

(2012) 04 DEL CK 0003

In the Delhi High Court

Case No : I.A. No. 4998 of 2012 in CS (OS) No. 136 of 2009 and I.A. No. 4831 of 2012 in CS (OS) No. 2954 of 2011

Sugandha Sethi

APPELLANT

Vs

Sudhir Puri and Another
 Sugam Puri Vs Sugandha Sethi and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 23 Rule 3A, Order 7 Rule 11, 151

Hindu Succession Act, 1956 — Section 6

Citation : (2012) 04 DEL CK 0003

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : N. Shoba with Mr. Sriram J. Thalapathy and Mr. V. Adhimoolam, in I.A. No. 4998 /2012 in CS OS No. 136/2009 and Mr. Rajiv Sharma, in I.A. No. 4831/2012 in CS OS No. 2954/2011, for the Appellant; F. Hasan, for D-1, Mr. Achin Aren, for D-2 in I.A. No. 4998 /2012 in CS (OS) No. 136/2009 and Ms. N. Shoba with Mr. Sriram J. Thalapathy and Mr. V. Adhimoolam for D-1, Mr. Achin Aren, for D-2 and Mr. F. Hasan, for D-3 I.A. No. 4831/2012 in CS (OS) No. 2954/2011, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—Smt. Sugandha Sethi, wife of Mr Rakesh Sethi, filed the suit bearing No. C.S(OS) 136/2009 for partition against her two real brothers, namely, Sudhir Puri and Samir Puri. The plaintiff and defendants are children of late Sh. Bipan Chand Puri and his wife Smt. Nirmal Puri. Sh. Ratan Chand Puri (father of Sh. Bipan Chand Puri) was granted a lease of 99 years regarding plot of 200 sq. yards in Block-I No.35, Jangpura Extn., New Delhi, which was registered on 08.05.1958.

2. Sh. Bipan Chand Puri was the absolute owner and he died in the year 1990 leaving behind his widow Smt. Nirmal Puri, who was suffering from paralysis

during her last days and died on 24.10.2008.

3. As per Sugandha Sethi, there was no partition in writing. On the basis of the oral settlement in the year 1990, it was settled that the defendant No.1 Sudhir Puri shall own and occupy the entire first floor portion and defendant No.2 Samir Puri shall have second floor portion besides having rights on the top floor of the suit property. The case of the plaintiff was that the ground floor was left with the mother till she survived and she had also kept her belongings in the ground floor.

4. Therefore, the suit for partition was filed before this Court along with an interim application. The same was listed before Court first time on 20.01.2009. The Court directed the parties to maintain status qua possession, title and construction of the suit property.

5. During the pendency of the suit, the defendant No.2 Samir Puri also filed an application, being I.A. No.16223/2009, seeking direction against the plaintiff to pay the court fee. The notice of that application was issued.

6. Before filing of the said application, the plaintiff filed an application, being I.A. No.10898/2009, under Order XII, Rule 6 CPC. The said application was heard by the Court on 30.07.2010 and it passed a preliminary decree in the matter declaring that the plaintiff and the defendants shall have 1/3rd share each in the suit property. The said order reads as under:

This is an application filed by the plaintiff under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (in short "CPC"). In the application it is averred that the plaintiff is entitled to a decree of partition by metes and bounds in respect of the suit property situate at I-35, Jangpura Extn., New Delhi admeasuring 200 sq. yds (in short "suit property"). Mr Gupta says that in view of the averments made in paragraph 2, 3 and 4 of the written statement, in reply to the corresponding paragraphs in the plaint, a preliminary decree on the basis of admission ought to be passed. It is Mr Gupta's submission that in the plaint it is specifically pleaded that no partition of the suit property has taken place. It is submitted that the plaintiff, who is the sister of defendant nos. 1 and 2, after the death of their parents, is entitled to a 1/3rd share in the suit property.

Mr Agnani, who appears for defendant no.2/non-applicant, says that there was an understanding and/or settlement between the parties, during the life time of the parents, whereby defendant no.1 was allowed possession and use of first floor of the suit property, while defendant no.2 was allowed possession and use of the ground and second floor alongwith roof rights of the suit property. Mr Agnani also says that even though notice was issued on the application, he had not filed a reply because the mediation proceedings were on going.

The learned counsel for defendant no.1, however, submits that he does not oppose application filed by the plaintiff.

I have heard the learned counsel for the plaintiff. A perusal of the averment

made in the written statement filed by defendant no.2, more particularly paragraph 2, 3 and 4 would show that the averment of the plaintiff that no partition has taken place, is not denied. There is a vague averment to the effect that there is some understanding and/or settlement arrived at in the life time of the parents which enabled defendants to occupy the partitions of the suit property, as indicated hereinabove.

In these circumstances, I am of the view that a preliminary facie decree in the matter ought to be passed. It is ordered accordingly. The plaintiff and the defendants shall have 1/3rd share each, in the suit property.

In so far as the other submission of Mr Agnani is concerned that there was no effective opportunity given to file a reply to the captioned application, is not dealt with; as at this stage, Mr Agnani says that he does not wish to press that part of submission. Only to be noted notice was issued in the application on 26.08.2009. The application was posted on 15.01.2010 when counsel for defendant no.2 was present. The matter was referred to mediation on 17.05.2010. There was no direction issued, staying in the interregnum the process of completion of pleadings in the captioned application.

7. Thereafter, the matter was referred to mediation, which failed. The matter was taken up by the Court from time to time for settlement. Parties also sought time to verify the position of the price of the suit property. However, it appears that mode of partition between the parties could not be resolved.

8. The plaintiff Smt. Sugandha Sethi, however, has informed the Court orally many times that she is agreeable if the property is sold and she may be given 1/3rd share of suit property at market price. The second option given by her is that she may be given ground floor in the suit property, which is vacant since the death of her mother, as per oral partition between the parties in the year 1990.

9. The defendant No.1 Sudhir Puri is agreeable to the first option that the property be sold in the market, but not agreeable to the second option as he is residing at ground floor these days due to certain family dispute. The matter was adjourned many times at the request of defendant No.2 Samir Puri for taking the final decision about the partition of the suit property without selling, if possible, in case funds are arranged.

10. In between, son of Samir Puri filed the suit, being CS(OS) No.2954/2011, for partition, declaration and injunction against the three defendants, namely, Smt. Sugandha Sethi, defendant No.1, her two brothers Mr Samir Puri (father of Sugam Puri) and Mr Sudhir Puri (uncle of Sugam Puri). The following reliefs are sought in the said suit:

a) that a preliminary decree followed by a final decree of partition be passed in respect of suit property, i.e. house bearing No.35 in Block-I, Jangpura, New Delhi admeasuring about 200 Sq. yds. and the share of the Plaintiff be given and handed over to the Plaintiff;

b) that a decree of declaration be passed declaring the said earlier suit being CS(OS) No.136 of 2009 titled Smt. Sugandha Sethi -VS- Shri Sudhir Puri and another, and the orders including the preliminary decree dated 30th July 2010 passed therein, which suit is pending adjudication before this Hon''ble Court, as null and void.

c) that a decree of permanent injunction be passed thereby restraining the Defendants, their respective family members, heirs legal representatives, employees, attorneys, agents, servants etc. from selling, transferring, encumbering or creating any charge or any third party interest in the suit property or any part thereof to the detriment of the Plaintiff;

d) that entire cost of the suit be allowed in favour of the Plaintiff and against the Defendants.

11. The case of the Sugam Puri/plaintiff in CS(OS) No.2954/2011 is that the suit property was not self-acquired property of late Sh. Bipan Chand Puri, his grandfather, but the same is ancestral property of the family. The plaintiff, being the great grandson of late Sh. Rattan Chand Puri, has the right, title, share, claim and interest in the suit property since his birth. He admits that he is residing in the suit property with his father Samir Puri and first time in October 2011 he came to know from his mother that Smt Sugandha Sethi is claiming her share in the suit property. Therefore, cause of action has arisen in his favour. He submits that it is apparent from the pleadings of the earlier suit filed by Smt. Sugandha Sethi, being CS(OS) No.136/2009, that his father and uncle have colluded with the plaintiff as they have not contested the said suit in order to help their sister. The said act of his father and uncle is against his interest. He has also pointed out indifferent attitude and behavior of the his father towards his family including him. He submits that since the final decree has not been passed, therefore, he is entitled to his share in the suit property.

12. Later on, his father Samir Puri filed an application, being I.A. No.4998/2012, under Order VII, Rule 11 CPC for rejection of the plaint/CS(OS) No.136/2009 mainly on the ground that the said suit was not properly valued for the purposes of court fee and jurisdiction and proper and requisite court fee was not paid. The objection was also raised that his sister was not in possession of any of the portions of the property. She had to pay ad-valorem court fee and at least as per her share. According to him, she valued the suit property at Rs.50 lac in 2009 in her suit, therefore, as per her own admission, her share comes to Rs. 16,33,333/- and she be asked to first pay ad-valorem court fee on this amount.

13. No reply to this application has been filed by her. She relied upon the reply earlier filed on the same lines in I.A. No.16223/2009 filed by Samir Puri. The submission has been made that both the applications filed by the defendant No.2 are an abuse of process of law. The plaintiff continues to be in joint possession of the suit property, therefore, the plaint has been correctly valued for the purpose of court fee and jurisdiction. She has relied upon the case of Umang Puri v. Lt.

Col. Pramode Chandra Puri, decided on 13.04.2009.

14. As far as the valuation of the property is concerned, the plaintiff submits that the plaintiff is entitled to her 1/3rd share as per the market value of the suit property and not the amount referred to in the valuation clause in the plaint in the year 2009 and in any case if additional court fee is to be paid at the time of drawing final decree, she will pay as per directions of the Court.

15. By way of this common order, I propose to decide the pending applications, being I.A. No.4998/2012 in CS(OS) No.136/2009 filed by Samir Puri and I.A. No.4831/2012 in CS(OS) No.2954/2011 filed by Smt. Sugandha Sethi. Parties have made their rival submissions.

16. Since a preliminary decree in the matter has already been passed, I am of the considered view that the applications under Order VII Rule 11 and 151 CPC raising the objection about Court fee filed by Samir Puri/defendant No.2 in CS(OS) No.136/2009 are misconceived and are not maintainable as the current valuation of the suit property has to be determined at the time of passing the final decree, the same have been filed by the defendant No.2 in order to delay the proceedings. The preliminary decree has been passed with the consent of the parties. The applications are therefore dismissed with cost of Rs.10,000/- which shall be deposited by Samir Puri/defendant No.2 in CS(OS) No.136/2009 with the Delhi High Court Advocates Welfare Fund within four weeks.

17. The defendant No.1/Smt. Sugandha Sethi in CS(OS) No.2954/2011 has filed an application, being 4831/2012, under Order VII, Rule 11 CPC for rejection of the plaint filed by Sugam Puri, son of Samir Puri for the reasons mentioned in paras 5, 7, 8, 9 and 10 of the application, the same are reproduced below:

5. After the lapse of 1 year and 2 months after passing preliminary decree and within less than two months after failure of the mediation (where the present plaintiff has been participating), the present plaintiff had filed the suit for partition praying for, inter alia, preliminary decree followed by a final decree of partition of the suit property, a declaration that the preliminary decree dated 30.07.2010 is null and void and consequent injunction. The broad allegation is that the property in the hands of Bipan Chand Puri was ancestral. He along with his two sons constituted a co-parcenary and the father and the two sons under the Hindu law became entitled to 1/3rd share. On the death of Bipan Chand Puri on 07.10.1990 his 1/3rd share devolved on the two sons and the applicant. Therefore, the applicant would be entitled to 1/3rd of the 1/3rd of the father's share and thus she would be entitled to 1/9th share. Therefore, the grant of 1/3rd share in the earlier suit is null and void.

7. The matter came up on 27.02.2012 and the matter was adjourned to 15.03.2012. The applicant respectfully submits that the plaint is a frivolous one. There is no cause of action for the plaintiff to file the suit and the plaintiff is barred from filing the suit in view of his participation alongwith his father. The plaintiff has suppressed material facts from this Hon'ble Court.

8. The claim of the plaintiff that the property held by Bipan Chand Puri was ancestral in his hands is wholly misconceived. The plaintiff does not challenge the finding by this Hon''ble Court, on admission by the parties that there had been no partition. In view of the Sec. 6 of the Hindu Succession Act, 1956 as it has been substituted in 2005, the position that the applicant would be entitled to 1/3rd cannot at all be disputed. The plaintiff does not refer to the amendment of Sec. 6 of the Hindu Succession Act, 1956 in the light of the facts admitted.

9. The plaintiff having participated in the proceedings alongwith his father, has with ulterior motives filed this present suit. The filing of the present suit is apart from being a clear abuse of the process of law clearly vexatious and frivolous. The averments made in the plaint are absolutely false, frivolous and vexatious. The plaintiff, if at all has any grievance, he can only claim any right in the share of his father that may be allotted to him in the final decree proceedings. Making wild allegations, the present plaintiff is trying to delay the proceedings in the earlier suit. It is obvious from the facts and circumstances that he has been set up by his father Samir Puri. The consent given by the brothers and the present plaintiff in the proceedings under Order XII Rule 6 constitutes informed consent. The fact that the present plaintiff was sui generis/major is also of singular importance.

10. It is respectfully submitted that when the parties had in the earlier suit admitted that there was no will and testament left by Bipan Chand and on the basis that the suit property had not been partitioned earlier in accordance with law is (by a registered deed of partition) 1/3rd share had been allotted to the applicant. This Hon''ble Court disposed of the application under Order 12 Rule 6 on the facts presented by the parties and on the admission by the parties that there was no partition. Therefore, the present suit is barred under Order XXIII Rule 3A. Therefore, it is respectfully submitted that the suit is frivolous and vexations under Order VII rule 11 of Code of Civil Procedure, 1908. There is no cause of action. The suit is barred under Hindu law by Sec. 6 of the Hindu Succession Act, 1956 and Order XXIII of the C.P.C. Therefore it is CS(OS) Nos.136/2009 & 2954/2011 Page No.10 of 12 respectfully submitted that this Hon''ble Court may be pleased to dismiss the suit under Order VI and reject the plaint under Order VII and dismiss the suit under Order XXIII C.P.C. and under Sec. 6 of the Hindu Succession Act, 1956 as not maintainable.

18. Reply to this application was filed by the plaintiff Sugam Puri. No reply was filed by the defendants No.2 and 3. The defendant No.3, who is uncle of the plaintiff, during the hearing of the application, has made his submission that the suit filed by Mr Sugam Puri, son of Samir Puri, is totally false and frivolous. He submits that his sister Smt. Sugandha Sethi, his brother Samir Puri and himself are entitled to 1/3rd share each of the suit property. He has also no objection if the property is sold at the market price and parties are given 1/3rd share each.

19. After having gone through the contents of the plaint as well as the averments made in the application, I am of the considered view that the application filed by

defendant No.1 Smt. Sugandha Sethi is liable to be allowed for the following reasons as the suit filed by Sugam Puri is barred by law:

a) A preliminary decree in the CS(OS) No.136/2009 was passed on 30.07.2010. The main allegation of the plaintiff Sh. Sugam Puri is that the property of his grandfather Sh. Bipan Chand Puri was ancestral property. He along with his two sons constituted co-parcenary and the father and two sons under Hindu law became entitled 1/3rd share. However, the plaintiff does not challenge the finding of this Court or admission of the parties that there had been no partition. In view of Section 6 of the Hindu Succession Act, 1956 as it was substituted in 2005, the position of Smt. Sugandha Sethi would be that she is entitled to 1/3rd share which cannot be disputed under these circumstances.

b) Smt. Sugandha Sethi and Sh. Sudhir Puri have informed the Court that when the matter was referred to mediation, the plaintiff Sugam Puri had participated in the said proceedings along with his father. The present suit has been filed by the plaintiff/Sugam Puri at the instance of his father with ulterior motives. He has admitted before Court that he is residing with his father. Further, Samir Puri, father of the plaintiff/Sugam Puri, in his written statement filed in CS(OS) No.136/209 has nowhere stated that Sh. Bipan Chand Puri had purchased the suit property in his name from the funds of family members nor he has taken the defence which has now been taken by his son.

c) It appears to me that the present suit has been filed in order to delay the proceedings for passing the final decree in earlier suit, being CS(OS) No.136/2009. It is also not denied by the plaintiff that in the earlier suit, a preliminary decree was passed with the consent of the parties. It appears to this Court that the present suit has been filed by the plaintiff at the instance of his father Sh. Samir Puri, who had earlier given the consent for passing a preliminary decree. He and his father are aware that preliminary decree, which was passed with consent of the parties, cannot be set aside under the provision of Order XXIII, Rule 3A CPC and no suit is maintainable by a party to the suit unless fraud has been played upon the Court or the decree is not passed by competent Court having jurisdiction. Rather, it appears from the conduct of his father and himself that the suit has been filed by him in a way to set aside the preliminary decree passed by this Court which is not permissible in law. Thus, the suit is barred by law under the provision of Order XXIII, Rule 3A CPC.

20. For the aforesaid reasons, the application filed by defendant No.1 is allowed. The plaint is rejected. As the plaintiff has filed a false and frivolous suit, the same is dismissed with cost of Rs.20,000/- to be deposited by the plaintiff with the Delhi High Court Advocates Welfare Fund within four weeks.

CS(OS) No.136/2009

21. Mr. Karan Bharihoke, Advocate, Mobile No.8826122888 is appointed as a Local Commissioner to verify the suit properties in dispute and to file a report with regard to mode and manner in which the suit properties could be partitioned

and also to report the present status of the properties on or before 9th July, 2012. The fee of the Local Commissioner is fixed at the first instance at Rs.60,000/- which shall be shared by the parties. List on 02.05.2012, the date already fixed.