

(2014) 04 DEL CK 0093
In the Delhi High Court
Case No : CS(OS) 585/2012

Shashi Garg

APPELLANT

Vs

M/s. Shitiz Metals Ltd. and Another

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 15
Easements Act, 1882 — Section 64
Transfer of Property Act, 1882 — Section 106, 55(4)(b)

Citation : (2014) 5 AD 45

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rachna Agrawal, Advocate for the Appellant; Sharad Malhotra,
Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

I.A. No.4426/2012 (u/O 39 R-1&2 CPC)

1. The ex-parte ad-interim order dated 7th March, 2012 is made absolute till the decision of the suit.

2. The application is disposed of.

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3. The suit is ripe for framing of issues.

4. The counsel for the plaintiff states that in this suit, (i) for recovery of possession of second floor with terrace of property No.D-819, New Friends Colony, New Delhi; and, (ii) for recovery of arrears of and future mesne profits and for ancillary injunction, insofar as the relief of possession is concerned, the written statement of the two defendants does not raise any material plea and the suit insofar as for the relief of recovery of possession, is entitled to be decreed forthwith.

5. If that be the position, Order XV of the CPC (CPC), 1908 permits such a course of action.

6. The counsels have been heard on the aforesaid aspect. However, when after hearing and after perusal of the written statement, it has been enquired from the counsel for the defendants, as to how the defences raised are material in law and entitle the defendants to lead evidence on the same, inasmuch as the same, even if proved, do not constitute a defence to the relief of possession, the counsel for the defendants states that the matter be adjourned. The same is not permissible. The counsels should come prepared and after this Court has heard the matter, no adjournments can be granted owing to the counsel's own unpreparedness. It is this which leads to the suits remaining pending by years together.

7. The plaintiff has instituted the suit, pleading:

(i) that the plaintiff is the owner, of the aforesaid second floor with terrace along with 40% undivided and indivisible rights in the 492 sq. yds. of land underneath the property, vide Sale Deed dated 4th September, 2003 executed by the defendant No.1 (through its Director Mr. Ajay Gupta husband of the defendant No.2 Smt. Sushma Gupta) in favour of the plaintiff;

(ii) that though as recorded in the said Sale Deed also, at the time of the execution thereof vacant, peaceful and physical possession of the property sold was delivered to the plaintiff but since the defendants were then in occupation thereof, they requested for some time to vacate the same and to which the plaintiff agreed being on friendly terms with the defendant No.2 and her husband Mr. Ajay Gupta;

(iii) that the defendants thereafter dilly - dallied in delivery of possession;

Ultimately, on 6th March, 2012 the suit was filed.

8. The defendants have contested the suit, by filing a written statement, on the grounds:

(a) that the suit is without cause of action;

(b) that the suit is barred by time; though the plaintiff become the owner in the year 2003, the suit has been filed in the year 2012;

(c) that the parties are in various litigations since the year 2006 and in which regard various letters and legal notices were exchanged between the parties; though the plaintiff in one of such notices dated 9th June, 2008 agitated the issue of possession but still filed this suit after nearly four years therefrom also;

(d) that the suit is not properly valued for the purposes of court fees and jurisdiction as the value of the suit property is not less than Rs.10 crores;

(e) that though the plaintiff claims the occupation of the defendants to be that of a licensee but no notice of termination of licence has been issued;

(f) that the suit is a counter-blast to an FIR No.56/2010 of P.S. New Friends Colony, New Delhi and in which the issue relating to the validity and sanctity of the Sale Deed dated 4th September, 2003 is sub-judice;

(g) that the husband of the plaintiff, who is a Chartered Accountant by profession, was looking after the entire accounts, taxation and financial accounts of the defendant No.1 and its sister concerns and enjoyed the blind faith and confidence of Mr. Ajay Gupta;

(h) that the execution of the Sale Deed dated 4th September, 2003 aforesaid was the game plan of the husband of the plaintiff and all the documents, including of purchase by the defendant No.1 of the said property and sale thereof to the plaintiff, were also got prepared by the husband of the plaintiff;

(i) that the said property i.e. second floor with terrace was agreed to be sold/transferred by the defendant No.1 to the plaintiff for a total sale consideration of Rs.1 crore but the husband of the plaintiff taking undue advantage of the faith and confidence reposed by the defendants, got the alleged Sale Deed dated 4th September, 2003 executed showing sale consideration of Rs.50 lakhs only and which too was shown to have been paid by adjustment of various entries;

(j) that since the full agreed sale consideration had not been paid, possession of the property was not delivered despite execution of the Sale Deed;

(k) that the adjustment of entries came under dispute leading to various civil and criminal litigations between the parties;

(l) that the plaintiff never acquired any lawful right, title or interest in the suit property and the defendant No.1 continues to be the owner thereof.

9. The first of the aforesaid pleas, of the suit being without cause of action is vague and without any particulars.

10. As far as the defence of the defendants, of the suit being barred by time is concerned, the limitation for recovery of possession of immovable property is governed by Articles 64 & 65 of the Schedule to the Limitation Act, 1963 and which provides a limitation of 12 years, either from the date of dispossession or from the date when the possession of the defendants become adverse to the plaintiff. The defendants as aforesaid admit to the execution of the Sale Deed. The Sale Deed which is executed on behalf of the defendant No.1 by the husband of the defendant No.2, undisputedly in Clause (3) thereof records that the actual, physical and quite vacant possession of the property sold had been delivered by the defendant No.1 as vendor to the plaintiff as vendee. The said suit has been instituted by the plaintiff prior to the expiry of 12 years therefrom. Though, it is not even the plea of the defendants that they were at any time claiming adversely to the plaintiff but even if it were to be presumed that the possession of the defendants, notwithstanding the Sale Deed, was adverse to the plaintiff, the suit has still been filed within the prescribed period of limitation. The said plea in the written statement is thus not material, so as to invite framing of an

issue.

11. The objection as to the valuation is again vague and neither any specific plea has been taken nor any documents in support thereof has been filed. Even otherwise, the said defence is not material, as the only consequence thereof would be of the plaintiff being required to pay more court fees. Even otherwise, if the plea of the defendants is of the valuation being much more than assessed by the plaintiff, the mesne profits payable by the defendants would be proportionally higher. The suit, for the relief of possession, is valued at Rs.50 lacs, at which price as per the sale deed the property was sold by defendant no.1 to the plaintiff and in the facts of the case, valuation is found to be appropriate.

12. The counsel for the defendants is unable to show, as to which law requires termination of licence or a notice of such termination. In fact as per Section 64 of The Indian Easements Act, 1882, the consequence of termination before time is only compensation. Even otherwise, now that when the Supreme Court in *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)*, has held that filing of a suit for ejectment itself is termination of lease as provided u/s 106 of the Transfer of Property Act, 1882, the plea of, this suit for possession being not maintainable in the absence of a notice of termination of licence, is baseless.

13. The plea of various other disputes between the parties since the year 2006 is again without any particulars of any dispute in which the validity of the said Sale Deed may be for adjudication. The only plea is of the Sale Deed being sub-judice in FIR No.56/2010. The validity of the Sale Deed cannot be said to be sub-judice in the said proceedings. No counterclaim qua the invalidity of the Sale Deed has been made in the present proceeding either. Moreover, as per the averments of the defendants, the defendants are at least since the year 2006 are aware of the mischief played by the husband of the plaintiff in the matter of having the Sale Deed executed from the defendant no.1. The pleas are not of the Sale Deed being void ab initio. If at all the Sale Deed, for any reason, was voidable at the instance of the defendant no.1, the defendant no.1 was to sue therefor and it appears that the claim even if any of the defendant no.1 of voidability of the Sale Deed is barred by time. It is thus felt that the plea of challenge to the validity of the Sale Deed is not material so as to invite framing of an issue.

14. That brings me to the crux of the defence of the defendants, of the entire sale consideration having not been received by the defendants. Section 55(4)(b) of the Transfer of Property Act provides that in the absence of a contract to the contrary, where the ownership of the property has passed to the buyer before payment of whole of the purchase-money, the seller is only entitled to a charge upon the property in the hands of the buyer for the amount of the purchase-money or any part thereof remaining unpaid, and for interest thereon.

15. A reading of the Sale Deed dated 4th September, 2003 admittedly executed by the defendant No.1 in favour of the plaintiff shows the defendant No.1 to have under the operative part thereof, at the time of execution thereof, sold,

conveyed, transferred and assigned the property to the plaintiff and to have delivered the actual, physical and quite vacant possession of the property to the plaintiff and to have also handed over photocopies of all previous title documents relating to the property to the plaintiff. The plaintiff, under Clause (8) of the Sale Deed, was also authorized to get the said property mutated in the records of all the local authorities in her favour. Clause (10) of the Sale Deed also records "that now the vendee has become the absolute owner of the above said portion and has acquired the rights of ownership in the above said portion and is fully entitled to use, mortgage and sell the above said portion as desired by her". All this shows that the ownership of the property passed from the defendant No.1 to the plaintiff at the time of execution of the Sale Deed. Neither is there any clause in the Sale Deed to indicate so nor is it the plea of the defendants that notwithstanding the execution and registration of the Sale Deed, the ownership of the property sold was not intended to pass to the plaintiff.

16. Once that is found to be the position under the provision aforesaid, the claim, even if any of the defendants for unpaid sale consideration, does not disentitle the plaintiff from claiming possession of the property as owner (under the Sale Deed) from the defendants and the only right of the defendants is to recover the unpaid sale consideration from the plaintiff and to exercise a charge for securing the same. Nothing of the sort has been done till now. It prima facie appears that as of today the said claim would also be barred by time.

17. I have in *Kawal Sachdeva Vs. Madhu Bala Rana and Others* dealt in detail on the aspect of framing of issues in such a situation and thus do not feel the need to reiterate the same here.

18. Mention may also be made of *T. Arivandandam Vs. T.V. Satyapal and Another*, *Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another*, and *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, holding that pleadings have to be read meaningfully and if on such a reading, it is found that there is no lis to be tried and the claim or defence is ultimately one destined to doom, the Courts should not waste their time on trial of such cases, to the prejudice of deserving cases.

19. The procedure prescribed in the Code of Civil Procedure, 1908 for disposal of suits provides for issues to be framed only on material propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must be allege in order to constitute his defence. Else, Order XV provides that where the parties are not found at issue or any question of law or fact, the Court should at once pronounce judgment.

20. Thus, the suit, insofar for the relief of recovery of possession, has to be decreed forthwith under Order XV of the CPC.

21. A decree for recovery of possession of the second floor with terrace of property No. D-819, New Friends Colony, New Delhi is accordingly passed in favour of the plaintiff and against the defendants jointly and severally.

22. Costs to be assessed at the final stage.

23. Decree sheet be drawn up.

24. As far as the claim of the plaintiff for mesne profits is concerned, the following issues are framed:

(i) Whether the plaintiff is entitled to arrears of mesne profits/damages for use and occupation of the property in the sum of Rs.36 lakhs or in any other sum and if so, from which of the defendants? - OPP

(ii) To future mesne profits/damages for use and occupation from the date of the institution of the suit and till delivery of possession, at what rate is the plaintiff entitled to and from which of the defendants? OPP

(iii) If the plaintiff is found entitled to any mesne profits/damages for use and occupation, whether the plaintiff is entitled to any interest thereon, if so for what period and at what rate? - OPP

(iv) Relief.

25. No other issue arises or is pressed.

26. The parties to file their list of witnesses within two weeks.

27. The plaintiff to file affidavits by way of examination-in-chief of all her witnesses within six weeks.

28. Option of having the evidence recorded before a Court Commissioner is given but declined.

29. List before the Joint Registrar for fixing the dates of trial on 9th July, 2014.