

(2011) 01 DEL CK 0017

In the Delhi High Court

Case No : Regular Second Appeal No. 7 of 2004 and CM No. 443 of 2004 (for stay) and CM No"s. 22881 and 23324 of 2010

Shri Hira Lal

APPELLANT

Vs

Shri Bhagwati Prasad and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0017

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : D. Moitra, for the Appellant; Sanjay Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has been directed against the impugned judgment and decree dated 08.10.2003 which had endorsed the finding of the trial judge dated 14.7.2003 whereby the suit of the Plaintiff filed by the Plaintiff Hira Lal seeking permanent and mandatory injunction to the effect that Defendants No. 1 to 5 (who are tenants in the suit property) be directed not to pay the rent to the Defendant No. 6 Om Prakash (brother of the Plaintiff) but to the Plaintiff.

2. The Plaintiff claimed himself to the owner of house No. C-1 (Plot No. 60, MCD No. 145), Sanwal Nagar, New Delhi. Defendants No. 1 to 5 were his tenants. Defendant No. 6 was his real brother who has been authorized to collect rent on his behalf from the tenants. Acrimony arose between the parties. Plaintiff sent legal notice informing Defendant No. 6 that he did not want him to collect rent on his behalf. Defendant No. 6 did not adhere to this request. Present suit was accordingly filed.

3. In the written statement filed by Defendant No. 6 it is stated that he i.e. Defendant No. 6 is collecting rent from the tenants in his legal capacity. The Plaintiff has suppressed material facts and has not disclosed about the will dated

13.5.1987 of their father by virtue of which the suit property had been bequeathed in favour of Defendant No. 6. He was fully authorized to receive the rents from the tenants i.e. from Defendants No. 1 to 5.

4. Defendants No. 1 to 5 (tenants) had also been served. Three out of the five tenants i.e. Defendants No. 1, 2 and 5 had filed their respective written statements. Their contention was that initially the rent receipts were being issued by them to Hiral Lal i.e. to the Plaintiff up to period 1980; thereafter his father Babu Lal as owner was getting the rent receipts issued in his name from 1981 to 1990. Babu Lal died in 1990; after his death Om Prakash (Defendant No. 6) had evidenced himself as the owner in respect of whom the rent receipts which were being issued from the year 1991.

5. On the basis of these pleadings, the trial judge had framed the following three issues: it read as follows:

1. Whether the suit of the Plaintiff is not maintainable and hit by the provisions of Section 41(h) of Specific Relief Act. OPD

2. Whether the Plaintiff is entitled for the decree of permanent and mandatory injunction as prayed against the Defendant? OPP

3. Relief.

6. On the basis of the oral and documentary led by the parties the court had held that the Plaintiff is not entitled to a decree. He was admittedly not in possession of the suit property. He did not even know the details of the tenants. The water bill and the house tax assessment produced by him did not mention the name of the property; even otherwise it pertained to the year 1971-72; the Defendant No. 6 had become owner of the property by virtue of the will of their who had died in the year 1990. The Defendant had produced on attesting witness to the will of their father which had been proved as Ex.DW-1/1.

7. The finding of the trial judge on issue No. 2 returned inter alia read as follows:

ISSUE No. 2

Under this issue the Plaintiff is required to prove that he has legal right title or interest to the suit property. The Plaintiff in his plaint has stated that he is owner of the suit property but he is silent as to how he become owner of the suit property and in whole of the --- he has not disclosed the same. In his affidavit produced in the evidence he has stated that he is owner of house No. C-1 and have simply stated that Defendant No. 6 has been collecting the rent on his behalf. Thus the Plaintiff has not brought only iota of evidence on the file to show and to prove his claim of ownership. There is no document of ownership in the name of the Plaintiff on the file. During the cross examination the Plaintiff put forward his case by stating that he became owner of the property by purchasing it from the association though it was not the specific case of the Plaintiff and was beyond the pleadings but still treating it as correct, the Plaintiff has not produced

any statement to that effect on the file. He introduced a new case in cross examination stating that there were 12 tenants in the suit property though he is talking about the five tenants and is silent regarding the seven tenants in the body of the plaint. He has stated that he does not know all the tenants which also shows that tenants were never kept by him or he has no concern with the suit property. He has stated that House Tax of the property was assessed in his name but the argument is not tenable firstly mere entering in the house tax registered will not create title in the Plaintiff and secondly in Ex. PW1/G in House Tax Assessment number of the property is not mentioned and only 60 is written. To the same effect in the Water Bill MCD No. 145 is not made out from this document. Mere issuance of notice will not create title in the Plaintiff and he had to prove his statements by cogent and reliable evidence. The counsel for the Plaintiff has argued that in the rent receipt the name of the Plaintiff in the column of ownership has been mentioned but again same argument is not tenable because the Plaintiff has not denied that these receipts pertain to 1971 and 1972 and father of the parties died in 1990. If it has self acquired property then there must be some document and if it was ancestral property then till the death of his father no valuable rights have accrued in favour of the Plaintiff. WS filed on behalf of Defendant No. 1,2 and 5 is also on the record in which they have stated that name of owner in rent receipts has been continuously been changed and it also goes against the Plaintiff because these receipts cannot be taken as proof of ownership. DW1 has proved Will in favour of Defendant in which at Sr. No. 1 the present suit property is mentioned. DW1 has proved Will and has stated that he knew the executants and the Will was read over to the executants. The counsel for the Defendant has argued that he has proved the Will as per law and relied upon Janki Narayan Bhoir Vs. Narayan Namdeo Kadam, and has stated that when will has been proved and executant has been proved by one attesting witness who has proved the execution of the will then examination of other attesting witness can be dispensed with. DW2 Defendant No. 6 has given the detailed account as to how Sanwal Nagar was carved out. The Plaintiff has not challenged the Will and moreover in para No. 2 of WS the Defendant No. 6 has stated that three rooms are in physical possession of the Defendant No. 6 and that there are nine tenants and Plaintiff has no knowledge of any tenant and the same averments have not been denied or accepted or replied by the Plaintiff in his replication and the same are deemed to be admitted by the Plaintiff. The Plaintiff has not brought forward any reliable and cogent evidence in support of his pleadings. For the relief of the injunction the Plaintiff has to specifically prove the main ingredient i.e. he is legally entitled to the suit property and there is invasion of that right but what to talk of invasion. The Plaintiff has failed to prove the first ingredient of legal entitlement against the oral evidence of the Plaintiff, there is documentary evidence with Defendant in the form of Will and there is nothing on the file to discard the testimony of the witness of the Defendant. The will has been duly proved. It can be said that the Defendants has firstly to prove that father was owner of the suit property and only then Will could have created rights in favour of the Defendant but

simultaneously this fact also cannot be ignored that this is a Plaintiff who had approached the court and he has to prove his case and he can not take benefit of the weakness of the Defendant as per 1998 (1) Punjab Law Reported 80 and further that Plaintiff has come forward with the plea that suit property was purchased from the association then he should have proved his plea. Hence no right of injunction is made out. I am of the considered opinion that Plaintiff is not entitle to any relief.

8. This finding of the trial judge was affirmed in appeal by the impugned judgment dated 08.10.2003; suit of the Plaintiff was dismissed.

9. On behalf of the Appellant, it has been urged that the documentary evidence has not been appreciated in its correct perspective and there is a perversity in the finding in the impugned judgment. Substantial questions of law have been formulated on page 6 of the memo of appeal; they inter alia read as follows:

(a) Whether the declaration of title/ownership of the property can be decided when the same was never been prayed in the suit.

(b) Whether the alleged Will of 1987 have any relevance when admittedly the rent receipt issued since 1971 clearly shows the Appellant as owner of the proper.

(c) Whether the veracity of the Will can be decided in an injunction suit without the same being proved by the Probate and/or related proceedings.

(d) Whether the alleged Will can be considered when it has been specifically pleaded that Father of the Appellant/Respondent No. 6 was never been the owner of the suit property.

10. All these questions are fact based; they do not raise any substantial question of law. The impugned judgment had correctly noted that no evidence had been produced by the Plaintiff to claim right, title or interest in the suit property. Plaintiff had contended all along that he is the recorded owner of the suit property and he had received this property from the Association; no such evidence was forthcoming. The will set up by the Defendant claiming right to the suit property through their deceased father Babu Lal had been proved as Ex.DW-1/1. Even in the replication filed by the Plaintiff, he had not made any categorical repudiation of the will. His contention was that this will was obtained by the Defendant by exercising influence on their father. No substantial question of law has arisen. Appeal as also the pending applications are dismissed in limine.