(2004) 02 DEL CK 0008

In the Delhi High Court

Case No : FAO 823 of 2003

Sumitra Devi Anand (deceased), Neeru Arora and Trilochan Anand — APPELLANT

Vs

Shanti Devi (deceased) and Others — RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Citation : (2004) 02 DEL CK 0008

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Harish Malhotra and Rajinder Aggarwal, for the Appellant; Jyoti Singh, for R-2 and Y.P. Bhasin, for R-3 to 6, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The facts involved in this case are rather detailed but the eventual question required to be decided is rather narrow inasmuch as this appeal is against an order dated 22nd November, 2003 refusing to grant an injunction Funder Order XXXIX Rules 1 and 2 of the CPC (CPC).

2.The suit property bears No.XVI/442, originally known as Hafiz Building but now known as Sethi Building, Faiz Road, Karol Bagh, New Delhi. It appears that soon after partition, Wazir Chand Anand (Anand) and B.S. Sethi (Sethi) were tenants of the Custodian on this property. The property was put up for auction on 9th November, 1955 and the highest bid was that of Sethi and Anand as his associate. Sethi paid the bid amount but, according to learned counsel for the Appellants, a sum of Rs.4,991.44, which was due to Anand as compensation for assets left behind by him in Pakistan, was utilized to make up the sale consideration. On this basis, the submission made by learned counsel is that Anand was a joint owner of the suit property.

3.On 24th April, 1959, the Settlement Officer (Judicial) passed an order in the case of Anand to the effect that his claim for compensation was taken up for consideration and rejected. According to learned counsel for the Appellants, notwithstanding this, Anand did pay an amount of Rs.4,991.44 in cash being his contribution for purchase of the suit property.

4. Be that as it may, on 20th July, 1961 a sale certificate was issued in respect of the suit property certifying that Sethi had given the highest bid for Rs.70,250/- in a public auction and had been declared the purchaser of the property in full.

5. Soon thereafter, by a letter dated 1st September, 1961, the tenants in the property, including Anand, were asked to attorn in favor of the auction purchaser, that is, Sethi.

6.Learned counsel for the Appellants submitted that despite the above documents, the Government of India by a letter dated 19th October, 1962 recognized Anand as one of the associates of Sethi and in that letter called upon Sethi to pay the amount of Rs.4991.44. A copy of this letter was endorsed to Anand for information intimating that he would be liable for action on account of his failure to withdraw from his association with the auction purchaser after dismissal of his application for compensation. Anand was called upon to see that the amount demanded is paid within the prescribed period. However, nothing turns on this letter.

7.On 10th February, 1986, Sethi filed an eviction petition against Anand on the ground that he required the suit property bona fide for his residence. Notice was issued in the eviction petition returnable on 20th March, 1986. However, before that date, on 19th February, 1986 Anand appeared before the Rent Controller and filed an application for leave to defend the eviction petition. He also filed, along with Sethi, an application for recording a compromise. The learned Rent Controller took the documents on the file and recorded the statements of both the parties and in view of the agreement between them, granted time to Anand to vacate the suit premises on or before 1st March, 1988. An undertaking of Anand was recorded to this effect and the case was disposed of.

8. According to learned counsel for the Appellants, the person who appeared before the learned Rent Controller on 19th February, 1986 was an impostor and was not Anand, and that is why he says that the eviction decree has been fraudulently obtained.

9.Some time in April, 1988, Sethi passed away and on 21st December, 1999 Anand passed away. The Appellants are the legal representatives of Anand while the Respondents are the legal representatives of Sethi. It may be mentioned that Sethi''s wife and Anand''s wife were real sisters. It may also be mentioned that Sethi was an advocate of some standing in Delhi.

10. On 28th February, 2000, when the period of limitation for executing the eviction decree was about to expire, the Respondents filed an execution petition against the Appellants.

11. In response, the Appellants filed their objections u/s 25 of the CPC but the

learned Additional Rent Controller dismissed these by an order dated 18th March, 2002.

12.Against dismissal of the objections, an appeal was filed by the Appellants but by an order dated 3rd April, 2002, the appeal was also dismissed. Thereafter, the Appellants preferred a petition under Article 227 of the Constitution, which came to be disposed of by a learned Single Judge of this Court on 9th October, 2002. In the writ petition, it was recorded that the parties are agreed that the petition may be disposed of with liberty to the Appellants to file a suit for challenging the decree on tee ground of fraud.

13.Pursuant to liberty granted by the learned Single Judge, the Appellants filed Suit No.1833/2002 in this Court and an interim injunction against their eviction was granted in favor of the Appellants. Thereafter, in view of an increase in the pecuniary jurisdiction of the District Courts, the suit was transferred and registered as Suit No.138/2003 in the Court of the learned Additional District Judge. After hearing learned counsel for the parties, the learned Additional District Judge by the order under appeal dated 22nd November, 2003 dismissed the injunction application.

14.Learned counsel for the Appellants made two principal submissions. It was firstly submitted that the eviction decree obtained from the learned Rent Controller was fraudulent inasmuch as Anand was not served in the case. The notice was allegedly received by his wife Sumitra Devi who signed in Hindi but as per the registered A.D., it was received "for Wazir Chand" in English. Moreover, Anand never appeared before the learned Rent Controller and some impostor was put up. In support of this contention, learned counsel submitted that there was no reason for Anand to put in appearance before the due date, nor was there was occasion for him to file an application for leave to defend and a compromise application on the same date. In addition, it is pointed out that the signatures of Anand in the proceedings before the learned Rent Controller are completely different from his signatures in various other documents such as his bank records, income tax documents, etc. The difference in signatures is apparent. It is further submitted that, surprisingly, Sethi took no steps to take possession of the suit property on 1st March, 1988 and in fact took no steps until the very last day of limitation when an execution petition was filed on 28th February, 2000. The second contention of learned counsel is that Anand was a joint owner of the suit property having paid a part of the consideration of Rs.4991.44 for and on behalf of Sethi. It was submitted that the learned Trial Court has erred in refusing to grant injunctions.

15. Having heard learned counsel for the parties, I am of the view that the Appellants have not made out any case for interference with the order refusing to grant an injunction.

16.Apart from the fact that various documents mentioned above show that no payment was made by Anand towards the purchase of the suit property, particularly since his claim for compensation was rejected, the only argument of learned counsel for the Appellants in support of his clients is that the amount of Rs.4991.44 was paid in cash. It is extremely hard to accept this, given the circumstances. It appears that Anand may have agreed to pay the amount, which he would have recovered by way of compensating, but since compensation was not awarded to him, there is nothing to show that he could have made any payment for and on behalf of Sethi. On the other hand, Sethi appears to have made the payment, which is why a sale certificate was issued in his favor, and all the tenants in the suit property were asked to attorney to him.

17.With regard to the allegedly fraudulently obtained eviction decree and an impostor having been set up before the learned Rent Controller, again I find this a little hard to believe. Sethi, as mentioned above, was a lawyer of some repute. It is extremely unlikely that he would have taken such a risk, which would have completely ruined his professional reputation. Moreover, Anand''s advocate M.S. Sethi (no relation of B.S. Sethi) countersigned the statement of Anand, which was recorded by the learned Rent Controller on 19th February, 1986. In fact, M.S. Sethi, Advocate has filed an affidavit dated 18th November, 2002 to the following effect:

"That I have been approached by legal heirs of late Shri Bunda Singh Sethi. They have shown me certified copies of the documents in Eviction Petition No.36/86 titled Shri Bunda Singh Sethi Vs. Shri Wazir Chand Anand. That I have been shown the certified copy of the Vakalatnama and recollect Shri Wazir Chand Anand R/o 16/442, Sethi Building, Faiz Road, Karol Bagh, New Delhi who was the Respondent in the aforesaid eviction Petition to appear on his behalf. That Shri W.C. Anand had approached me and engaged me as his Advocate in the aforesaid case. The Vakalatnama has been signed by me after Shri Wazir Chand Anand signed the same in my presence. That I have seen the certified copy of the statement of Shri W.C. Anand who appeared in Court and made the said statement on oath in my presence. I recollect having identified Shri W.C. Anand who signed the said statement in the court in my presence. I have identified Shri W.C. Anand''s signature who have signed (illegible) and I had signed to that effect."

18. Apart from M.S. Sethi, Advocate, Anand had engaged another advocate, namely, M.L. Sharma. This advocate has also filed an affidavit dated 18th November, 2002 on similar lines. He says in his affidavit as follows:

"That I have been approached by legal heirs of late Shri Bunda Singh Sethi. They have shown me certified copies of the documents in Eviction Petition NO.36/86 titled Shri Bunda Singh Sethi Vs. Shri Wazir Chand Anand. That I have been shown the certified copy of the Vakalatnama and recollect Shri Wazir Chand Anand R/o 16/442, Sethi Building, Faiz Road, Karol Bagh, New Delhi had approached me and engaged me as his Advocate in the aforesaid case. The Vakalatnama has ben signed by me after Shri Wazir Chand Anand signed the same in my presence. That I have also seen the certified copy of the application for leave to defend to contest the Eviction Proceedings. The application for leave to defend was drawn as per instructions of Shri Wazir Chand Anand, my client who had signed the said application in my presence and I had also put my signature in the said application as his lawyer. I can identify his signatures and also my signature on the same. On the instance of my client the said leave to defend was filed in the Eviction Proceedings and later on, on the instance of both the parties who had informed me that they have settled the matter, a compromise application was drafted by me for Shri Wazir Chand and who had signed the aforesaid application and the affidavit accompanying the said application in my presence. I can identify the signature of Shri Wazir Chand."

19.There is nothing to disbelieve the affidavits of the these advocates and, in fact, learned counsel for the Appellants has not brought out anything to controvert the correctness of the averments made by them, except to say that it is rather strange that Anand should engage two advocates for recording a compromise. Again, it is unlikely that these two advocates would put their professional reputation on the line for no apparent reason.

20.As far as the difference in signatures between the documents filed in Court and other documents such as income tax records and the bank records of Anand is concerned, it is not unknown that for official purposes involving financial transactions, persons tend to use a signature, which cannot easily be copied, and they use a different signature for other purposes. This is something that may have happened in this case, but one can only speculate in this regard.

21.I must confess that I was a little troubled by the fact that the eviction proceedings were rushed through in the manner that they were, and thereafter Sethi took no steps for 14 years to take possession of the suit property which, according to him, he required for his bona fide use. Learned counsel for the Respondents has explained this as being due to the close relationship between Sethi and Anand. It is not possible to hazard a guess what may have weighed with Sethi. Whatever be the reason, I think the sanctity of judicial records has to be maintained, unless there are exceptionally strong reasons to doubt their authenticity. Exceptionally strong reasons are lacking in this case, and suspicion cannot take the place of proof.

22.The principal and substantial fact, however, remains that there is no documentation available to show that Anand was a joint owner of the suit property and I think the dispute between the parties is really in this regard. Therefore, whatever may be the reason for Sethi not taking any steps to evict Anand may not be of much significance in the long run.

23.Learned counsel for the Respondents have brought to my notice that so far as the proceedings before the learned Rent Controller are concerned, no application for inspection of the Court records was filed by the Appellants or anyone claiming under them. Therefore, it is not possible for the Appellants to say that an impostor had appeared on behalf of Anand before the learned Rent Controller. I need not go into this aspect of the matter because it is not unknown that records can be inspected unofficially. However, it does put a question mark on the stand taken by the Appellants who allege that Sethi did not play fair, but resorted to subterfuge.

24.For the reasons mentioned above, I am of the view that the Appellants have not made out a strong prima facie case for the grant of an injunction. Consequently, it is held that the learned Trial Court did not commit any error in declining to grant an interim injunction in favor of the Appellants. The appeal is, accordingly, dismissed. No costs.

25. It is made clear that anything stated in this order will not be used to influence the learned Trial Judge while disposing of the proceedings in the suit.

