
(2013) 10 DEL CK 0462

In the Delhi High Court

Case No : Regular First Appeal 623 of 2007

Shyam Behari and Others

APPELLANT

Vs

Ram Kishan and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Slum Areas (Improvement and Clearance) Act, 1956 — Section 3, 4

Citation : (2013) 10 AD 236

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : P. Chakraborty, for the Appellant; Parveen Kumar for Ms. Amita Gupta, for MCD, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—None appears for the legal heirs of the respondent no. 1/plaintiff. The counsel for the respondent no. 2 MCD states that the arguing counsel Ms. Amita Gupta is not available and seeks an adjournment.

2. However this appeal being nearly six years old, it is not deemed expedient to await the counsels for the respondents and the counsel for the appellants has been heard.

3. The appeal impugns a judgment and decree dated 20th May, 2005 of the Court of the Addl. District Judge, Delhi allowing Suit No. 447/2004 filed by the predecessor-in-interest of the respondents no. 1(a) to 1(i) and passing a preliminary decree for partition of quarter No. 53-A, Block No. 5, Mata Sundari Road, New Delhi and declaring the respondent no. 1/plaintiff to be having one half share therein and the nine appellants/defendants together to be having the remaining half share therein.

4. Notice of the appeal and of the application for condonation of more than 590 days delay in filing the appeal was issued. Vide subsequent order dated 11th March, 2008, the delay in filing the appeal was condoned. Though vide orders

dated 28th October, 2009 and 12th January, 2010 the counsels were asked to file written synopsis of their submissions but the same have not been filed. The appeal was on 12th August, 2010 admitted for hearing. On the application of the appellants/defendants for early hearing for the reason of the appellants/defendants being senior citizens, the hearing was expedited by placing the matter in the category of "Regulars Matters of Senior Citizens". The counsel for the appellants/defendants has been heard.

5. It is not in dispute, (i) that quarter No. 53-A, Block No. 5, Mata Sundari Road, New Delhi, for partition of which the suit was filed, was allotted in the name of Shri Munna Lal who was the father of the deceased respondent no. 1/plaintiff and the grandfather of the nine appellants/defendants; (ii) that the said allotment was made vide letter dated 11th June, 1975 of provisional allotment, by the Office of the Commissioner (Slums), Delhi Development Authority (DDA); (iii) that the said allotment was under a Rehabilitation Scheme and in lieu of a quarter in the Sheesh Mahal area of Walled City, which was demolished by the DDA; (iv) that the provisional allotment was subsequently regularized; (v) that the said Shri Munna Lal died intestate on 14th August, 1980 leaving the deceased respondent no. 1/plaintiff and the father of the nine appellants/defendants namely Shri Sawal Dass as his sons and only legal heirs; and, (vi) that though the deceased respondent no. 1/plaintiff was also residing with Shri Munna Lal in the quarter at Sheesh Mahal area but when the same was demolished by DDA, he along with his family shifted to property No. 364/B, Chirag Delhi, New Delhi and only Shri Munna Lal along with the said Shri Sawal Dass and his family members shifted to the quarter subject matter of the suit from which this appeal arises.

6. The respondent no. 1/plaintiff filed the suit, also pleading:-

(a). that his brother Shri Sawal Dass had pre-deceased the father Shri Munna Lal on 8th July, 1977;

(b). that upon the demise of Shri Munna Lal the respondent no. 1/plaintiff inherited one half share in the said quarter and the appellants/defendants, being the legal heirs of Shri Sawal Dass, along with their mother Smt. Batto Devi inherited the other half share in the quarter;

(c). that the appellants/defendants along with their mother Smt. Batto Devi continued residing in the said quarter, holding the same also for the benefit of the respondent no. 1/plaintiff;

(d). that Smt. Batto Devi sometime in January, 1996 applied to the Slum & JJ Wing of the respondent No. 2 MCD for transfer of the said quarter in her name;

(e). that the respondent no. 1/plaintiff immediately on learning of the same objected thereto vide his letter dated 6th February, 1996; and,

(f). that before the disposal of the application of Smt. Batto Devi, she died intestate on 1st September, 1996 and her share out of one half share in the

quarter devolved upon the appellants/defendants. the respondent no. 1/plaintiff accordingly sought partition of the quarter.

7. The appellants/defendants contested the suit, by filing a written statement, on the grounds:-

- (i). that the quarter could not be partitioned;
- (ii). that the allotment of the said quarter in the name of Shri Munna Lal was on the basis of actual verification of the residence in the Sheesh Mahal quarter;
- (iii). that the respondent no. 1/plaintiff was at that time not residing in the Sheesh Mahal quarter as he had been residing separately since the year 1960;
- (iv). that the allotment was for the benefit of the family members of Shri Munna Lal who were residing along with him in the Sheesh Mahal quarter;
- (v). that the Slum Wing of the DDA which had made the allotment, had since been taken over by the respondent no. 2 MCD;
- (vi). that as per the policy of the Slum Wing, earlier of the DDA and now of the MCD, the allotment could be only in the name of the persons actually residing in the quarter;
- (vii). that the respondent no. 1/plaintiff had never resided in the subject quarter or in the quarter at Sheesh Mahal in lieu whereof the subject quarter was allotted and thus had no right with respect thereto;
- (viii). that Smt. Batto Devi had applied for mutation in her name as the head of the family of all the nine appellants/defendants; and,
- (ix). that the appellants/defendants alone were entitled to the said quarter and the respondent no. 1/plaintiff had no right with respect thereto.

8. Needless to state that the respondent no. 1/plaintiff in his replication controverted the aforesaid contents.

9. The respondent no. 2 MCD also filed a written statement, pleading:-

- (I). that the allottee Shri Munna Lal had in the list of his family members, included the name of the respondent no. 1/plaintiff as a family member;
- (II). confirming that the quarter was allotted to Shri Munna Lal in lieu of property No. 631/X, Sheesh Mahal, Delhi;
- (III). that as per the survey report dated 7th October, 1988 Smt. Batto Devi was residing in the subject quarter and as per the survey report dated 18th October, 1996, the appellants/defendants were residing in the said quarter;
- (IV). that Smt. Batto Devi had applied for leasehold rights in the quarter in her name, in September, 1984 and in March, 1989 and had in January, 1996 applied for transfer of the quarter in her name; and,

(V). confirming that the respondent no. 1/plaintiff had objected to the transfer/mutation of the quarter in the name of Smt. Batto Devi.

10. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 10th November, 2004:-

(1) Whether the plaintiff has one half share in the suit property, if so, its effect? OPP

(2) Whether plaintiff is entitled to the relief of partition of suit property as claimed? OPP

(3) Whether plaintiff is entitled to permanent injunction? OPP

(4) Relief.

11. The learned Addl. District Judge in the impugned judgment, has found/observed/held:-

(A). that on the basis of the admitted facts, the respondent no. 1/plaintiff had a half share in the quarter and the evidence led was hardly of any consequence;

(B). that no evidence had been led by the appellants/defendants to prove as to why the respondent no. 1/plaintiff was not entitled to half share in the quarter after the death of Shri Munna Lal in accordance with the provisions of the Hindu Succession Act; and,

(C). that no arguments had been advanced on issue No. 3 which was decided in favour of the appellants/defendants.

accordingly the preliminary decree for partition declaring the respondent no. 1/plaintiff to be having one half share in the quarter was passed.

12. The counsel for the appellants/defendants has not controverted the right of the deceased respondent no. 1/plaintiff to inheritance as a son of Shri Munna Lal. His contention however is that since the allotment of the quarter in the name of Shri Munna Lal was in pursuance to slum clearance and in lieu of the quarter at Sheesh Mahal occupied by Shri Munna Lal and his family members comprising of only his son Sawal Dass and the family members of the said son and not the respondent no. 1/plaintiff, the rights in pursuance to the allotment in the said quarter were personal only to such of the persons who had been residing in the quarter at Sheesh Mahal which also belonged to the Slum Wing of the DDA and such rights could not have been inherited by the respondent no. 1/plaintiff. It is further the contention that Shri Munna Lal himself was not the owner but merely a licensee of the said quarter and which rights were not inheritable. Reference without citing, is made to Sections 3 & 4 of the Slum Areas (Improvement and Clearance) Act, 1956.

13. Though the learned Addl. District Judge has held that the evidence led in the suit is of no avail but I have perused the cross examination by the appellants/defendants of the sole witness of the respondent no. 1/plaintiff namely Shri

Khem Chand being the respondent no. 1(c) herein, by the counsel for the appellants/defendants. No other documents except the letter dated 11th June, 1975 supra of provisional allotment of the quarter in the name of Shri Munna Lal has been proved. Though the counsel for the appellants/defendants has argued that the said witness in his cross examination having admitted that he was not aware of the contents of his affidavit by way of examination-in-chief, his evidence is of no avail but the fact remains that the appellants/defendants also have not proved anything else through his cross examination. The appellants/defendants themselves did not lead any evidence, having been proceeded against ex parte.

14. The question which arises for consideration is whether the law of inheritance/succession would be any different with respect to such properties.

15. The counsel for the appellants/defendants having referred to the Slum Act, the same has been perused. No provision for allotment in lieu of slum clearance has been found therein. The counsel for the appellants/defendants upon enquiry states that the said provision is in a scheme framed under the Act and states that though the said scheme has not been placed on record and has not been brought by him today but if the matter is adjourned, can be placed.

16. It is not in dispute that the mother of the appellants/defendants namely Smt. Batto Devi had applied to the Slum Wing of the DDA/MCD for grant of leasehold rights in the said quarter. From the same it appears that though the allotment of the quarter to Shri Munna Lal was as a licensee but there was some scheme for grant of leasehold rights in such quarter/premises to the allottees/licensees and/or their heirs. The text book on the subject contain a circular No. K-17011/71/83/- DDIA of the Government of India, Ministry of Works & Housing with respect to grant of perpetual leasehold rights in respect of tenements constructed in Delhi under Slum Clearance Scheme. The same is found to provide for grant of leasehold rights to the authorized allottee as well as to unauthorized occupant and also for transfer by sale of such properties on terms. It thus appears that the said quarter/property of the deceased Munna Lal is no different from any other property. The appellants/defendants have not proved that the right to occupy the said quarter was only of those who were residing in the premises in lieu of which the quarter was allotted. Rather, the policy of grant of leasehold rights in the quarter even to purchasers thereof shows the quarter to be a tangible asset and not merely a licence. As far as the effect of the respondent no. 1/plaintiff being not in possession thereof is concerned, once the rights in the quarter are found to be tangible, the possession of appellants/defendants as co-owners would be the possession of the respondent no. 1/plaintiff also. The counsel for the appellant/defendants also admits that there is such a scheme but states that the same has been stayed/quashed by this Court but is unable to give any particulars thereof.

17. The fact also remains that though the allotment of the quarter in the name of Shri Munna Lal was as a licensee but Shri Munna Lal and his family have now

been in occupation of the quarter for the last more than three decades and there is not stated to be any move afoot for determination of the said licence of Shri Munna Lal with respect to the said quarter.

18. The law of inheritance/succession covers all assets of the deceased; an immovable property, even if on license, would be a valuable asset of the deceased and in the absence of the law or any provision under which the said allotment was made, making a distinction, I am unable to accept the argument of the counsel for the appellants/defendants. There is nothing to show that upon the demise of the allottee of such quarters, the mutation thereof can only be in the name of the family members of the allottees residing in the said quarter. Judicial notice can be taken of the hard reality of such tenements/quarters exchanging hands for huge consideration. There is no reason to deprive an heir who though has not been residing with the deceased in such a quarter, from a share therein, or to limit the inheritance thereof in favour of only such of the heirs who have been residing with the deceased.

19. The counsel for the appellants/defendants has also argued that the said quarter comprises only of one room and is not divisible.

20. However the said aspect is to be considered at the stage of the final decree in the partition suit and not at this stage and which proceedings appear to have been held up owing to the Trial Court file having been requisitioned to this Court.

21. The appeal is therefore without any merit and is dismissed.

22. The respondents having not contested the same, no costs.

23. Decree sheet be drawn up. The file of the Trial Court be sent back forthwith to the District Judge having jurisdiction over the area where the said quarter is situated namely Mata Sundari Road, for continuation of the proceedings subsequent to the preliminary decree for partition. The parties to appear before the concerned Court on 9th December, 2013.

Dasti, as requested.