
(2004) 08 DEL CK 0024

In the Delhi High Court

Case No : CS (OS) 709 of 2004 and is 4065 of 2004

Shri Kamlendra Sinh

APPELLANT

Vs

Sanghi Bros (Indore) and Another

RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16

Citation : (2004) 08 DEL CK 0024

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Manoj K. Singh, for the Appellant; Nemo, for the Respondent

Judgement

R.C. Jain, J.—The above named plaintiff has filed the present suit for declaration, declaring that the memorandum of understanding, general power of attorney and special power of attorney, all dated 01.12.1998 are null and void, stands revoked, cancelled and rescinded and of no consequence and does not confer any right or interest in favor of the defendants. Admittedly above referred all three documents were executed between the parties at Indore, Madhra Pradesh and are in relation to the estate of a certain deceased Late Maharaja Surendra Sinhji of Alirajpur pursuant to the Will dated 5.11.1984 regarding which a probate case bearing No.329/1996 was stated to be pending before the High Court of Madhya Pradesh Bench at Indore. Reference of a house bearing No.A-9/9, Vasant Vihar, New Delhi as part of the estate of the said deceased also appears in these documents.

2. Before issuing summons of the suit, the learned counsel for the plaintiff was called upon to satisfy this Court as to how this Court has the territorial jurisdiction to adjudicate the present suit. In this connection, the submission of learned counsel for the plaintiff is that since the subject matter of the suit is situated within the jurisdiction of this Court, Therefore, this Court has the jurisdiction to try the present suit. According to him by "subject matter" he means house No.A-9/29, Vasant Vihar, New Delhi i.e. the immovable property

and, Therefore, by virtue of the provisions of Section 16 CPC, this Court has the jurisdiction to entertain and try the present suit. Section 16 CPC provides that subject to the pecuniary or other limitations prescribed by any law, following categories of suits are to be instituted in the Court within the local limits of whose jurisdiction the property is situate:

- a) for the recovery of immovable property with or without rent or profits,
 - b) for the partition of immovable property,
 - c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
 - d) for the determination of any other right to or interest in immovable property,
 - e) for compensation for wrong to immovable property; and
 - f) for the recovery of movable property actually under distraint or attachment,
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."''

3. Now the question is as to whether the present suit can be said to be one falling under any one or more of the above categories. In clauses (a) to (f) or under proviso of Section 16 of CPC. In the opinion of this Court, the present suit being a suit implicate for declaration of certain documents as null and void without any consequential / further relief, cannot be termed as a suit relating to immovable property. Reference of a particular property in the document which is sought to be declared nul and void by itself would not become the "subject matter" of the suit within the meaning of Section 16 of the CPC. From a careful perusal of the prayer clause, the paragraphs relevant to the cause of action and jurisdiction of the Court and having regar to the fact that none of the defendants resides or works for gain and no part of cause of action in relation to the relief sought can be said to have arisen within the jurisdiction of this Court, it is abundantly clear that this Court lacks the territorial jurisdiction to adjudicate on the present suit. The plaint is accordingly ordered to be returned to the plaintiff for proper presentation in accordance with law. List before the Joint Registrar on 19th August, 2004 for further necessary action in the attter.