
(2009) 07 DEL CK 0463

In the Delhi High Court

Case No : CS (OS) No. 222 of 2006

Shri Hari Narain Chadha

APPELLANT

Vs

Shri Dhanesh Kumar Chadha and Others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, 151

Citation : (2009) 07 DEL CK 0463

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Manish Kohli and Manjit Pathak, for the Appellant; Ex-parte, for the Respondent

Judgement

Manmohan Singh, J.—The plaintiff has filed the present suit for declaration, partition and rendition of accounts with the prayer to declare that the plaintiff is the owner to the extent of his half undivided share in the immovable property bearing municipal No. Old 282, New 474/1, Mohalla Zeenat, Bari Gali, Hamilton Road, Kashmere Gate, Delhi- 110006 (hereinafter referred to as the "suit property"). The plaintiff has further prayed that a preliminary decree for partition be passed with respect to the aforesaid suit property declaring the plaintiff to be entitled to one half undivided share in the property as he is entitled to partition of the same by metes and bounds. The plaintiff has also prayed that a Local Commissioner be appointed to ascertain the mode of partition of the property.

2. The plaintiff and his elder brother late Sh. Kundan Lal Chadha are alleged to be the joint and absolute owners of the suit property having purchased the same from Sh. Lekh Raj vide registered sale deed dated 8.7. 1968. The defendants No. 1 to 4 are the children of late Sh. Kundan Lal Chadha. He died intestate on 15.1.1998. Smt. Bimla Rani, wife of late Sh. Kundan Lal Chadha predeceased him, having expired in June 1962 and thus the property of Sh. Kundan Lal Chadha devolved upon his legal heirs i.e. defendants No. 1 to 4 in equal shares.

3. The plaintiff averred in the plaint that the suit property is a triple storey building and the entire building is being used by the tenants for commercial purposes. There are about 13 to 14 tenants and about 17 to 18 shops in it. The ground floor consists of about 10 shops, first floor consists of five shops and second floor consists of 2 to 3 shops. During the lifetime of Shri Kundan Lal Chadha, he used to receive the rent directly from the various tenants and thereafter share the same with the plaintiff. However, after his death, the plaintiff has not been receiving any rent and presently the rent is being received and appropriated only by defendants No. 2 to 4, who are using the same exclusively for their own purposes.

4. It is further averred in the plaint that the plaintiff is in joint possession of the suit property along with the defendants being the joint/co-owner of the same. After the death of Shri Kundan Lal Chadha, the plaintiff has been requesting the defendants to partition the suit property and also to share the rent received by them from the various tenants, but they have not been acceding to the requests of the plaintiff. Therefore, the present suit is filed for partition of the suit property in equal shares among the parties.

5. The plaintiff filed an application under Order XXXIX Rules 1, 2 and 3 read with Section 151 CPC for interim relief and vide order dated 6th February, 2006 this Court restrained the defendants from creating any third party interest in the suit property. The plaintiff served all the defendants, however, despite being duly served, no appearance was entered nor was any written statement filed on behalf of any of the defendants. This Court vide order dated 2nd May, 2008, thus proceeded against all the defendants ex parte and also made the interim orders dated 6th February, 2006 absolute till the final disposal of the suit.

6. The plaintiff filed his affidavit by way of evidence and proved on record the registered sale deed dated 8.7.1968 with respect to the suit property, executed in favour of the plaintiff and his elder brother late Sh. Kundan Lal Chadha by Shri Lekhraj which is exhibited as Ex. PW1/1. The plaintiff has also annexed the letter dated 5.8.1971 by the plaintiff and late Shri Kundan Lal Chadha sent to the Assistant Assessor and Collector, Municipal Corporation of Delhi, with regard to the mutation of the suit property. The plaintiff has further proved on record the original Special Power of Attorney exhibited as Ex. PW1/2 executed by him and his elder brother late Shri Kundan Lal Chadha, in January, 1982, in favour of Shri Madan Lal Suri, husband of defendant No. 3 to pursue the case in Civil Courts in respect of one room on the ground floor of the suit property against one tenant Shri Tirath Dass. The plaintiff has also proved on record the original notice Ex. PW1/3 sent by him and defendant No. 1 Shri Dhanesh Kumar Chadha to M/s. J.S.B. Bearings, one of the tenants of the suit property for payment of rent in their favour after death of Sh. Kundan Lal Chadha. The plaintiff has also proved on record the original legal notice dated 4.3.1998 Ex. PW1/4 sent by the defendant No. 2 Shri Yogesh Chadha through Shri Mohan Lal Suri, Adv. to M/s. J.S.B. Bearings and a copy of which was also sent to the plaintiff and Mr. Dinesh

Kumar for not paying rent to them.

7. It is apparent that the Defendants are ex parte in this case and there is no rebuttal to the case of the plaintiff. None of the defendants ever appeared in the present case to defend their case against the plaintiff. From the documents on record, it is apparent that the sale deed was registered in the name of the plaintiff and father of defendants late Sh. Kundan Lal Chadha and a joint letter by the plaintiff and defendant has been sent for the mutation of the property. In the present circumstances, there is no bar to pass the preliminary decree for partition in favour of the plaintiff in terms of the prayer made in the plaint.

8. However, it is to be noted that the plaintiff affixed the fixed court fees of Rs. 20/- for the relief of partition. In view of the well settled law that when a partition suit is brought to the court by a joint owner who has been excluded from the joint ownership of the property and to which he is entitled, he is liable to pay court fee on ad valorem basis on the value of the property claimed by him. (Ref : Prakash Wati Vs. Dayawanti and Others, , Smt. Rani Devi Vs. Ashok Kumar Nagi and Another, , the plaintiff shall pay the deficient court fee within four weeks from today.

9. In my considered view, therefore, the plaintiff is entitled for a decree as per the prayers made in the plaint. A preliminary decree for partition as well as declaration is passed in favour of the plaintiff and against the defendants thereby declaring that the plaintiff is the owner to the extent of one-half undivided share in the immovable property bearing Municipal No. Old 282, New 474/1, Mohalla Zeenat, Bari Gali, Hamilton Road, Kashmere Gate, Delhi-110006. The Local Commissioner namely Dr. Chandra Shekhar (Mobile No. 9810472702/27193291) is appointed to ascertain the mode of partition of the suit property. The defendants shall also render the accounts with regard to the amount received by them as rent from various tenants of the suit property from the period beginning January, 2006 till the date of passing of the preliminary decree. The Local Commissioner shall submit his report within three months from today. The fee of the Local Commissioner is fixed as Rs. 30,000/-.

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10. List this matter on 03.10.2009 for awaiting the report of the Local Commissioner.