(2001) 07 DEL CK 0092

In the Delhi High Court

Case No : IA No. 11322/96 in Suit 2745/96

Smt. Uma Aggarwal and Others APPELLANT

Vs

Sh. Rajesh Gupta and Others RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2001) 94 DLT 317

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Mr. Rajiv Nayar and Mr. Munish Goel, for the Appellant; Mr. P. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Mohan Lal is the common ancestor of the plaintiffs and defendants 1 to 3. He was the husband of defendant no. 4. During his life time he is alleged to have done well in life and acquired many properties besides inheriting from his father Gopi Nath Gupta. Mohan Lal died intestate in 1975. plaintiffs who are the daughters of the deceased Mohan Lal have filed the present suit for a partition and rendition of accounts.

2. It is alleged that after the death of Mohan Lal the parties to the suit inherited the property of the deceased. Each of them is entitled to 1/7th share in the assets of Mohan Lal. Mohan Lal is stated to have left the following properties and assets:

(i) M/s Gopi Nath Pvt. Ltd.

(ii) M/s Gopinath Mohan Lal Pvt. Ltd.

(iii) M/s Shree Mohan Lal & Company

(iv) Plot of 10,000 sq. yds of land with partially constructed at 19/92 Sarai Rohilla, Old Rohtak Road, Delhi

(v) Plot of Land measuring 4850 sq yds. with Construction thereupon and under the tenancy of M/s Karori Mal Engineering Works, 16/1 Najafgarh Road, Delhi

(vi) Property at Haridwar known and stayed Mohan Kutir, Niranjan Garden, Haridwar.

(vii) Eighteen godown in different parts of UP, details of which are not fully known to the plaintiffs and the defendants have full knowledge of the same.

3. After the death of Mohan Lal, the defendants had started handling his business. Defendants 1 and 2 had taken over the entire properties and business in their hand. Defendants 5 to 9 are pleaded to be private limited companies but in fact it has been pointed that they are family concerns. M/s Gopi Nath Pvt. Ltd was floated by the deceased grand father of the plaintiffs (Gopi Nath Gupta), while the other business in different names came into being by the acts of the deceased father of the plaintiffs. plaintiffs have not been paid any amount after the demise of Mohan Lal Gupta and since the rights of the plaintiffs have been challenged, the present suit referred to above had been filed.

4. During the pendency of the suit the plaintiffs prayed for an ad interim injunction invoking Order 39 Rule 1 and 2 with Section 151 of the Code 151 of the CPC to restrain defendants 1 and 2 from individually and collectively creating any third party interest or parting with possession of the immovable properties particularly piece of land measuring 4850 sq. yds at 16/1 Najafgarh Road, the property no. 19/52 Sarai Rohilla, Mohan Kutir at Haridwar and 18 godowns mentioned in the plant. It is prayed that they should be restrained from selling or creating any interest in different companies who have been arrayed as defendants 5 to 9.

5. By virtue of the present order the said interim application (IA 11322/96) is proposed to be disposed.

6. Needless to state and it was not in controversy during the course of argument that plaintiffs 1 and 3 have since settled their disputes and the present claim was thus confined to the above said prayer of plaintiff no. 2.

7. In the written statement filed by defendants 3, 4 and 8 there is little contest offered to the claim. The petition as well as the suit has been contested by the other defendants, namely defendants 1, 2, 4, 5, 6, 7 and 9. It has been asserted that the properties in respect of which the plaintiffs claim partition and rendition of accounts on the assumption that the same are joint family properties are either properties/assets of defendant no. 5 which is a private limited company or are owned by defendant no. 5 in her personal right. None of the properties mentioned in the plaint belonged to or were ever owned by Gopi Nath or Mohan Lal at the time of their death. Partition as such cannot be claimed with respect to any property owned by the business entity. None of the properties form subject-matter of the suit thus can be called to be the joint family property. It is admitted that plaintiffs were in possession of two rooms properties at Haridwar

named Mohan Kutir. Defendant no. 3 is stated to have colluded with the plaintiff. In the reply as well as the written statement further details of certain properties are forthcoming. So far as M/s Gopi Nath Pvt. Limited, defendant no. 5 is concerned, it is pleaded that the same was incorporated in 1941 by late Gopi Nath, grand father of the plaintiffs. Later on, his son Mohan Lal joined as shareholder Mohan Lal expired in 1975. The shares held by him devolved on the parties in equal share. Except plaintiff no. 2, plaintiff no. 1 and 3 transferred their shares to defendant no. 4 for consideration. They executed various documents in this regard. plaintiff no. 2 is stated to be holding only 9.8% shares in the total issued share capital of defendant no. 5. So far as defendant no. 6, Gopi Nath Mohan Lal Pvt. Ltd, is concerned it has been pleaded that it was incorporated during the life time of Gopi Nath, grand father of the plaintiffs and defendants 1 to 3 besides father-in-law of defendant no. 4. Defendant no. 6 has already been dissolved on 22nd February, 1997 in terms of the orders passed by this court on 24th February, 1997. This was a petition filed for winding up. As regards M/s Mohan Lal & Co. defendant concern, it has been pleaded that there is no company or firm with the said name floated or run by Mohan Lal. There was a partnership firm run in the name and style of M/s Mohan Lal & Co established in 1989 between defendants 2 and 4 as partners thereof. Mohan Lal died in January 1975. Thus this firm did not have any connection with any property or asset of Mohan Lal. Similar details have been given with respect to the properties mentioned in the plaint already reproduced above pertaining to the piece of land at Nazafgarh Road, property at Sarai Rohilla, Mohan Kutir at Haridwar and 18 godowns. It has been asserted that the plaintiff no. 2 has little to do with the same.

8. The fate of the present application indeed hinges on the controversy as to if plaintiff no. 2 establishes a prima facie case or not. It has rightly been pointed by learned counsel for the defendants that so far as the private limited companies are concerned, the suit for partition as such will not be maintainable. In this regard, suffice to say that if a person has any right as shareholder he can move the necessary application or petition in accordance with law but not seek partition of those companies which are stated to be private limited companies.

9. Learned counsel for the plaintiff no. 2 highlighted the fact that it is a settled principle that court would pierce the veil and in fact these companies are nothing but family concerns.

10. The principle of law is not in dispute. If there is a camouflage or any such event to suppress a fact, the court indeed would pierce the veil. Some time it is described that court would tear the mask and see the real face of the transaction. But before this principle can be pressed into service, it must be shown prima facie for purposes of the present petition that in fact it is nothing but a family concern and not private limited companies. Necessary basis for the same do not appear in detail even in the plaint. There is very little before the court. Therefore, in the absence of any other material to support the said

pleadings which are vague and consequently it cannot be held at this stage that the principles of piercing the veil can be attracted.

11. Great stress in the application under consideration has been laid for the ad interim injunction with respect to a piece of land at Sarai Rohilla, Rohtak Road. The said plot of land is stated to be owned by defendant no. 5 (M/s Gopi Nath Pvt. Ltd.). It is stated to have been purchased by the said company from the competent authority under the Evacuee Interest (Separation) Act, 1951. In this process the plaintiffs and defendants 1 to 4 have no ownership or proprietary rights in their individual capacity therein. It is shown that is belong to defendant no. 5, which is a company. Consequently, ad interim injunction of the said property of the company for the reasons stated above will not be permissible.

12. So far as plot of land at Nazafgarh Road is concerned, it is stated to have been purchased by defendant no. 5 by the sale deed of 3rd February, 1964 executed between Delhi Development Authority and defendant no. 5. Defendant no. 5 is stated to have sold a substantial portion of the same to M/s Kumar Iron Steel Works on 15th February, 1991. Once again when it is not established otherwise, for purposes of the order, no ad interim injunction can be granted.

13. The property called Mohan Kutir at Haridwar is the personal ownership of defendant no. 4 which is stated to be so from the sale deed of 28th March, 1979. With the plaintiff no. 3 having no right therein the said stay necessarily must be refused. The last prayer made has been with respect to 18 godowns in different places at UP. At this stage, this court is not going into the controversy because petition does not describe the places where the godowns are situated. From the written statement it has transpired that defendant no. 6 had already been dissolved and these godowns have been surrendered back to the owners. The net result would be that plaintiff fails to establish a prima facie case with respect to any of the said properties so as to assert that she has a valuable right in this regard.

14. As an offshoot of the aforesaid reasons the petition under consideration must fail and is dismissed.