
(2011) 12 DEL CK 0321

In the Delhi High Court

Case No : Regular First Appeal No. 411 of 2010

Sh. Rakesh Rawat and Another

APPELLANT

Vs

Sh. Rajesh Kumar Rawat and Others

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2012) 2 ILR Delhi 177

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Purnima Sethi, for the Appellant; Ramesh Kumar, Advocate for Respondent No. 1 and Ms. Latika Choudhary, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial court dated 29.5.2010 passing a final decree determining the value which shall be payable by the respondent No. 1 / plaintiff to the appellants / defendants. The preliminary decree declaring shares of the parties in the various properties was passed earlier vide judgment and decree dated 1.5.2009, and which judgment admittedly has become final because the same was never challenged by any of the parties.

2. By the preliminary decree dated 1.5.2009 a decree was passed declaring the respondent No. 1/plaintiff as entitled to 4/6th share in the first suit property i.e. D-63/1, Vijay Colony, Near Usmanpur, 3rd Pusta, Shastri Park, Delhi - 110053. The respondent No. 1 / plaintiff was also held entitled to a 2/3rd share in the second suit property i.e. D-75, Vijay Colony, Near Usmanpur, 3rd Pusta, Shastri Park, Delhi - 110053. The appellants / defendant Nos. 1 and 2 were entitled to 1/6th share in the first property and 1/3rd share in the second property. In the second property only the defendant No. 2 was held entitled to 1/3rd share in the property.

3. A local commissioner was appointed after passing of the preliminary decree, however, in view of the dissatisfaction of both the parties to the report of the local commissioner, the report of the local commissioner was rejected by the court vide order dated 26.5.2010.

4. The parties, thereafter, in the present case agreed to the modality of arriving at the value of the suit property by inter se bidding. As per the inter se bidding, the respondent No. 1 / plaintiff offered an amount of Rs. 30,000/- per sq. yd. for both the properties, but the appellants / defendants only offered a sum of Rs. 25,000/- per sq. yd. This offer of Rs. 25,000/- per sq. yd. was not increased by the appellants in spite of opportunities given by the trial court.

5. Learned counsel for the appellants argued before this Court the following aspects for allowing the appeal:

(i) The preliminary decree wrongly determines the shares of the parties.

(ii) The trial court has wrongly recorded the aspect as to the inter se bidding, and the facts as stated in the impugned judgment does not state the correct factual position, inasmuch as there was no actual bidding. It is also argued that the order was passed in haste without giving sufficient opportunity to the appellants

(iii) Lastly, it was argued that as per various judgments of Supreme Court valuation of the property ought to have been arrived at and only after a valuation is arrived at through the valuer's report, and only on the basis of such valuation could the final decree have been passed.

6. So far as the first point of argument of challenging the preliminary decree is concerned, this argument is wholly misconceived inasmuch as a preliminary decree is as much a judgment and decree as a final judgment and decree, and if the appellants were aggrieved in any manner by the preliminary judgment and decree dated 1.5.2009 declaring the respective shares of the parties, then, such judgment and decree which was appealable ought to have been appealed from. Admittedly, till date neither the appellants, nor the respondent No. 3 who is supporting the appellants, have challenged the preliminary judgment and decree. Therefore, I reject the argument raised on behalf of the appellants by seeking to challenge the preliminary judgment and decree dated 1.5.2009 in a challenge which is now laid against the final judgment and decree dated 29.5.2010.

7. The second argument which is urged on behalf of the appellants is that the trial court has wrongly recorded as a matter of fact that there was inter se bidding. It is also argued that the order was passed in haste without giving any opportunity to the appellants.

I am indeed surprised and pained at this unfortunate argument which is being urged on behalf of the appellants through their counsel and which is totally against the factual aspects which have been stated in the impugned final judgment and decree. I may note that Supreme Court right from the judgment in

the case of State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, has held that if in case a factual narration as to what transpired during the hearing is wrongly recorded in judicial proceedings, then, the only way to get such factual aspects allegedly wrongly recorded, corrected, is by immediately approaching the concerned court which has recorded the factual aspects after the order/judgment is passed. If the matter is not brought to the notice of the concerned court when the matter is fresh in the mind of the said court immediately after it being recorded, by moving of an application seeking correction of the record, then, the matter must necessarily end there and it is not open to a party in an appeal to canvass that factual aspects which are stated in a judicial order have been wrongly recorded by the court. This judgment of the Supreme Court in the case of Ramdass Srinivas Nayak (supra) has been followed thereafter in at least over a dozen reported judgments. Admittedly, the appellants have not filed any application till date before the trial court challenging the factual aspects as narrated in the order, and therefore, it is really a sorry state of affairs that unnecessary and expansive arguments are being made against judicial record, and, which in fact in my opinion borders on contempt of court. I, therefore, reject the argument that the trial court judgment / impugned judgment does not correctly factually record the narration of facts with regard to the appellants only offering Rs. 25,000/- per sq. yd. and the respondent No. 1 / plaintiff offering Rs. 30,000/- per sq. yd. with respect to the properties for being purchased by inter se bidding. I may note that counsel for the respondent No. 1 has brought to my attention the fact that the trial court has recorded that enough opportunities were given to the appellants / defendants to increase their offer, but they failed to do so.

8. The last argument which was urged on behalf of the appellants was that there could not have been passed a final decree unless a valuation report was called for so as to determine the value of the properties. Of course finding out the value of a property through a valuation report is one of the methods of determining value of property, however, inter se bidding between the parties to a suit is also a well recognized mode for arriving at the value of the properties, more so, when this is an agreed inter se bidding procedure. The appellants having agreed to the inter se bidding procedure, and having lost out in the bidding by offering a lower amount of Rs. 25,000/- per sq. yd. instead of Rs. 30,000/- per sq. yd. which was offered by the respondent No. 1/ plaintiff, therefore, now cannot object to the final decree by urging that the valuation report should have been called for before passing of the final decree. I, therefore, reject this argument urged on behalf of the appellants / defendants that the final decree could only have been passed after valuation report of the property was filed for the value to be arrived at.

9. In view of the above, there is no merit in this appeal, which is accordingly dismissed with costs of Rs. 20,000/- and which shall be paid within a period of two weeks from today. The Supreme Court in the recent judgment of Rameshwari Devi and Others Vs. Nirmala Devi and Others, has observed that it is

high time that actual and realistic costs be imposed. I am also empowered to impose actual costs in terms of Volume V of the Punjab and Haryana High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.

10. The appeal is accordingly dismissed. By the impugned judgment respondent No. 1 was given one month's time to pay the amount as per the rate of Rs. 30,000/- per sq. yd., and since the impugned judgment was stayed during the pendency of this appeal, the respondent No. 1 / plaintiff is now granted time upto 31.1.2012 to abide by the directions with regard to payment as contained in the impugned judgment.

CM No. 11267/2010 (u/O 41 R 27)

Dismissed as not pressed.