
(2011) 03 DEL CK 0189

In the Delhi High Court

Case No : Regular First Appeal No. 241 of 1999

Smt. Neelam Kapoor

APPELLANT

Vs

Bhag Chand thr. LR

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5, Order 22 Rule 6, 96

Citation : (2011) 03 DEL CK 0189

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Arvind Nayar, for the Appellant; Manoj Sharma, Sumit Bhardwaj and Kapil Kaushik, for the Respondent

Judgement

Valmiki J Mehta, J.—A new counsel, Mr. Arvind Nayar, Advocate, has appeared on behalf of the Appellants and therefore the earlier counsel, Mr. Rahul Bakshi stands discharged. Mr. Rahul Bakshi states that he has handed over back the fee cheque and the case file to the Appellants which is confirmed by the counsel who is now appearing for the Appellants.

2. The challenge by means of these Regular First Appeals u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 16th January, 1999 which decided the lis between the sons and widow of Sh. Rup Chand. The dispute was with respect to the property B-IV/15, Amar Colony, Lajpat Nagar, New Delhi. The subject property was conveyed by means of a Lease Deed dated 21st November, 1967, executed by the Land and Development Office of the Ministry of Rehabilitation, Government of India in favour of Smt. Assi Bai widow of Rup Chand and Sh. Mohan Lal (her one son, Defendant No. 2 Bhag Chand being the other son) giving shares of 3/4th and 1/4th respectively to Smt. Assi Bai and Sh. Mohan Lal. Smt. Assi Bai is stated to have executed a gift deed dated 19.2.1982 in favour of her other son Sh. Bhag Chand and which gift deed was registered on 20.2.1982. As of today neither Sh. Mohan Lal is alive nor is Sh. Bhag Chand alive and nor Smt. Assi Bai. In the proceedings before the

Trial Court, Mohan Lal claimed complete ownership of the property inter alia for the reasons that property was benami in the name of the mother but Mohan Lal was the actual owner, Mohan Lal had constructed on the property and hence was the owner by law of adverse possession/law of prescription and so on. Sh. Bhag Chand disputed the case of Sh. Mohan Lal and claimed inter-alia that the property in fact belonged to him as he had 3/4th share of the property which his mother Smt. Assi Bai had gifted by a gift deed dated 19/2/1982 registered on 20.2.1982 and that Mohan Lal was only 1/4th owner. These disputes have been decided by the Trial Court in the impugned judgment which decided two suits, one filed by Mohan Lal against Bhag Chand and the second filed by Bhag Chand against Mohan Lal and Assi Bai. By the impugned judgment the suit of Mohan Lal was dismissed and the suit of Bhag Chand was decreed and it was held that Mohan Lal was not entitled to 3/4th share of Smt. Assi Bai and in fact Bhag Chand was entitled to 50% ownership (back portion) of the suit property.

3. After final arguments were heard in the case in the Trial Court, and the case was reserved for judgment, both Bhag Chand and Mohan Lal expired. As per Order 22 Rule 6 Code of Civil Procedure, a judgment can be passed, although a party to a case has expired after the case is reserved for judgment but before pronouncement of judgment and it will be deemed as if he died after the pronouncement of judgment. In such circumstances for an appeal against the judgment of the trial court, the persons who will file the appeal, and also who would be Respondents in the appeal have naturally to be the legal heirs of the parties who contested the case in the Trial Court. In the present case, there is no dispute as to the legal heirs of late Sh. Mohan Lal because they are the natural legal heirs being the children of Mohan Lal, however, so far as Bhag Chand is concerned, the position is not so simple. Bhag Chand was a bachelor and therefore on his death he left behind no natural legal heirs who could have been his widow or children or other legal heirs as specified in Class 1 of the Schedule of Hindu Succession Act, 1956. The representation on behalf of Sh. Bhag Chand in this Court is by one Sh. Jagdish Lal Dua who is said to have in his favour a registered Will dated 26.1.1999. There is therefore a dispute as to whether Sh. Dua is entitled to represent the estate of Bhag Chand. I may note that Sh. Dua had filed an application in the Trial Court after conclusion of final arguments and after the pronouncement of judgment and the Trial Court had allowed the said application and treated Mr. Dua as the decree holder and legal heir of Sh. Bhag Chand. This order of the Trial Court dated 24th November, 1999 was challenged in this Court by the legal heirs of Mr. Mohan Lal and which challenge filed in this Court failed. A further challenge was laid in the Supreme Court in Civil Appeal Nos. 7218-7219/2002 titled as Sanjay Kapoor and Anr. v. Jagdish Lal Dua (dead). The Supreme Court in the SLP passed the following order on 6.5.2008:

Heard learned Counsel for the Appellant.

This appeal is directed against the order of the High Court allowing the substitution application. Allowing of substitution application does not create any

right. It is open to the Appellant to urge all the contentions available to him under the law at the time of hearing of the appeal. It is also open to the Appellant to urge that Jagdish Lal Dua is not a legal heir of Bhag Chand @ Subhash Chand.

With the aforesaid clarification, the appeal is dismissed.

4. It is a disputed question of fact whether Sh. Jagdish Lal Dua is the legal heir entitled to represent the estate of Sh. Bhag Chand, and such a disputed question of fact cannot be decided except by leading evidence. The procedure to decide such disputes of representation to an estate of a deceased person, in a pending litigation, is provided by Order 22 Rule 5 CPC which reads as under:

Determination of question as to legal representative.- Where a question arises as to whether any person is or is not the legal representative of a deceased Plaintiff or a deceased Defendant, such question shall be determined by the Court:

(Provided that where such question arises before an Appellate Court, that Court may. Before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any recorded at such trial, its findings and reasons therefore, and the Appellate Court may take the same into consideration in determining the question.)

5. The disputed question of fact with regard to existence or otherwise of a Will in favour of Jagdish Lal Dua by late Sh. Bhag Chand can only be decided after trial following the procedure under Order 22 Rule 5 Code of Civil Procedure. The present is not a normal case where there is at least one admitted natural legal heir of late Sh. Bhag Chand and therefore I could leave the further decision as to the inter se rights between such natural legal heirs of Bhag Chand to another litigation by allowing one or some or all natural heirs to represent the estate of late Sh. Bhag Chand. It is therefore required to be decided as to whether Jagdish Lal Dua (who himself has expired, and now is represented by his natural legal heirs) had inherited the estate of Sh. Bhag Chand by means of the Will dated 26.1.1999. In view of the above and in terms of the mandate of Order 22 Rule 5 CPC and the order dated 6.5.2008 of the Supreme Court I remand this case back to the Trial Court to decide the issue as to whether Sh. Jagdish Lal Dua was the legal heir of late Sh. Bhag Chand by virtue of the Will dated 26.1.1999 executed in his favour. The Trial Court would frame appropriate issues including with regard to the existence and validity of the Will dated 26.1.1999 executed by Sh. Bhag Chand in favour of Sh. Jagdish Lal Dua and allow both the parties to lead evidence. The Trial Court thereafter must record its finding with its reasons and return such finding to this Court.

6. The appeals are adjourned sine die. Parties to appear before the District and Sessions Judge on 26.4.2011, and on which date, the Districts and Sessions Judge will mark the case to an appropriate Court for decision of the issue with regard to representation to the Estate of late Sh. Bhag Chand.

7. Trial Court will make an endeavor to dispose of the case so far as possible within a period of one year from the first date fixed before the said Court. Counsel for the parties are agreeable that none of the parties will take unnecessary adjournments in the matter and the Trial Court will be entitled to impose costs for unnecessary adjournments being taken in the matter. Trial Court record be sent back.