

(2009) 07 DEL CK 0207

In the Delhi High Court

Case No : I.A. No. 14160 of 2008 and CS (OS) 946 of 2007

Shri Surendra Prasad Sinha

APPELLANT

Vs

Smt. Bibha Sinha and Others

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 16, 17, 18, 19

Citation : (2009) 4 ILR Delhi 177

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S.K. Pruthi and Manoj Ahuja, for the Appellant; Irshad Ahmad, for the Respondent

Judgement

S. Ravindra Bhat, J.—This order will decide the question of jurisdiction in the suit, where the plaintiff claims declaration that the family settlement arrived at between the parties, (dated 04.09.2005) and reduced to writing on 10.01.2006 is valid, subsisting and legally enforceable and a consequential permanent injunction restraining the defendants from selling, transferring, interfering with the plaintiff's possession, or creating any third party rights on the properties, mentioned in Schedule A-1, Schedule A-4 and Schedule B to the suit.

2. The suit averments are that the plaintiff is the elder brother-in-law of the first defendant i.e. elder brother of her pre-deceased husband; the second defendant is daughter of the first defendant. The undisputed position is that this suit is in respect with the agricultural land situated in Distt. Chapra and Betiah, Bihar.

3. The following preliminary issue was framed by order dated 09.01.2009:

Whether this Court has jurisdiction to entertain the suit? OPP.

4. The plaintiff urges that there is no defect in the jurisdiction of this Court, as he has not sought any relief in regard to the properties and that rather it is only for a declaration and injunction in respect of the family settlement, which the defendants have resiled from after consciously entering into. Thus, the relief

relates only to the personal obligation of the defendants and has nothing to do with the properties. According to the plaintiff, Section 16 of the CPC (hereafter the Code) does not come into picture. It is stated that the defendants reside and work for gain in Delhi; for proving this their Voter identification cards and insurance policies are placed on record. The plaintiff says that this Court has territorial jurisdiction to try the suit as the relief sought is such that can be obtained through personal obedience of the defendants; he places reliance on a judgment of this Court *Sidharth Choudhary Vs. Mahamaya General Finance*, where the court observed that:

5. As per the proviso to Section 16 of the C.P.C. a suit to obtain relief respecting immovable property held by or on behalf of the defendant may 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, provided that the relief sought can be entirely obtained through the personal obedience of the defendants. In the present case defendants 1 and 2 admittedly have their registered office in Delhi and are carrying on business in Delhi. The relief sought in the suit is only for directing the defendants to execute the sale deed in respect of the suit property in favor of the plaintiff and to get the sale deed registered. The said relief of executing of the sale deed and getting the sale deed registered can be entirely obtained through the personal obedience of the defendants who are carrying on business within the local limits of the jurisdiction of the Court of the Civil Judge, Delhi. Therefore, the court of the Civil Judge, Delhi had territorial jurisdiction to try the suit.

6. The learned Civil Judge has observed that the relief sought by the plaintiff is not only for execution of the sale deed but also for registration of the sale deed and that the registration of the sale deed cannot be obtained by the personal obedience of the defendants since registration of the sale deed is not the job of the defendants. This is not a correct view. It is common knowledge that the registration of a sale deed is the function of the Registrar and not the job of the person executing the sale deed. The job of the person executing the sale deed is to present the sale deed to the Registrar for registration and to comply with the formalities required. When that is done registration will naturally follow. This is why the plaintiff sought the relief of directing the defendants to get the sale deed registered in favor of the plaintiff and not to register the sale deed. The Civil Court in Delhi can make the defendants obey its direction to present the sale deed of the Registrar for registration and to comply with the necessary formalities. Hence, the learned Civil Judge was not right in assuming that the relief of getting the sale deed registered cannot be obtained by the personal obedience of the defendants.

5. The defendants resist the plaintiffs' submission about jurisdiction and rely on the Supreme Court judgment reported as *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, where it was observed as under:

26. ...As we have already indicated, the suit relates to specific performance of an agreement of immovable property and for possession of plot. It is, therefore, covered by the main part of Section 16. Neither proviso to Section 16 would get attracted nor Section 20 (residuary provision) would apply and hence Delhi Court lacks inherent jurisdiction to entertain, deal with and decide the cause....

36. ...The registered office of the Company was in Bombay and the agreement was finally concluded in Bombay. It was, therefore, contended that Dhulia Court had no jurisdiction to try the suit. It was, however, held by the High Court that the case was covered by Clause (d) of Section 16 of the Code, the Proviso had no application and since the property was situated at Dhulia, Subordinate Judge, Dhulia had jurisdiction to entertain and try the suit. See also *Ananda Bazar Patrika Ltd. and Others Vs. Biswanath Prasad Maitin*, .

6. It is evident from the above discussion that the lis between the parties is whether the family settlement relied upon by the plaintiff binds the defendants, in so far as it pertains to properties situated in District Chapra, in Bihar. The defendants dispute the courts jurisdiction, contending that the residuary provision in the Code, i.e. Section 20 is inapplicable, since Section 16, which specifically deals with the question of disputes pertaining to immovable properties, would be attracted. The plaintiff's case, on the other hand, is that the relief is not ipso facto relatable to immovable property, but the obligations arising out of the family settlement, and that the defendants' personal obedience to comply with this Courts orders can be secured here, since they reside within the territorial jurisdiction of the court.

7. Section 16 of the Code reads as follows:

Suits to be instituted where subject-matter situate.- Subject to the pecuniary or other limitations prescribed by any law, suits,-

- (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,
- (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.

8. According to the defendants the suit is covered u/s 16(d) of the Code as opposed to the plaintiff's claim that the suit falls under the proviso to Section 16. Clause (d) covers such suits in which the determination of any right to or interest in immovable property is not prescribed under either Clause (a), (b) or (c). The proviso to Section 16 is based on the maxim equity acts in personam and encompasses cases where a suit can be instituted in a court within the local limits of whose jurisdiction the defendant actually or voluntarily resides or carries on business or works for gain although the property in respect of which it is filed may be situated outside the territorial jurisdiction of that court.

9. The High Court of Calcutta in *Trustees for Improvement of Calcutta Vs. Bahadur Khan and Others*, held that where the plaintiff wanted a determination as to his right and status in regard to the immovable property, the forum should be determined u/s 16 of the Code of Civil Procedure. In *Pantaloon Retail India Ltd. Vs. DLF Limited and Others*, the plaintiff had moved this Court in appeal against the order of the learned Single Judge returning plaint seeking mandatory injunction against the defendants therein on the ground that Delhi courts lacked territorial jurisdiction to entertain the suit as the suit property is situated in Gurgaon, Haryana. The contention regarding lack of territorial jurisdiction was affirmed. In *Vipul Infrastructure Developers Ltd. v. Rohit Kochhar and Anr.* FAO(OS) 196-197/2005 decided on 11.03.2008 the following discussion by the Division Bench is worth noting:

17. The interpretation that is sought to be given by the respondents herein, if accepted, would in view of the aforesaid decision, lead to an incongruous situation, as a person who is located in Delhi and buys a property in Gurgaon or in Mumbai, would seek for declaration at Delhi and at the execution stage, get the decree transferred to Gurgaon or Mumbai for its execution.

18. In the present case, it is an admitted position that the appellant had entered into the aforesaid alleged contract at its Corporate office at Delhi. It is the specific stand of the appellant that they were initially residents of Delhi and that they had moved to Gurgaon and their corporate office is now also located at Gurgaon. It is the contention of the Counsel appearing for the respondents that the proviso to Section 16 of CPC is applicable which is sought to be invoked, for, the relief which is sought for could be entirely enforced through the personal obedience of the defendants in Delhi. There is however not only a prayer in the plaint for declaration of the right and title, but also to transfer the right, title and interest in the suit premises situate at Gurgaon. As, in our opinion, the suit can be decreed in favor of the plaintiff only when the Court can get the sale deed executed and registered in favor of the plaintiff which would confer the title of the suit premises on the plaintiff, and the execution and the registration of the sale document would have to take place at Gurgaon and, for this the Court will

also have to pass a decree directing the defendant to get the sale deed executed and registered at Gurgaon, implication of the same will be that a direction will have to be given to the defendant that he shall have to move out of Delhi and go to Gurgaon and get the same registered. No sale deed is sought to be registered at Delhi and, therefore, in our considered opinion such a relief cannot be entirely obtained through the personal obedience of the defendant, who in this case has to go to the jurisdiction of another court to get the decree executed and the sale deed registered....

10. In the judgment reported as Harshad Chiman Lal Modi Vs. DLF Universal and Another, , the Supreme Court observed that:

In the prayer clause, the plaintiff stated;

Therefore, it is most respectfully prayed that in the facts and circumstances stated above, this Hon''ble Court may graciously be pleased to:

a) pass a decree of declaration to the effect that there is a valid and existing contract with regard to plot No. L-31/4, DLF Qutab Enclave Complex, Gurgaon, Haryana, between the plaintiff and the Defendant No. 1;

b) pass a decree to the effect that the Defendant No. 1 is bound to abide by the contract, i.e. plot buyer agreement dated 14.8.85 and the unilateral rescinding/ canceling/withdrawing of the contract by the Defendant No. 1 is bad and illegal;

....

Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts is uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary Section and covers all those cases not dealt with or covered by Sections 15 to 19.

Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment.

Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery Courts in England. Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property.

....

In the instant case, Delhi Court has no jurisdiction since the property is not situate within the jurisdiction of that court. The trial court was, therefore, right in passing an order returning the plaint to the plaintiff for presentation to the proper court. Hence, even though the plaintiff is right in submitting that the defendants had agreed to the jurisdiction of Delhi Court and in the original written statement, they had admitted that Delhi Court had jurisdiction and even after the amendment in the written statement, the paragraph relating to jurisdiction had remained as it was, i.e. Delhi Court had jurisdiction, it cannot take away the right of the defendants to challenge the jurisdiction of the court nor it can confer jurisdiction on Delhi Court, which it did not possess. Since the suit was for specific performance of agreement and possession of immovable property situated outside the jurisdiction of Delhi Court, the trial court was right in holding that it had no jurisdiction.

11. In the present case had the claim only been for declaration simplicitor it could have been, perhaps, said that the court had jurisdiction if it were established that the defendants actually and voluntarily reside, or carry on business, or personally work for gain within the jurisdiction of this Court. As far as the second defendant is concerned it is an admitted position that after her marriage in January, 2006 she has been residing at Lucknow, Uttar Pradesh as is also clear from the memo of parties filed by the plaintiff.

12. The plaintiff here has sought a relief of permanent injunction restraining the defendants from selling, transferring, interfering with the possession of plaintiff or creating any third party right on the suit properties coupled with a prayer for declaration with regard to the legality of the said family settlement. The plaintiff is essentially asserting his right and title over the said properties, which allegedly vested in him by way of the family settlement document. Although he has not made a claim for recovery/handing over of possession but he has prayed for injuncting the defendants from interfering with the possession of the plaintiff which implies that he claims to be in possession and that the alleged conduct of the defendants amounts to disturbing his possession.

13. The court is of opinion, in line with the decision in Harshad Chimabhai's

case, that the reliefs claimed by the plaintiff are not of the kind that can be ensured through mere personal obedience. The document, on the basis of which rights are concededly set up in the suit, pertain to properties which are not subject matter to this Court's jurisdiction, under Sections 15 and 16 of the Code. Prior to the document, the plaintiff did not possess the kind of rights he is asserting. Thus, the document on which the suit is based, concerns itself with recording the share of respective parties. The share is in respect of immovable property is squarely by the description in Section 16(d) of the Code, i.e. "for the determination of any other right to or interest in immovable property". The rulings of this Court, as well of the Supreme Court clearly stipulate that such suits cannot be entertained in terms of the residuary Clause in the Code, i.e. Section 20. This court is therefore of the view that suit cannot be entertained before this Court.

14. For the above reasons, the preliminary issue is held in favour of the defendant, and against the plaintiff. The plaint in the suit is hereby directed to be returned to the plaintiff, who shall file the same in the court of competent jurisdiction, within ten weeks from today. The suit is accordingly disposed off, as returned. No costs.