

(2005) 09 DEL CK 0035

In the Delhi High Court

Case No : CS (OS) No. 2591 of 1995, IAs 4363 of 1996, 3717 of 1997, 1533 of 1999, 2925 of 2004 and 61 of 2005 and Criminal M. 94 of 2005

Shri Rajiv Seth

APPELLANT

Vs

Shri Daya Kishan Mehra and Others

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Bankers Books Evidence Act, 1891 — Section 6
Civil Procedure Code, 1908 (CPC) — Order 11 Rule 11, Order 14 Rule 5, Order 7 Rule 11, 151, 16
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2005) 84 DRJ 75

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : M.L. Lonial, for the Appellant; Arun Khosla, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The plaintiff has filed a suit for declaration and partition in respect of estate of late Seth Muni Lal Mehra. The declaration is sought in respect of the Will dated 23.3.1993 which, according to the plaintiff, is a forged one. The plaintiff claims share to the extent of 1/24 in the estate. The plaintiff has also claimed the relief of rendition of accounts against defendants No.1 to 5.

2. It is necessary to set out the relationship of the parties. The plaintiff is the son of Shri Raj Kishore Seth. Shri Raj Kishore Seth was married to Late Smt. Saroj Seth who is the daughter of late Seth Muni Lal Mehra. Defendants No.1 to 4 are the sons of late Seth Muni Lal Mehra. One of the sons of late Seth Muni Lal Mehra pre-deceased him and thus the second line has been imp leaded as defendants. The brothers and sisters of the plaintiff have also been arrayed as defendants.

3. In the plaint, it is stated that the properties mentioned in para 2 of the plaint are the self-acquired properties of late Seth Muni Lal Mehra and there may be even other properties of which the particulars would be with defendants No.1 to 6.

4. The list of properties given in para 2 includes some movable assets apart from the immovable properties. The immovable properties are stated to be John Mills, Agra and four bungalows in Agra Cantt. There are only two immovable properties set out of Delhi. These properties are D-372, defense Colony, New Delhi and 785, Nai Sarak, Delhi.

5. In the written statement filed by defendants No.1 to 5, inter alia, an objection was taken about the territorial jurisdiction of this court. This plea was based on the fact that there was no immovable property of late Seth Muni Lal Mehra located within the territorial jurisdiction of this court while there were immovable properties situated at Agra.

6. In respect of the two properties at Delhi mentioned in the plaint, it is stated that property No. D-372, defense Colony, New Delhi is the leasehold property owned by a company named M/s Krishan Prashad Brothers Pvt. Ltd. and that late Seth Muni Lal Mehra was neither a subscriber nor a Director of the company. Property No. 785, Nai Sarak, Delhi is stated to be a tenancy of M/s Krishan Prashad Brothers., a partnership firm in which firm late Seth Muni Lal Mehra was not a partner at the time of his death. The written statement of defendants No.6 to 10 adopts the stand of the defendants No.1 to 5. Defendant No.13 has also taken more or less the similar stand.

7. In the replication filed by the plaintiff to the written statement of defendants, it has been stated that late Seth Muni Lal Mehra was the Managing Director of the M/s Krishan Prashad Brothers. It has also been denied that late Seth Muni Lal Mehra was not a partner in M/s Krishan Prashad Brothers carrying on business at Nai Sarak.

8. In view of the aforesaid pleading, a preliminary issue was framed on 4.8.2004 as under:

"Issue No.1 Whether the Delhi court has territorial jurisdiction to try the present suit? OPP"

Learned counsel for the parties stated that no evidence was required for the disposal of this issue.

9. It is on the aforesaid issue that arguments have been heard of learned counsel for the parties.

10. A reading of the pleadings as set out herein above would show that it is really not in dispute that late Seth Muni Lal Mehra was not either the exclusive owner or co-owner of any of the properties situated in Delhi. The first property being D-372, defense Colony is owned by a limited company. Even if late Seth Muni Lal Mehra had some shareholding in the company, the plaintiff would have to establish the rights to the shares. It is not denied by the plaintiff that the property vests in the limited company and not with late Seth Muni Lal Mehra. Similarly, the property at Nai Sarak is only the tenancy rights and that too in the name of a firm of which late Seth Muni Lal Mehra was not the partner.

11. Learned counsel for the plaintiff, however, placed strong reliance on the judgment of the Division Bench of the Bombay High Court in Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass and Others, . One of the issues raised in the said suit was in respect of the territorial jurisdiction where a suit was for partition of land and movable properties and the land was outside the territorial jurisdiction of the court where the suit was filed. It was held that if the plaintiff combined a suit for the land with a suit which is not for land, it cannot be said that the court will have no jurisdiction to try the suit to the extent it is not a suit for land if the cause of action with regard to the latter arises within its jurisdiction. The court has the jurisdiction to try the suit to the extent that it seeks partition of movable properties situated within the jurisdiction. However, it was further held that the Judge would be in error in dismissing the whole suit on the ground that a court had no jurisdiction but the Judge should dismiss the suit only to the extent that it sought for partition of lands situated outside the jurisdiction.

12. Learned counsel for the defendant also in fact relies on the same proposition and concedes to the extent that the present suit would have to continue in respect of the claim for movable properties, though it is contended that there are really no movable properties of particulars given in respect of which the plaintiff can claim any rights. However, in my considered view, that is not the subject matter of the preliminary issue. It is, however, submitted that in so far as the suit relates to immovable properties, no part of the immovable properties of the estate of late Seth Muni Lal Mehra being situated within the territorial jurisdiction of this court, the suit at least to the extent of the claim of partition for the immovable properties must fail and be dismissed.

13. Learned counsel for the plaintiff, faced with this situation, referred to the judgment of this court in CS(OS) 2167/1996 decided on 22.4.2004 in Karan Mahendru & Anr. v. M/s Vatika Plantations (P) Ltd. However, in my considered view, the said judgment would have no application to the facts of the present case since that was a suit filed for a decree of specific performance and in the alternative for a decree for recovery of money where a preliminary issue about territorial jurisdiction was framed. An agreement to purchase firm land had been executed and it was the plea of the plaintiff that the obligations under the said agreement had not been performed. The land was situated in Haryana. A plea was raised that the suit should have been filed where the immovable property was situated in view of the provisions of Section 16 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") while the plaintiff in the suit sought to rely on the provisions of Section 20 of the Code as part of the cause of action had arisen within Delhi as the purchase agreement was entered into at Delhi and the consideration money was also paid at Delhi.

14. The learned Judge relied upon the proviso to Section 16 which permits a suit in the local limits of whose jurisdiction the property is situated or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily

resides or carries on business, where the relief sought can be entirely obtained through his personal obedience. Since the suit was filed not only for the specific performance of the contract but also, in the alternative, for a decree of compensation and the agreement was executed in New Delhi, it was held that the court had jurisdiction.

15. Learned counsel for the plaintiff also referred to the Constitution Bench judgment of the apex court in *Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr.* 2005 SCC (CrI) 1101. I, however, fail to appreciate the relevance of the said judgment which discusses the issue of the offences relating to documents being committed and as to the court which is *custodia legic*. The fact that the will, which is alleged by the plaintiff to be forged and fabricated, has been filed in the present proceedings, would make no difference. The fact remains that there is no immovable property admittedly owned by late Seth Muni Lal Mehra located in Delhi while immovable property owned by him is located outside the territorial jurisdiction of this court. In view thereof, the judgment of the Bombay High Court in *Shiv Bhagwan Moti Ram Saraoji's case* (supra) would squarely apply to the facts of the present case.

16. In view of the aforesaid, I am of the considered view that the suit regarding the claim for partition in respect of immovable property is liable to be dismissed with liberty to file an appropriate claim in accordance with law before the competent court while the suit is permitted to continue in so far as the claim relating to movable properties is concerned.

IA 4363/1996

This is an application filed by the plaintiff u/s 6 of the Bankers' Book Evidence Act, 1891 seeking a direction to the banks to prepare and produce in courts certified copies of all entries regarding accounts and details of fixed deposits of late Seth Muni Lal Mehra. In order to establish the claim, the plaintiff will have to summon the necessary documents at the stage of evidence and no such direction is called for in this application.

The application stands disposed of.

IA 3717/1997

This is an application under Order 7 Rule 11 read with section 151 CPC filed by defendants No.1 to 5. It is stated that the properties, specially the immovable properties can be valued in terms of the money and the plaintiff should be directed to pay court fees on the claim for partition specially when the plaintiff is not in possession of any of the properties. However, in view of the dismissal of the suit, in so far as the relief of partition of immovable properties is concerned, this application does not survive for consideration and is disposed of.

IA 1533/1999 (under Order 11 Rule 11 CPC)

This is an application filed by the plaintiff to serve interrogatories on the

defendants. The interrogatories have been filed along with the application. A reading of the interrogatories, in my considered view, makes it clear that questions are framed more in the nature of cross-examination of the defendants. It has to be kept in mind that the object of serving interrogatories is to obtain admissions from the person on whom such interrogatories are served with the object of facilitating proof of the case and to save the costs which may otherwise be incurred in adducing evidence to prove the necessary facts.

The first four questions deal with the status of the parties, when the same are not disputed. Questions have been raised about the constitution of the partnership firm M/s Krishan Prashad Brothers while no specific relief has been prayed in respect of the assets of that firm. There is no relief of any declaration in respect of the assets of the firm in the plaint. Thus, the interrogatories relating to the said firm starting from No.6 to 15 are not permissible. Interrogatories starting from No.16 to 19 relate to the assets of a private limited company being M/s Krishan Prashad Brothers Pvt. Ltd. in respect of which also no substantive relief in the suit has been claimed.

There are questions raised in respect of the will. These, in my considered view, would be questions to be posed to the witnesses to the will or the defendants when they appear in the witness box to prove the will.

A number of questions have been posed and I find no relevance or cogency to the same. These interrogatories cannot be permitted to be delivered on the defendants.

The application is dismissed.

IA 2925/2004

This is an application on behalf of defendants praying for variation of the order dated 6.2.1996. By the said order, the applications for injunction and vacation of the order had been dealt with. The vacation of the orders is sought in respect of the properties situated at Agra. Since the suit had been dismissed qua the properties situated in Agra and other immovable properties, not within the territorial jurisdiction of this court, the interim orders granted in terms of such properties would naturally lapse and be inoperative.

The application stands disposed of accordingly.

IA 61/2005

This is an application filed by the plaintiff under Order 14 Rule 5 CPC whereby it is prayed that the question - whether Seth Muni Lal Mehra executed the will dated 23.3.1993, be tried as a preliminary issue. This can hardly be tried as a preliminary issue. The fact that denial of the right of the plaintiff in the estate of late Seth Muni Lal Mehra is based on the will, cannot give rise to cause to try the issue as a preliminary issue. Evidence would have to be adduced and, in my considered view, this issue should be decided along with the other issues to be

framed which may arise in the suit.

The application stands disposed of.

Crl. Misc. 94/2005

This is an application filed by the plaintiff u/s 340 Cr.PC alleging that the will produced by late Seth Muni Lal Mehra is a forged and fabricated will and thus proceedings should be initiated against the defendants.

In my considered view, it is yet not established whether this document produced, being the will, is forged and fabricated. The mere allegation of the plaintiff is not enough. No doubt, if ultimately a finding is reached by this court after trial that the said document is forged and fabricated, it is always open to take out appropriate proceedings against the persons who have presented such a forged and fabricated document. At that stage it would be open for the plaintiff to take necessary steps in accordance with law if such a finding is arrived at.

The application stands disposed of.