

(2009) 08 DEL CK 0273

In the Delhi High Court

Case No : F.A.O. No. 258 of 2009 and C.M. No. 11681 of 2009

Sh. Kundan Lal and Others

APPELLANT

Vs

Smt. Prakash Devi Wd./o Sh. Pritam Das

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 22 Rule 10(3), Order 22 Rule 2, 151

Citation : (2009) 08 DEL CK 0273

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : S.S. Panwar and Sumit Dutt Balani, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—This appeal has been filed the Appellant No. 1, against judgment dated 10th July, 2009 of Additional District Judge, Delhi, who dismissed the application of Appellant No. 1, filed under Order 22 Rule 10 read with Order 1 Rule 10 and Section 151 CPC (for short as code).

2. Brief facts are that Respondent filed a suit for partition against Appellant Nos. 2 to 6 and her mother Smt. Sewi Bai @ Savitri Devi, who was Defendant No. 2 at the time of filing of the suit. Smt. Sewi Bai died on 26th May, 1998. Vide order dated 22nd October, 1998, application under Order 22 Rule 2 of the Code, was disposed of since her legal representatives were already on record as Defendants.

3. On 26th September, 2003 Appellant No. 1 herein, filed application under Order 22 Rule 10 read with Order 1 Rule 10 of the Code on the basis of registered Will dated 27th April, 1995 of her grandmother, Smt. Sewi Bai.

4. It is contended by learned Counsel that Appellant No. 1 is the assignee/transferee in suit property and as such he is a necessary party. The court has power to join the necessary party under law at any stage of the proceedings and

mere delay in moving the application does not justify to reject it. No prejudice would be caused to the opposite party, if Appellant No. 1 is impleaded in this case. In support of its contention learned Counsel cited decision of Supreme Court; Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, .

5. Order 22 Rule 10 of the Code reads as under:

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 therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit Sub-rule (1).

6. This provision is based on the principle that trial of a suit cannot be brought to an end merely because 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. It is the discretion of the court to implead any party to whom such interest has devolved or not. This discretion to implead or not to implead the parties who apply to continue the suit, has to be exercised judicially and not arbitrarily.

7. As per Appellant No. 1's case, Smt. Sewi Bai being his grandmother, executed Will on 27th April, 1995 in his favour. Smt. Sewi Bai died on 26th May, 1998. It was only on 26th September, 2003, Appellant No. 1 filed present application, that is, five years four months after, death of Smt. Sewi Bai.

8. In Lakshan Chunder Dey Vs. Sm. Nikunjamoni Dassi and Others, , it has been observed:

An applicant who invokes the aid of Rule 10 of Order 22 is not entitled, as a matter of right, to an order in his favour, regardless of delay or laches. The court undoubtedly has a discretion in the matter which must be judicially exercised.

9. In Amit Kumar Shaw (Supra) same principle is laid down:

Transferee cannot be joined as of right but court has discretion to do so

10. Trial court in impugned judgment held that;

why the applicant kept mum from 26th May, 1998 to 26th September, 2003." I agree with the findings of the trial court. There is no explanation as to why there is delay of more than five years, in filing of this application nor it is stated as to how and when Appellant No. 1, got knowledge of pending suit before trial court.

11. The application is absolutely silent on these points. So there is no infirmity and ambiguity in the impugned judgment. The present appeal is thus not maintainable and same is hereby dismissed with costs of Rs. 5000/-.

12. Appellant No. 1 is directed to deposit the costs with Registrar General of this Court within one month from today.

CM No. 11681/2009

13. In view of dismissal of appeal, this application stands dismissed.

14. Copy of this judgment be sent to trial court.

15. List for compliance on 6th October, 2009.