dev, Chela Bawa Harjug Dass Vs. Som Dass (Deceased) through his Chela Shiam Dass, , in which it has been held as under:

This rule is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of the suit has devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. The word "interest" which is mentioned in this rule means interest in the property i.e., the subject matter of the suit and the interest is the interest of the person who was the party to the suit.

22. One more aspect requires consideration. The petitioners herein have disputed and denied the execution of various documents dated 22.12.2001 purportedly

executed by Ms. Satyawati Sharma in favor of respondents 6 to 11 and the General Power of Attorney. In this regard they have also relied upon the alleged deed of cancellation dated 17.4.2003. Prima facie it appears that Ms. Satyawati Sharma had executed these documents otherwise there was no need for her to execute deed of cancellation of the General power of Attorney dated 17.4.2003. Moreover the said documents have been executed for consideration as is apparent from the deed of agreement dated 22.12.2001, which mentions that a sum of Rs. 1 lakh was paid.

23. However, it is apparent that the legal heirs of Ms. Satyawati Sharma and she herself had questioned and challenged the validity of the assignment. This aspect will have to be decided and adjudicated. In the impugned order the learned District Judge has upheld the execution of the said documents without giving an opportunity and right to the petitioners to question and challenge the same. As already stated above, I am prima facie of the view that the said documents are genuine and validly executed. However, no final verdict or decision can be given in this regard without giving an opportunity to the petitioners to lead evidence and prove and establish their case. This can be done either in a separate suit or in the proceedings pending before the learned trial court. I would prefer the later option as it would cut short and help final and complete adjudication within the suit itself. This procedure, which I am accepting and adopting is recognised and accepted in several decisions of High Courts. It has been held that the validity of assignment once challenged, need not be immediately decided at the stage of deciding of the application under Order XXII Rule 10 of the Code. Court at that stage can take a prima facie view of the matter. Reference in this regard may be made to AIR 1944 137 (Nagpur) and Seethai Achi Vs. Meyappa Chettiar and Others, It could be also appropriate here to refer to a judgment of the Bombay High Court in the case of Jawasharlas Vs. Saraswatibai Babulal Joshi and Others, wherein it has been held as under:

12. Having regard to the provisions of O.22, R.10, Civil P.C and the authorities to which I have referred, it is apparent that no detailed enquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution and the question about the existence and validity of the assignment or devolution can be considered at the trial of the suit on merits. This being the legal position the order passed by the learned trial Judge was correct and no interference with the discretion exercised by him is called for.

24. Keeping in view the above position of law, I set aside the impugned order dated 10.3.2004 with the following directions:

(1)The application of the petitioners under Order XXII Rule 3 of the Code is allowed and they are imp leaded as legal representatives of Ms. Satyawati Sharma.

(2) The respondents 6 to 11 will be permitted to plead and establish their case on the basis of deed of agreement (assignment) and the General Power of Attorney. The respondents 6 to 11 will move an application for amendment of the written statement to rely upon the said documents dated 22.12.2001 and the same will be allowed by the learned trial court.

(3) The trial court will examine the question of validity of the alleged assignment deed dated 22.12.2001, the general power of Attorney and the other documents.

(4) The Respondents 6 to 11 will be also entitled to prove and establish the claim for mesne profits, damages and arrears of rent against respondent No. 1 and other respondents.

(5) In case the assignment is found to be legal, valid and genuine, the respondents 6 to 11 will be entitled to exemplary costs from the petitioners and the respondents 6 to 11 (and not the petitioners) will be entitled to execute the decree against other respondents. 25. A word of caution in the end. I have not examined and gone into the aspect whether the alleged deed of assignment is legal and valid u/s 6(e) of the Transfer of Property Act, 1882. Further the views expressed in this order on the question of deed of agreement, the General Power of Attorney and other documents are tentative views based upon prima facie opinion. Learned trial court will decide the question of genuineness and validity of these documents on the basis of evidence and material led by the parties.

25. Presently, no order as to costs.