
(2004) 12 DEL CK 0046

In the Delhi High Court

Case No : IAs No"s. 5739/99, 9357/00 and 5260 and 6077 of 2004 in CS (OS)
No. 2167 of 1993

Shri Ajit Singh (now substituted by Surjit Kaur Gill)

APPELLANT

Vs

Smt. Adarsh Kaur Gill and Others

RESPONDENT

Date of Decision : 01-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Transfer of Property Act, 1882 — Section 111

Citation : AIR 2005 Delhi 205 : (2005) 116 DLT 217 : (2005) 79 DRJ 413

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : M.L. Bhargava, for the Appellant; P.V. Kapur and Malvika Rajkotia,
for defendant No. 1, for the Respondent

Judgement

R.C. Chopra, J.—This order shall dispose of the aforesaid IAs filed in Suit No. 2167/1993.

2. The facts relevant for the disposal of these applications, briefly stated, are that the plaintiff, since deceased and now represented by LR (originally defendant No. 3), has filed a suit for partition, rendition of accounts, declaration and permanent injunction in respect of property No. 3, South End Road, New Delhi, which was left behind by his sister, deceased Late Avinash Kaur. The deceased plaintiff Ajit Singh, defendant No. 1 Adarsh Kaur Gill and defendant Surjit Kaur Gill (now imp leaded as plaintiff), were brother and sisters of deceased Late Avinash Kaur. Defendant No. 2 is the daughter of defendant No. 1 Adarsh Kaur Gill and the defendant No. 3 Gurinder Singh Gill is a nephew of late Avinash Kaur. An unmarried son of deceased Avinash Kaur named Kamal Kishore Bindal was also imp leaded as a defendant initially but during the pendency of the suit, he died leaving behind no LRs.

3. According to the plaintiff, Late Avinash Kaur had married one Seth Shiv Prasad in the year 1953. Late Kamal Kishore Bindal was the son of Seth Shiv Prasad

from Late Avinash Kaur, who had seven other sons also from his first wife. Seth Shiv Prasad was a rich man. He transferred lot of moveable and immovable properties in favor of Late Avinash Kaur. From the amounts gifted by him, Late Avinash Kaur purchased the suit property in January, 1956. According to the plaintiff, Late Avinash Kaur expired leaving behind a registered Will dated 6.2.1973 and a Codicil according to which all her movable and immovable properties including the suit property were to devolve upon the parties to the suit. It is also pleaded that Late Avinash Kaur was in exclusive possession and was residing in the suit property and had even let out the said property to Vietnam Embassy. She had earlier rented out a part of the said property, i.e., Guest House to Lord Krishna Sugar Mills also vide a Lease Deed dated 14.12.1956.

4. It is alleged that the sons of Seth Shiv Prasad, from his first wife, came in complete control of the business of Seth Shiv Prasad after his death in May, 1957 and thereafter, they tried to obtain certain documents from late Adarsh Kaur with a view to oust her from the estate of Seth Shiv Prasad. In view of the threats from her step sons, Late Avinash Kaur raised first floor of the suit property so as to generate some income and for this purpose, she mortgaged the property in favor of Smt. Sushila Daftari and Anil Daftari in the year 1959 and took a loan of Rs. 1,98,000/- from them. After getting this loan, Avinash Kaur carried out renovations and constructions in the suit property but could not raise first floor for various reasons. She, however, remained in possession of the said property. While she was contemplating to raise construction in the property, she received an attachment notice from Income Tax authorities, which was for over Rs. 23 lacs. Late Avinash Kaur got upset on account of the attachment of the property and as such, contemplated to show letting of the said property in the names of her sisters Adarsh Kaur Gill and Surjit Kaur Gill. They made statements even before the Recovery Officer that they were tenants in the said property. However, later on, Late Avinash Kaur created tenancy in favor of defendant No. 1 only but the underlying idea was to defeat the attachment as well as claims of her step-sons over the said property. Details of various problems being faced by late Adarsh Kaur were given in the suit and it was pleaded that the tenancy in the name of defendant No. 1 Adarsh Kaur was fake and Late Avinash Kaur always remained in possession thereof and she had let out the said property to Vietnam Embassy. It was also pleaded that in October, 1963, when the suit property was in occupation of Vietnam Embassy under the Lease and license Agreement, Late Avinash Kaur entered into an agreement for the sale of the said property with one Jaswant Rai and it was mentioned therein that the property was mortgaged with Smt. Sushila Daftari and Anil Daftari. In this Agreement to Sell, no mention of any Lease Deed in favor of defendant No. 1 was made inasmuch as everybody knew that the Lease Deed in favor of defendant No. 1 was a sham document and not genuine.

5. In the suit filed by the mortgagees in the year 1963, a compromise decree was passed on 20.2.1978 and the mortgage was redeemed in the name of

defendant No. 1 because at that time, even the suits filed by the step-sons of Late Avinash Kaur were pending and the fake Lease Deed containing the charge of defendant No. 1 was still operative. This was done to increase the quantum of charge of defendant No. 1 on the suit property so as to avoid the claim of the step-sons. Giving details of various facts and circumstances, the plaintiff pleaded that the defendant No. 1 was never a tenant in the suit property with right to sub-let and Late Avinash Kaur always remained the owner thereof and was enjoying the rents received through her sister, defendant No. 1. In these premises, the plaintiff claimed a preliminary decree of partition of the estate of late Avinash Kaur in the hands of defendants No. 1 & 2, rendition of accounts of the rents received by defendant No. 1, declaration that the defendant No. 1 is not a subrogated of the mortgage and a declaration that the estate of late Avinash Kaur was liable to be partitioned. A decree of permanent injunction against defendant No. 1 restraining her from alienating, transferring, letting out or parting with the possessions of the suit property was also claimed.

6. The defendant No. 1, who is the main contesting party in the suit, filed a written statement raising various legal objections. On facts, the defendant No. 1 pleaded that late Avinash Kaur had no Stri Dhan in her hands at the time of her death and she died in deep debts. It was admitted that Late Avinash Kaur was the absolute and exclusive owner of the suit property but it was pleaded that she had given the suit property to defendant No. 1 on a monthly rent of Rs. 500/-, which was later enhanced to Rs. 1,500/- per month. According to defendant No. 1, because of her financial difficulties, late Avinash Kaur could not carry out even renovations needed in the suit property. It was pleaded that the lease between Late Avinash Kaur and defendant No. 1 was not a fake document and on the basis of this lease deed only, the defendant No. 1 had let out the property to Vietnam Embassy and GDR Embassy and had been receiving rent from them. Regarding mortgage, it was pleaded that the defendant No. 1 had redeemed the mortgage and as such, now, she was holding the suit property as a lessee, owner of 1/6th share and mortgagee in possession. It was also pleaded that she being a lessee with a right to sub-let, was not liable to render any accounts to the plaintiff as alleged and neither the plaintiff nor any other LR of late Avinash Kaur was entitled to take possession of suit property from her. The Will dated 6.2.1973 executed by Late Avinash Kaur was admitted but it was denied that any codicil was also executed by her as alleged. It was also denied that plaintiff or anybody else was in constructive possession of the suit property.

7. Along with the suit, the plaintiff had filed an application for ad interim injunction under Order 39 Rules 1 & 2 of the Code of Civil Procedure. Vide orders dated 27.9.1993, the defendant No. 1 was restrained from alienating or parting with possession or encumbering the suit property. The application of the plaintiff for ad interim injunction was disposed of vide orders dated 25.7.2000 upon the statement of learned counsel for the defendant No. 1 that defendant No. 1 would not transfer, alienate or encumber the property. It was stated that whenever she desires to let out the property, she would seek permission of the Court. It was

further added that she was in occupation of the property and there was nobody in the premises.

8. IA.No. 9357/2000 is an application u/s 151 CPC filed by defendant No. 1 in which she has pleaded that she is in exclusive possession of the suit property since 1958, which was leased out to her by her elder sister with a right to sub-let the same. It is pleaded that the defendant No. 1-applicant is the owner of 1/6th share on the basis of the Will dated 8.2.1973. She is also a statutory tenant with a right to sub-let and a mortgagee in possession having redeemed the property. It is prayed that she be allowed to induct a licensee in the suit premises so that she has some income there from to which she is lawfully entitled.

9. IA.No. 5739/1999 is plaintiff's application under Order 40 read with Section 151 of the CPC for the appointment of a Receiver.

10. IA. No. 5260/2004 has been filed by the plaintiff with a prayer to dispose of the application of defendant No. 1 for permission to let out the premises on the ground that every co-owner of the property is the owner of the entire property and as such, a co-owner cannot be lessee also of the same property. This contention is based on Section 111(d) of the Transfer of Property Act, which says that a lease of immovable property gets determined in case the interests of the lessee and the Lesser in the whole of the property become vested at the same time in same person.

11. IA. No. 6077/2004 is an application filed by the plaintiff to take into consideration the fact that DRT-II has already attached the suit property and restrained the parties including defendant No. 1 from creating any third party interest therein.

12. After considering the submissions made by learned counsel for the parties and examining the records, this Court is of the considered view that in such like suits, the Court is not only under a duty to protect and safeguard the interests of the parties in respect of suit property but is also required to ensure that no unnecessary pecuniary loss is caused to them or to the party ultimately found entitled to the property on account of the pendency of the suit and the delay in its disposal. If the property in the suit is under occupation and enjoyment of the parties, status quo can be conveniently maintained without allowing any party to transfer, alienate, sub-let or create third party interest therein but in a case where the property is lying vacant and is capable of fetching some income, the Court must permit the utilization thereof so that at the end of the day when the suit is finally disposed of, the party/parties entitled to the property get their share of the income collected during the pendency of the suit. No useful purpose would be served nor it would be in the interests of any of the parties that during the pendency of the suit, the income that may be generated from the property is lost.

13. In view of the Will dated 6.2.1973 executed by late Avinash Kaur, the owner of the suit property, which was a registered Will and which is not disputed it can

be prima facie held that the parties to the suit are entitled to 1/5th share therein. Initially, their share was 1/6th each but on account of the death of Kamal Kishore Bindal, who died without leaving any LR, the shares of the parties to the suit now appear to be 1/5th each. The plea of defendant No. 1 that she was a lessee of the suit property with a right to sub-let is seriously challenged and disputed by the plaintiff. There are numerous facts and circumstances on record which strongly militate against the plea of defendant No. 1 in regard to the lease in her favor with a right to sub-let the same. The first and foremost circumstance which goes against this plea of defendant No. 1 is that in case Avinash Kaur herself was in financial difficulties why she should have allowed defendant No. 1 to pay her a rent of Rs. 500/- per month only and then earn hefty rent by sub-letting. This Court need not go into various questions which would be adjudicated upon after the recording of the evidence and considering the material placed on record by the parties. The plea of the defendant No. 1 that she had become a mortgagee in possession as the mortgage was redeemed in her favor is also disputed and needs trial. The case of the plaintiff is that the mortgage in favor of defendant No. 1 alone was redeemed as she is their sister and the parties wanted to increase her charge on the suit property on the basis of the fake lease deed as well as the redemption of the mortgage so as to challenge the claims of sons of Seth Shiv Prasad. Therefore, at this stage, this Court is not in a position to hold that the redemption of the mortgage in favor of defendant No. 1 alone was bona fide or genuine. However, the right, title and interest of defendant No. 1, by virtue of the Will of late Avinash Kaur, is not disputed and as such, it can be prima facie held that on the basis of her share in the suit property, she along with the other parties to the suit is entitled to inherit as well as share the income of the suit property.

14. The plea of the plaintiff that in view of Section 111(d) of the Transfer of Property Act the defendant No. 1 no longer remains a lessee, is devoid of force for the reason that the lease in an immovable property gets determined only in a case the interests of the lessee and the Lesser in the whole of the property become vested in the same person at the same time. The issuance of the attachment orders passed by DRT-II also does not stand in the way of this Court in passing orders as present orders are subject to the orders of DRT-II with which this Court cannot interfere in these proceedings.

15. In view of the aforesaid facts and circumstances, the orders dated 25.7.2000 passed by this Court are modified to the extent that permission is granted to defendant No. 1 to let out the suit property. However, actual letting will be with the approval of this Court. Uncontrolled and unfettered permission cannot be given to defendant No. 1 to let out the property the way she wants inasmuch as the defendant No. 1 may try to get undue benefit or jeopardizes the rights and interests of the other parties in the suit property. Accordingly, it is ordered that the suit property will be let out by defendant No. 1 only after the approval of this Court. The letting will be done for a period of three years only to a tenant, who offers maximum rent. All the parties are at liberty to place on record within 30

days, written offers from different tenants to get the property on rent along with a demand draft of Rs. 50,000/- from the tenant in favor of the Registrar General of this Court to demonstrate his bona fides for taking the premises on rent. 1/5th of the rental will be released by the Court every month in favor of defendant No. 1 but the remaining rent shall be retained in the Court and shall be regularly put in Fixed Deposits in a Nationalized Bank so that at the time of the final disposal of the suit the deposited amount may be disbursed in favor of parties/party held entitled thereto.

16. The IAs aforesaid stand disposed of.