

(2012) 05 DEL CK 0059

In the Delhi High Court

Case No : I.A. No. 13113/11, in CS (OS) No. 2014 of 2011

Smt. Kamlesh Sharma @ Kamleshkumari and Another

APPELLANT

Vs

Smt. Satya Devi and Others

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 6 Rule 17, Order 7 Rule 11, 151

Citation : AIR 2012 Delhi 102

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sanjiv Bahl, with Mr. Eklavya Bahl and Mr. Rajat Bhardwaj, for the Appellant; Jayant Nath, with Mr. L.M. Asthana, for defendants No. 1, 3 and 4, for the Respondent

Judgement

Manmohan Singh, J.—Two sisters, namely, Smt. Kamlesh Sharma and Smt. Renu Rai, plaintiffs in the matter, have filed the present suit for partition, possession and permanent injunction in respect of the property bearing No. D-147, Block No. D at Surajmal Vihar, (also known as Teachers Colony), Delhi (hereinafter referred to as the suit property) against their mother (defendant No. 1), brother (defendant No. 2) and two sisters (defendants No. 3 and 4). The facts of the case as per plaint are that their father, Late Mr. Suraj Prakash Sharma died intestate on 27.12.1989, leaving behind his wife, Mrs Satya Devi, defendant No. 1 herein, his son Mr. Satender Kumar Sharma, defendant No. 2 herein, his four daughters, namely Ms. Sudesh Kumari, Ms. Anita Kumari who are defendant Nos. 3 & 4 respectively and plaintiffs.

2. It is stated in the petition that at the time of his death, deceased was the owner and in possession of the suit property and as the deceased died intestate without any Will or any other deed in favour of any person, therefore, as per the Hindu Succession Act, 1956, the plaintiffs being daughters of the deceased, are entitled to get 1/6th share of the suit property.

3. The plaintiffs state that time and again they have asked the defendants specially, the mother, defendant No. 1 to get the set property partitioned by metes and bounds through family settlement deed. However, defendants kept dragging the matter. On 17.07.2011, the plaintiffs came to know that the defendants are trying to sell the suit property, despite the reminder on 31.07.2011 not to do so, as they have equal rights in the suit property, but, the defendants refused to share the suit property with the plaintiffs. Hence, the plaintiffs filed the present suit.

4. By way of I.A. No. 13113/2011, filed under Order XXXIX Rules 1 & 2 read with section 151 CPC, the plaintiff are seeking an Ad-interim injunction order to restrain the defendants from creating third party interests in the portion belonging to the plaintiffs at the suit property. On 19.08.2011, on the basis of statement made by the plaintiffs, interim orders were passed directing the parties to maintain status quo with respect to possession and title of the suit property.

5. Upon service, the defendants filed their written-statement, reply and an application under Order VII, Rule 11 CPC for rejection of plaint. It is alleged by the defendants that during his life time, the deceased had executed a Will dated 10.08.1989, which was registered before the Sub-Registrar, Delhi. By way of the said will dated 10.01.1989, the decease gave the suit property to his wife, defendant No. 1, as the sole and exclusive owner along with all the moveable assets i.e. deposits in banks and G.P.F. etc.

6. It was also mentioned in the Will that that the unmarried daughters will continue to live in the suit property, till they move to their respective matrimonial homes. Defendant No. 4, who is unmarried, is still living in the suit property, as far as defendant No. 3 is concerned, immediately after her marriage, she had some matrimonial dispute and therefore, she is also residing in the suit property along with her son.

7. As defendant No. 2 was disobedient and did not have good relations with his father, therefore, he was not given any share in the suit property.

8. Admittedly, after the death of the deceased, his property was transferred in the name of defendant No. 1. Relinquishment-Deeds dated 23.02.1990 were executed by all the children in her favour except plaintiff No. 1. The said Relinquishment Deeds were registered before the Sub-Registrar, Delhi. Thereafter, on 18.06.2009, defendant No. 1 got the property freehold from the Delhi Development Authority, vide a Conveyance Deed between the President of India and the defendant No. 1 and the same was also registered before the Sub-Registrar VII Delhi, New Delhi vide registration No. 3405 on Page 176-178.

9. After filing the written-statement, immediately the plaintiffs filed the application under Order VI, Rule 17 CPC for amendment of plaint by adding the prayer of declaration to the effect that the Will dated 10.08.1989 executed by their father as well as alleged Relinquishment Deed dated 23.02.1990 are illegal,

null, void, non-est having no force in the eyes of law.

10. Application was not seriously opposed by the defendants and the same was allowed by the order dated 05.03.2012 with cost of Rs. 10,000/-. However, Mr Jayant Nath, learned Senior Counsel, appearing on behalf of defendant No. 1, 3 and 4, has very strongly opposed the prayer of continuation of interim order passed on 19.08.2011. His submission is that both plaintiffs have failed to assert how they are entitled to seek any remedy from this Court. He argued that late Sh. Suraj Parkash, husband of defendant No. 1, in his life time had executed a Will dated 10.08.1989, which is a registered Will in favour of his wife. Father was the exclusive owner of the immovable and all movable properties, both the plaintiffs were aware about the Will which clearly indicates that the unmarried daughters will continue to live in the property till they move out to their matrimonial home.

11. It is also argued by him that since his client defendant No. 1, is the legal owner of the property, plaintiffs, who are not the owners, cannot demand a partition. It is now for the mother to take her decision about the suit property. He submits that as far as the interim application is concerned, since the plaintiffs have no prima facie case in their favour, they are not entitled for interim order on the reasons that (a) they have no right in the suit property, (b) plaintiff No. 2 had executed the Relinquishment Deed in February, 1990 (the fact which is not disclosed by her in the plaint) and at the time of obtaining interim order, (c) the plaintiffs have filed the present suit after more than 20 years from the date of registered Will in the year 1989 and Relinquishment Deeds in 1990.

12. Mr Sanjiv Bahl, learned counsel appearing on behalf of the plaintiffs, has argued that if the arguments of the defendants are accepted and interim order is vacated, the plaintiffs would suffer irreparable loss and injury and suit would become infructuous. Thus, in the interest of justice, equity and fair play and in order to maintain harmony in the family, the status quo order should continue till the disposal of suit, particularly when the plaintiffs have now challenged the validity of the Will and Relinquishment Deed.

13. Mr Bahl also argued that the plaintiffs are the Class 1 legal heirs of the deceased. As per Hindu law, they have the right to get the property partitioned by the operation of law. Each party is entitled to get the equal one sixth share owned by the deceased. Factum of the Will came to the notice of the plaintiffs when the written statement was filed. Plaintiffs have challenged the same by amending their plaint, alleging that the same is not a genuine Will as the deceased was not well during that period otherwise, he never wanted to deprive any of his daughters or son from the property in question. There was no requirement for the execution of Relinquishment Deed by the children in case the defendant No. 1 is the beneficiary under the Will. These are manipulated documents in order to disinherit the plaintiffs from their rights in the suit property. In certain clauses of Relinquishment Deed relied upon by the plaintiff, it is mentioned that the legal representatives have one sixth share each in the suit

property.

14. However, it is not denied that there was relinquishment of rights by plaintiff No. 2 in favour of her mother. It is true that the said fact was not disclosed in the plaint. Counsel gave justification on behalf of the plaintiffs that at the time of execution of said deed, plaintiff No. 2 was 18 years and one month old. She was at that time, not in a position to appreciate the document and executed the same under misrepresentation. Result and effect of the said document was never disclosed to her by the defendants. Even in DDA, on the basis of manipulation of documents, the mutation was got done in the year 1995 without the knowledge of the plaintiffs.

15. Having heard both the parties, no doubt at this stage it is merely to determine as to whether the plaintiffs are entitled for an injunction as prayed or not. It is not in dispute that after filing of the written statement by the defendants, the plaintiffs amended their plaint and have challenged the validity of the documents which were registered in the year 1989 and 1990 in favour of their mother. Both sisters (plaintiffs herein) are married. Execution of Relinquishment Deed in the year 1990 is now, not denied by the plaintiff No. 2, though the said fact was not disclosed in the plaint. It seems that it was done in order to obtain the interim order. The deceased by virtue of the Will dated 10.08.1989 had given the property to his wife. It is also not denied by the plaintiffs that the property was owned by him. The plaintiff No. 2 relinquished her rights in the year 1990 in favour of her mother by means of registered Relinquishment Deed. Then, the suit has been filed after the expiry of 21 years. The other two sisters (defendants No. 3 and 4 herein) have taken the same stand as taken by the mother. In the written statement, defendant No. 1, the mother, has stated that by virtue of the registered Will, the plaintiffs are not entitled to any share. Thus, the balance of convenience lies in favour of defendant No. 1 and against the plaintiffs.

16. Thus, the plaintiffs have failed to establish any prime facie case in their favour. If the plaintiffs at the time of trial are able to establish that the said documents are manipulated, then doctrine of lis pendence would apply. In case the interim order will continue, the defendant No. 1 would not unnecessarily deprive her valuable rights acquired by virtue of the Will and Relinquishment Deeds in the year 1989 and 1990. Therefore, order already granted on 19.08.2011 is vacated. I.A. No. 13113/2011 is disposed of accordingly.

CS(OS) No. 2014/2011

List the matter before Joint Registrar on 06.08.2012 for admission/denial of documents and before Court on 13.08.2012 for framing of issues and directions for trial.