

(2008) 08 DEL CK 0199
In the Delhi High Court
Case No : CS (OS) No. 2762 of 1999

Shri Rakesh Kumar Juneja and Others APPELLANT
Vs
Shri Rakesh Kathuria and Others RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Debts Recovery Tribunal Act, 1993 — Section 19
Specific Relief Act, 1963 — Section 31

Citation : (2008) 08 DEL CK 0199

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R.M. Bagai, for the Appellant; Ex parte, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiffs have instituted this suit u/s 31 of the Specific Relief Act, 1963 for cancellation of documents. It is inter alia the case of the plaintiffs that they are the owners of property No. E-255, Greater Kailash-II, New Delhi. The colony of Greater Kailash-II was developed by DLF Housing & Construction Ltd.; plot No. E-255, Greater Kailash-II, New Delhi, was sold by DLF Housing & Construction Ltd. to Smt. Gurdial Kaur vide registered sale deed dated 27.7.1964; Smt. Gurdial Kaur vide registered sale deed dated 21.3.1966 sold the said plot to Shri Thakur Singh and Sh. Lashkar Singh; the said Shri Thakur Singh and Shri Lashkar Singh vide registered sale deed dated 14.12.1970 sold the said plot to Shri Satender Singh; that the said Shri Satender Singh vide registered sale deed dated 2.5.1986 sold the said plot to the plaintiffs No. 1 & 2 and their deceased father Shri Nand Lal Juneja and put them into the vacant peaceful possession of the said plot of land; that Shri Nand Lal Juneja expired on 28.3.1991 bequeathing his 1/3rd share in the property to the plaintiff No. 3; the plaintiff No. 3 is the mother of the plaintiffs No. 1 & 2; that the plot is mutated in the record of the MCD in the name of the plaintiffs.

2. It is further the case of the plaintiffs that they came across a public notice in

the newspaper Hindustan Times of 8.11.1996 of the Advocate for the defendant No. 3 Punjab & Sind Bank, informing the public that the aforesaid property No. E-255, Greater Kailash-II, New Delhi, had been mortgaged by the defendants No. 1 & 2 in favour of the defendant No. 3 bank. The plaintiffs claimed to have got sent a legal notice to the Advocate of the defendant No. 3 Bank claiming their ownership and disclaiming any right of the defendants No. 1 & 2 to the said property.

3. It is further the case in the plaint that some other persons had also asserted ownership in respect of the said plot of land on the basis of a bogus gift deed dated 23.6.1966 purported to be executed by Smt. Gurdial Kaur; yet another defendant in that suit, and yet some other persons had claimed that Smt. Gurdial Kaur executed a will dated 22.7.1976 in his favour prior to her demise on 23.9.1976 and such person had claimed to have become the owner of the plot on the basis of the said Will and had executed four sale deeds all dated 11.9.1989 in favour of four different persons with respect to the 1/4th undivided share in the said plot of land. The plaintiffs claimed that they were forced to file the suit No. 3416/1992 in this Court for cancellation of the said Gift Deed and sale deeds and this Court vide judgment dated 6.10.1998 decreed the suit of the plaintiffs and held the four Sale Deeds and Gift Deed to be void.

4. The plaintiffs pleaded that they had learnt that the defendant No. 1 had claimed before the defendant No. 3 Bank to be the owner of the said plot of land on the basis of a sale deed registered as document No. 1411 in Additional book No. 1, volume No. 8185 at pages 72 to 76 registered with the office of Sub-Registrar, Delhi (defendant No. 4) and Rectification deed thereof registered with the Sub-Registrar-III, Delhi, as document No. 5775 on 12.8.1994. Similarly, it was claimed that the defendant No. 2 vis-a-vis the defendant No. 3 bank claimed himself to be the owner of the other half share of the said plot of land on the basis of the sale deed registered as document No. 1417 in Additional book No. 1, volume No. 8185, at pages 77 to 81 on 25.2.1994 and Rectification deed thereof registered as document No. 5776 registered with the defendant No. 4 Sub-Registrar, on 12.8.1994.

5. It was the claim of the plaintiffs that the aforesaid two sale deeds purportedly executed by Smt. Gurdial Kaur in favour of defendants No. 1 & 2 respectively and both registered on 25.2.1994 and the rectification deeds both registered on 12.8.1994 set up by the defendants No. 1 & 2 are bogus; Smt. Gurdial Kaur had died at Chandigarh on 23.9.1976. It is further claimed that Smt. Gurdial Kaur had in any case sold the plot on 21.3.1966 and was not the owner thereof thereafter and could not have executed the sale deed dated 25.2.1994. Several other grounds have also been taken to show falsity of the documents with respect to the plot set up by the defendants No. 1 & 2 in their favour.

6. The plaintiffs accordingly filed the present suit and since the sale deeds and the rectification deeds alleged to have been forged by the defendants No. 1 & 2 in their favour with respect to the plot of the plaintiffs had been deposited by the

defendants No. 1 & 2 with the defendant No. 3 Bank, the defendant No. 3 Bank was impleaded as party. The Sub-Registrar, Asaf Ali Road, New Delhi, and the Sub-Registrar, Vikas Sadan, New Delhi, were impleaded as defendants No. 4 & 5 as proforma defendants.

7. That neither of the defendants appeared in spite of being served and were proceeded ex parte vide order dated 13.4.2005 and the plaintiffs were directed to lead their ex parte evidence. The defendants remain ex parte.

8. The plaintiffs have in their ex parte evidence proved the sale deed dated 2.5.1986 with respect to the said plot of land executed by Shri Satender Singh in favour of plaintiffs No. 1 & 2 and their father Shri Nand Lal Juneja as Ex. PW1/1 and the letter of mutation of the said plot of land in favour of the plaintiffs as Ex. PW1/2. The plaintiffs have proved the advertisement of the advocate of the defendants No. 3 bank from which the plaintiffs learnt of the documents deposited by the defendants No. 1 & 2 with the defendant No. 3 Bank as Ex. PW1/3 and the correspondence with the Bank as Ex. PW1/4 to Ex. PW1/8. The plaintiffs have proved the certified copy of the ex parte judgment dated 6.10.1998 in Suit No. 3416/1992 as Ex. PW1/9. The plaintiffs have proved the certified copy of the bogus rectification deed of which cancellation is sought as Ex. PW1/10 & Ex. PW1/11. The plaintiffs have proved the certified copy of the death certificate of Smt. Gurdial Kaur, showing her date of death as 23.9.1976 as Ex. PW1/12. It has further been deposed that the certified copies of the bogus sale deeds both dated 25.2.1994 were applied for by the plaintiffs, but were not provided for by the office of the Sub-Registrar.

9. Needless to add that the evidence of the plaintiffs remains unrebutted.

10. After the conclusion of ex parte evidence, this Court, finding that the financial interest of the defendant No. 3 Bank was likely to be affected by the outcome of the suit, issued notice to the defendant No. 3 bank even though it had not cared to appear and contest the suit. Pursuant thereto, the counsel for the defendant No. 3 bank appeared and an affidavit of the Chief Manager, Assets Recovery Branch-I of the defendant No. 3 Bank has been filed. It is stated in the said affidavit that one M/s. Univest Leasing and Finance Pvt. Ltd., had availed of financial assistance from the defendant No. 3 Bank and had offered property No. E-252, Greater Kailash-II, New Delhi, as security; that the Bank filed an application u/s 19 of the Debts Recovery Act and in which a recovery certificate for recovery of Rs. 1,30,86,160/- with interest was issued; that the bank upon realizing that the security offered by the defendants No. 1 & 2 was forged had filed a criminal complaint against the defendants No. 1 & 2 and others and which was pending in the court of Metropolitan Magistrate, Patiala House Courts; that in the said case a report was called from the SHO Connaught Place, who had reported that the original documents of title of property No. E-252, Greater Kailash II, New Delhi, which were offered to create equitable mortgage for the facilities availed by M/s. Univest Leasing and Finance Pvt. Ltd. were forged documents. Though the affidavit refers to property No. E-252, Greater Kailash-II,

New Delhi, but the same appears to be a typographical error in as much as the final report of enquiry conducted u/s 202 Cr.PC attached to the affidavit gives the property No. E-255, Greater Kailash-II, New Delhi. Also the report of the advocate for the defendant No. 3 bank enclosed to the said affidavit gives the number of the property as E-255, Greater Kailash-II, New Delhi.

11. Mr. B.T. Singh, advocate for the defendant No. 3 bank on 31.7.2008 also stated that the defendant No. 3 bank does not claim any rights with respect to the property No. E-255, Greater Kailash-II, New Delhi, and does not want to contest the suit and that the bank had in fact admitted the position that the title deeds of the said property deposited by the defendants No. 1 & 2 with the defendant No. 3 bank were forged and fabricated.

12. The plaintiff had sought production of the sale deeds dated 25.2.1994 and the rectification deeds of which cancellation is sought in the present case, but the counsel for the defendant No. 3 bank stated that the documents were not available with the bank also and were lying in the court of Mr. Pritam Singh, Metropolitan Magistrate, Delhi, in the aforesaid complaint case filed by the bank against the defendants No. 1 & 2.

13. That as aforesaid the certified copies of the two sale deeds dated 25.2.1994 purported to be executed by Smt. Gurdial Kaur of which cancellation is sought have not been produced before the court. However, the certified copies of the rectification deeds dated 12.8.1994 also purported to be executed by Smt. Gurdial Kaur have been proved as Ex. PW1/10 & Ex. PW1/11. The same refer to sale deeds having been executed by Smt. Gurdial Kaur in favour of the defendants No. 1 & 2 on 25.2.1994. The death certificate of Smt. Gurdial Kaur proved as Ex. PW1/12 establishes that Smt. Gurdial Kaur died on 23.9.1976. Thus question of her executing the sale deed on 25.2.1994 does not arise. In the facts and circumstances aforesaid, the plaintiffs have made out a case that the sale deeds dated 25.2.1994 and the rectification deeds dated 12.8.1994 are forged and fabricated documents. Since the same relate to the property of which the plaintiffs have established themselves to be the owner, the plaintiffs are entitled to have the said documents cancelled.

14. A decree is thus passed in favour of the plaintiffs and against the defendants declaring the following documents:

- i) Document No. 1411 in Additional book No. 1, volume No. 8185 at pages 72 to 76 registered with the office of Sub-Registrar, Delhi,
- ii) Rectification deed registered with the Sub-Registrar-III, Delhi, as document No. 5775 on 12.8.1994,
- iii) Sale deed registered as document No. 1417 in Additional book No. 1, volume No. 8185, at pages 77 to 81 on 25.2.1994,
- iv) Rectification deed registered as document No. 5776 registered with the Sub-Registrar, on 12.8.1994,

as null and void and cancelling the same. However, since the original of the documents could not be brought before the court, it is ordered that upon the plaintiffs producing a certified copy of this judgment and decree, the plaintiffs shall be entitled to have an endorsement of cancellation made on the originals of the said documents, wheresoever they may be and by the person incharge/ custody of the said documents. A copy of this judgment and decree be also sent to the Sub-Registrars, defendants No. 4 & 5 who shall on the registers maintained by them make entry of the cancellation of the documents aforesaid. The decree sheet be drawn up. The plaintiffs shall also be entitled to costs of the suit from the defendants No. 1 & 2.