
(2009) 01 DEL CK 0148

In the Delhi High Court

Case No : Regular First Appeal (OS) 2 of 2008 and CM 523 of 2008

Smt. Rekha Khanna

APPELLANT

Vs

Sh. Joginder Pal Kohli and Others

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Citation : (2009) 01 DEL CK 0148

Hon'ble Judges : Sudershan Kumar Misra, J;Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : R.S. Sahni, for the Appellant; Arun Khosla, Shreeanka Kakkar, for R-1 and Mahipal Singh Dral, for R-6, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—One Sh. Ram Lal Kohli enrolled himself as a member of the Refugees Cooperative Housing Society Limited. The Society changed its name to Punjabi Bagh Cooperative Housing Society Limited ("the Society" for short). Sh. Ram Lal Kohli passed away in 1956 leaving behind his widow Smt. Lajwanti, two sons and four daughters. He had made a nomination in favour of his wife Smt. Lajwanti and thus the membership of the society was transferred to Smt. Lajwanti. The Society allotted plot No. 13 at Road No. 60 measuring 279.55 sq.yards in favour of Smt. Lajwanti in the land of the Society. The title of Smt. Lajwanti was perfected by execution of a sale deed in her favour on 16.04.1962 which was duly registered on 27.04.1962.

2. Smt. Lajwanti executed a sale deed dated 26.03.1966 in favour of her son Mr. Joginder Pal Kohli, which was duly registered. A house was constructed on the said plot in the year 1967. She passed away in the year 1968.

3. A suit came to be filed on the original side of this Court being CS(OS)1440/2000 by Sh. Mela Ram, the other son of Smt. Lajwanti impleading Sh. Joginder Pal Kohli as the first defendant and the four sisters as defendant Nos. 2 to 5. The Society was impleaded as defendant No. 6. The suit filed was for

partition, declaration and permanent injunction. The case set up in the plaint was that Smt. Lajwanti, though was a nominee and became a member of the Society, held the property on behalf of the legal heirs and each of the legal heirs was entitled to 1/7th undivided share in the plot. The plaintiff Sh. Mela Ram claimed that he had contributed towards the construction of the property and being the elder brother got his sisters married off. The plaintiff and the sisters were stated to be in constructive possession of the property though the physical possession was solely with Sh. Joginder Pal Kohli, defendant No. 1.

4. It is admitted that no steps were taken to get the shares separated till 01.07.2000 when the plaintiff claimed to have derived knowledge that defendant No. 1 was negotiating for sale of the property as a whole. The plaintiff alleged that he had claimed partition which was declined and the plaintiff came to know of the execution of the sale deed in favour of defendant No. 1 by Smt. Lajwanti only when the written statement to the suit was filed by defendant No. 1 whereafter the plaint was amended. The competency of Smt. Lajwanti to execute the sale deed was called into question.

5. The defence of defendant No. 1 was that he was in open, continuous and uninterrupted possession of the property and the super structure since 1967 to the exclusion of the other parties and the same was in pursuance to the sale deed dated 26.03.1966 which had been executed with the consent and concurrence of the other legal heirs. The property also stood mutated in the name of defendant No. 1. Smt. Lajwanti was stated to have paid the amounts towards the purchase of plot and became absolute owner and her title was perfected by execution of a sale deed in her favour which title was in turn transferred in favour of defendant No. 1. The sale deed was also witnessed by defendant No. 4, one of the sisters. Defendant No. 1 further claimed that defendant Nos. 2 and 3 got married during the lifetime of Smt. Lajwanti who spent money for the same and defendant Nos. 4 and 5 lived with defendant No. 1 after death of their parents and it is defendant No. 1 who looked after them.

6. Defendant Nos. 3 to 5 in their written statement supported the claim of the plaintiff in respect of partition of the property. On the pleadings of the parties, the following issues were framed:

1. Whether the present suit is barred by the provisions of the Benami Transactions Act both on account of challenge to the sale deed dated 27.4.1962 in favour of Lajwanti Kohli and the sale deed dated 26.3.1966 in favour of defendant No. 1 ? OPD

2. Whether the present suit is barred by limitation ? OPP

3. Whether the defendant No. 1 is entitled to claim acquisition of ownership over the property by adverse possession in view of the defence taken in the written statement and, if so, its effect in view of pleadings in the present suit ? OPD

4. Whether the plaintiff and all other defendants are estopped from questioning

the legality and validity of the sale deed dated 16.4.1962 in favour of late Smt. Lajwanti Kohli on account of their consent in that regard ? OPD

5. Whether the plaintiff and other defendants are estopped from questioning the legality and validity of the sale deed dated 26.3.1966 in favour of the defendant No. 1 having received their share in the sum of Rs. 8368.50 paid by defendant No. 1 as sale consideration for the plot of land in question to the original owner, late Smt. Lajwanti Kohli ? OPD

6. Whether the plaintiff has made any contribution towards the purchase of the plot in favour of Smt. Lajwanti Kohli and also made contribution for the construction of the building and, if so, to what effect ? OPP

7. Whether the plaintiff has any share in the suit property and can seek partition thereof and, if so, what is the share of the plaintiff in the suit property ? OPP

8. Whether the plaintiff and other defendants were not in the knowledge of the sale deed dated 26.3.1966 in favour of defendant No. 1 till 1.7.2000 ? OPD

9. Whether the sale deed dated 26.3.1966 is a forged document and was not executed by the late Smt. Lajwanti Kohli in favour of the defendant No. 1 in accordance with law, if so its effect ? OPP

10. Whether the plaintiff and the defendants are entitled to partition of the suit property as claimed in the plaint and, if so, for what share the parties hereto are entitled to ? OPP

7. The parties led their respective evidence and by judgment and decree dated 06.11.2007, the suit of the plaintiff has been dismissed with costs of Rs. 50,000/-.

8. The plaintiff has apparently not agitated the matter any further and the present appeal has been filed by the original defendant No. 3, one of the sisters, claiming that in a partition suit all parties are plaintiffs and defendants and since she was also claiming 1/7th share in the suit property, as set out in her written statement, she has a equal right to file the present appeal.

9. We have heard the learned Counsel for the parties and our findings on the issues are as under:

Issue No. 1

Whether the present suit is barred by the provisions of the Benami Transactions Act both on account of challenge to the sale deed dated 27.4.1962 in favour of Lajwanti Kohli and the sale deed dated 26.3.1966 in favour of defendant No. 1 ? OPD

10. The learned Single Judge has come to the finding that Smt. Lajwanti had become a member of the Society in her own right and paid the membership and demand made by the Society for allotment of land to her. Sh. Ram Lal Kohli had passed away in the year 1956, prior to the allotment of any land and as per the

nomination, the membership stood transferred to Smt. Lajwanti who made payments for the plot. The provisions of Benami Transactions Act have been held not to be applicable to the present case since the membership was personal to Mr. Ram Lal Kohli which stood transferred to his wife, Ms. Lajwanti, after his death. The membership had not crystallized into a right in the property at the time of the death of Sh. Ram Lal Kohli.

11. The sole submission of the learned Counsel for the appellant is that the nomination in favour of Ms. Lajwanti could not have deprived the other legal heirs of their right of succession to the plot and in that behalf has referred to the judgment of the Supreme Court in Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another, . The said case dealt with the effect of nomination in respect of the National Savings Certificates which are governed by the Government Savings Certificates Act, 1959. It was held that the nomination was only to facilitate release of the amount in favour of the nominee but the estate devolved upon all the persons who are entitled to succession under law. Thus the nominee was entitled to receive payment but the amount thereafter was to be disbursed among the legal heirs as there was no alternative succession created.

12. The aforesaid judgment would not apply to the facts of the present case as at the time of demise of late Ram Lal Kohli in 1956, there was only a membership of the Society. Membership was transferred in favour of his wife Smt. Lajwanti and no one else claimed a right to the membership. The payments of the plot of land which came to be allotted subsequently were made by Smt. Lajwanti and the sale deed was executed in her favour in the year 1962 which perfected her title. Thus Smt. Lajwanti alone became the owner of the property in question and was thus competent to transfer the rights by a registered document in favour of any party which would include defendant No. 1, her other son.

13. Learned Counsel for the appellant in court has stated that the appellant was born in the year 1940. She would thus have attained majority in the year 1958 and never claimed any right in the membership of the Society. The plot came to be allotted much later. None of the legal heirs raised any issue till the year 2000 i.e. for 38 years after the sale deed was executed in favour of the mother and for 34 years after the sale deed was executed in favour of defendant No. 1 who remained in exclusive possession of the property.

14. Learned Counsel for the appellant has not been able to show us why this finding on issue No. 1 should be disturbed and we thus reject any challenge to the said finding.

Issue No. 4

Whether the plaintiff and all other defendants are estopped from questioning the legality and validity of the sale deed dated 16.4.1962 in favour of late Smt. Lajwanti Kohli on account of their consent in that regard ? OPD

15. The stand of the original plaintiff and the supporting defendants was that Smt. Lajwanti was holding the membership and the property as a trustee on behalf of all the legal heirs of late Sh. Ram Lal Kohli and deposed to that effect. Defendant No. 4, in fact, stated that she was not even aware that her mother had become a member of the Society and thus she had no occasion to object at any stage. She was, in fact, devoid of any knowledge as is apparent from her cross examination and the learned Single Judge has found that her answers were evasive during cross examination. She claims to have developed interest in the property only at the time of its sale. Defendant No. 3, appellant herein, deposed that she had not objected to the execution of the sale deed in favour of her mother since she was a nominee of her father, but she expressed her ignorance about when the payment was made for the plot and who incurred expenses for construction over the plot. It has come on the record that the plaintiff had sold away shops left behind by the father. The plaintiff admitted that he had not made payments in respect of the plot but the payments were made by Smt. Lajwanti who did all that was necessary including applying for making construction and for completion. In fact, the plaintiff claimed that he was not even on talking terms with the family of the defendant No. 1 for 50 years. The deposition also showed that the plaintiff started running business and suffered losses. He disposed of the shops and separated from the family some time in the year 1962-63. He contributed not a penny towards the plot or the construction. In fact, nobody other than the Smt. Lajwanti did so.

16. The learned Single Judge has rightly held that it does not lie in the mouth of the plaintiff or any of the defendants to claim ownership of property jointly or otherwise after 40 years especially when the plaintiff had separated from the family taking away entire business of his father and was not even on talking terms with his brother/defendant No. 1. Defendant No. 1, being the other son, was living with his mother and the mother decided to sell the property to him for which the money passed through cheque. The conclusion has thus rightly been reached that Smt. Lajwanti alone was the exclusive owner of the property.

17. Learned Counsel for the appellant in fact did not even make a serious endeavour to assail the finding and could say nothing in support of the appellant.

Issue No. 5

Whether the plaintiff and other defendants are estopped from questioning the legality and validity of the sale deed dated 26.3.1966 in favour of the defendant No. 1 having received their share in the sum of Rs. 8368.50 paid by defendant No. 1 as sale consideration for the plot of land in question to the original owner, late Smt. Lajwanti Kohli ? OPD

Issue No. 9

Whether the sale deed dated 26.3.1966 is a forged document and was not executed by the late Smt. Lajwanti Kohli in favour of the defendant No. 1 in accordance with law, if so its effect ? OPP

18. There could be no impediment in Smt. Lajwanti in selling the property once she is held to be the exclusive owner. The relevant witness from the office of the Sub Registrar has proved the registration of the sale deed. The witness from the Land and Building Department has proved that defendant No. 1 executed a bond and availed of a loan for construction of the house. Thus the source of money for construction of the house by defendant No. 1 has been established. Once again, the findings in favour of defendant No. 1 cannot be assailed and, in fact, have really not been assailed by the counsel for the appellant.

Issue No. 6

Whether the plaintiff has made any contribution towards the purchase of the plot in favour of Smt. Lajwanti Kohli and also made contribution for the construction of the building and, if so, to what effect ? OPP

19. The plaintiff, and for that matter, the supporting defendants, other than a bald allegation in the pleadings have failed to establish any contribution towards the plot or the construction. As noticed above, the plaintiff had taken over the business of his father including shops and ruined the same. Defendant No. 1 has been able to establish that he took a loan and constructed on the plot and the payment for the plot was made by Smt. Lajwanti who had a registered sale deed in her favour which in turn was again transferred to defendant No. 1 vide a registered sale deed for valuable consideration. No fault can be attributed to the findings in favour of defendant No. 1 on these issues.

Issue No. 7

Whether the plaintiff has any share in the suit property and can seek partition thereof and, if so, what is the share of the plaintiff in the suit property? OPP

Issue No. 10

Whether the plaintiff and the defendants are entitled to partition of the suit property as claimed in the plaint and, if so, for what share the parties hereto are entitled to? OPP

20. The appellant cannot claim partition unless she has a share in the estate. The plea is predicated on the plea of nomination not conferring any right. The learned Single Judge has come to the conclusion that mere membership of the Society is a not a propriety right and the transfer of membership would be dependent on the rules of the Society. The only person eligible to become a member of the Society was Smt. Lajwanti. No one else took any interest in the plot which came to be ultimately allotted in pursuance to the membership and the construction was made by defendant No. 1. The findings once again in favour of the defendant No. 1 cannot be faulted.

Issue No. 8

Whether the plaintiff and other defendants were not in the knowledge of the sale deed dated 26.3.1966 in favour of defendant No. 1 till 1.7.2000? OPD

21. The testimony on record shows that the plaintiff separated from the family in 1963 while the sisters took a stand that they had nothing to do with the property at the relevant stage of time.

22. One of the sisters was even a witness to the sale deed and there is a contradictory evidence of the plaintiff and defendant No. 3, one of the sisters, as to whether the sale deed was signed as a witness by her. The fact remains that a sale deed was duly executed and registered. No one took any interest in the plot or the construction thereon and the litigation in question is purely speculative to somehow extract some money on account of astronomical increase in prices of land of which judicial notice can be taken. The other parties cannot claim jointness of title or constructive possession with defendant No. 1 and the issue has been rightly decided by the learned Single Judge to which once again there has been no substantial plea raised by the learned Counsel for the appellant.

Issue No. 2

Whether the present suit is barred by limitation ? OPP

23. Learned Single Judge, in our considered view, has rightly found that the suit is barred by time. The plaintiff separated in 1963. The sisters took no interest for all this period of time. No one claimed any right as a member in the Society or contributed a penny towards the plot. The construction on the plot was raised by defendant No. 1 as far back as in 1967 after availing of a loan. Smt. Lajwanti died in 1968 and no suit was filed for a period of 32 years after her death. It can, in fact, hardly be said that the suit is within time.

Relief

24. The suit has been rightly dismissed with costs of Rs. 50,000/-. We would have imposed further costs for a frivolous appeal but for the fact that the parties are brothers and sisters and costs of Rs. 50,000/- already stands imposed by the learned Single Judge. We hope better sense now prevails on the remaining parties as also the appellant who have initiated and prosecuted a frivolous suit and appeal, which is in the nature of an extraction/speculative litigation.

25. The appeal and the application are dismissed leaving the parties to bear their own costs.