(2018) 10 DEL CK 0028

In the Delhi High Court

Case No : Regular First Appeal No. 831, 833 OF 2018

Vijay Kumar Puri & Ors Rajinder Nath Puri (Since Deceased) Thr Lrs And Anr

Date of Decision : 04-10-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, Order 2 Rule 2, Order 6 Rule 4

Citation : (2018) 10 DEL CK 0028

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

VALMIKI J. MEHTA, J (ORAL)

CM No. 41153/2018 (Exemption)

1. Â Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 41154/2018 (delay in re-filing)

2. For the reasons stated in the application, delay in re-filing is condoned.

CM stands disposed of.

RFA No. 833/2018 & CM No. 41152/2018 (stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/son in the suit impugning the

Judgment of the Trial Court dated 28.04.2018 by which the trial court has decreed the suit for mesne profits filed by the father, Sh. Rajinder Nath

Puri, (since deceased and now represented by his legal heirs), with respect to a portion of the property situated on the ground floor of D-141, Kamla

Nagar, Delhi-110007.

4. The facts of the case are that the plaintiff/father/Sh. Rajinder Nath Puri filed the subject suit for mesne profits of the suit property on the ground

that he was the owner of the property bearing no. D-141, Kamla Nagar, Delhi (hereinafter 'suit property') in terms of the registered Sale Deed dated

07.01.1959. The appellant/defendant being the son of the plaintiff/Sh. Rajinder Nath Puri was permitted to stay as a gratuitous licensee in three rooms,

one bathroom, two toilets and one kitchen situated on the ground floor of the property. Since the behavior of the appellant/defendant was cruel

towards the plaintiff/father, hence, the license of the appellant/defendant was terminated, as also the other brother namely Sh. Shyam Sunder Puri (a

co-appellant in connected RFA No. 831/2018) vide Legal Notice dated 06.02.2004. Thereafter, the subject suit was filed against the

appellant/defendant. The plaintiff/ father claimed mesne profits at Rs. 15,000/- per month from 01.03.2004 till 31.10.2006 amounting to Rs. 4,80,000/-

along with interest. The subject suit was filed on 16.11.2006. Â

5. The appellant/defendant contested the suit and denied the sole ownership of the plaintiff/father. It was contended by the appellant/defendant that

the suit property was an HUF property as it was purchased with the funds accruing from ancestral property. The appellant/defendant also pleaded

that the stridhan of the mother was used for the purchase of the property. The appellant/defendant also pleaded that he had contributed funds for the

purchase of the property.

The suit was therefore prayed to be dismissed.

6. At this stage, this Court would like to note that on the death of the plaintiff/ father (original plaintiff), the appellant/defendant claimed that the father

died intestate, and therefore, he being one of the legal heirs, would also be one of the co-owners of the suit property. Hence, the suit for seeking

mesne profits cannot succeed on the death of the father/plaintiff. However, it is noted that the father, Sh. Rajinder Nath Puri, died leaving behind his

registered Will dated 17.09.2004, and with respect to this registered Will of the father a probate petition was filed, and this probate petition was

allowed in terms of the Judgment of the Probate Court dated 29.03.2011. A challenge filed by the appellant/defendant and his other brother, Sh.

Shyam Sunder Puri, to the Will before this Court in FAO No. 338/2011 failed and the FAO was dismissed by the learned Single Judge of this Court on

20.03.2018. Further, this challenge by the appellant/defendant to the Judgment dated 20.03.2018 in FAO No. 338/2011 before the Supreme Court also

failed and the Supreme Court dismissed the SLP being SLP(C) No. 16950/2018 vide Order dated 24.07.2018. Therefore, the validity of the Will dated

17.09.2004 executed by the father, Sh. Rajinder Nath Puri, stands finally established and hence the Will of the father dated 17.09.2004 will operate. Â

7. After the pleadings were complete, the trial court framed the following issues:-

â??(1) Whether the suit bad for want of cause of action? OPD

(2) Whether the suit is bad for suppression of material fact? OPD

(3) Whether the suit is bad under Order 2 Rule 2 CPC? OPD

(4) Whether the plaintiff has no locus standi to file the present suit? OPD

(5) Whether the suit is liable to be stayed under section 10 CPC? OPD

(6) Whether the plaintiff is entitled for recovery of mesne profits? If so, at what rate and for which period? OPP

(7) Whether the plaintiff is entitled for interest? If so, at what rate and for which period? OPP

(8) Relief.â??

8. The appellant/defendant had taken up two main defences before the trial court. First, that the appellant/defendant was the owner of the suit

property as he had contributed funds for purchase of the plot and second, that the suit property is an HUF property. These two defences have been

rejected by the trial court and the trial court has noted that the appellant/ defendant was born in the year 1958 and the suit property was purchased in

1959, and therefore, the trial court has effectively held that a one year old boy could not have contributed funds for the purchase of the suit plot. The

trial court has also rejected the case of the appellant/defendant that there existed an HUF because no documents, whatsoever, were filed and

proved/exhibited, which could have showed that the suit property is an HUF property. In law, an HUF comes into existence only if a person inherits a

property from his paternal ancestors before passing of the Hindu Succession Act 1956, or if after 1956 a person throws his self acquired property into

a common hotchpotch. This is held by the judgment of the Supreme Court in the cases of Commissioner of Wealth Tax, Kanpur and Others v.

Chander Sen and Others, (1986) 3 SCC 567 and Yudhishter v. Ashok Kumar,

(1987) 1 SCC 204. This Court has examined the ratios of these

judgments in depth while deciding the case of Surinder Kumar v. Dhani Ram and Others, 227 (2016) DLT 217. The ratio of the judgment in Surinder

Kumar (supra) has been upheld by the Division Bench of this Court in the case of Sagar Gambhir v. Sukhdev Singh Gambhir and Ors 241 (2017)DLT

98; 2017 (162) DRJ 575. The relevant para of the Division Bench judgment in Sagar Gambhirâ??s case (supra) is para 10 which reads as under:-

â??10. In Chander Sen's case (supra), the Supreme Court held that after the promulgation of the Hindu Succession Act, 1956, the traditional view

under the Hindu Law no longer remained the legal position. This decision was followed incase (supra) the Supreme Court held that after the

promulgation of the Hindu Succession Act, 1956, the traditional view under the Hindu Law no longer remained the legal position. This decision was

followed in Yudhishter's case (supra). We agree with the legal position noted by the learned Single Judge which flows out of the two decisions of the

Supreme Court, which would be as under:-

(i) If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person,

inheritance of an immovable property of such a person by his successors-in-interest is no doubt inheritance of an 'ancestral' property but the

inheritance is as a self-acquired property in the hands of the successor and not as an HUF property although the successor(s) indeed inherits

'ancestral' property i.e. a property belonging to his paternal ancestor.

(ii) The only way in which a Hindu Undivided Family/joint Hindu family can come into existence after 1956 (and when a joint Hindu family did not

exist prior to 1956) is if an individual's property is thrown into a common hotchpotch. Also, once a property is thrown into a common hotchpotch, it is

necessary that the exact details of the specific date/month/year etc. of creation of an HUF for the first time by throwing a property into a common

hotchpotch have to be clearly pleaded and mentioned and which requirement is a legal requirement because of Order VI Rule 4 CPC which provides

that all necessary factual details of the cause of action must be clearly stated. Thus, if an HUF property exists because of its such creation by

throwing of self-acquired property by a person in the common hotchpotch, consequently there is entitlement in coparceners etc. to a share in such

HUF property.

(iii) An HUF can also exist if paternal ancestral properties are inherited prior to 1956, and such status of parties qua the properties has continued after

1956 with respect to properties inherited prior to 1956 from paternal ancestors. Once that status and position continues even after 1956; of the HUF

and of its properties existing; a coparcener etc. will have a right to seek partition of the properties.

(iv) Even before 1956, an HUF can come into existence even without inheritance of ancestral property from paternal ancestors, as HUF could have

been created prior to 1956 by throwing of individual property into a common hotchpotch. If such an HUF continues even after 1956, then in such a

case a coparcener etc of an HUF was entitled to partition of the HUF property.

9. There are only vague averments of the father, Sh. Rajinder Nath Puri, receiving ancestral funds, but no evidence which can be believed has been

led by the appellant/defendant, as to what funds i.e. what amount was inherited by the father, Sh. Rajinder Nath Puri, from his own father, prior to

1956, and nor was any evidence, whatsoever was led much less documentary evidence, that the father, Sh. Rajinder Nath Puri, inherited any

immovable property from his paternal ancestors prior to 1956. There is no pleading of the appellant/defendant in his written statement stating any date

on which the said suit property was thrown into the common hotchpotch of the HUF.

10. At this stage, I may note that the appellant/defendant relied upon two documents to show the existence of an HUF. The first being a Letter of the

Income Tax Department dated 18.04.1990 and the second being a Letter of the alleged tenants, Sh. Chunni Lal and Sh. Satish Kumar, however,

admittedly both these documents have not been proved before the trial court and therefore the trial court has rightly rejected the same and no reliance

has been placed upon such documents as they were neither exhibited nor proved. In any case, the Letter of the Income Tax Department dated

18.04.1990 does not in any manner show that the suit property is shown as an HUF property in the Income Tax Records.

11. The trial court in my opinion was therefore completely justified in rejecting the defences of the appellant/defendant that the suit property was an

HUF property or that the appellant/defendant had spent funds towards purchase of the suit plot. This Court, therefore, affirms the findings and

conclusions given by the trial court that the appellant/defendant has no right, title and interest in the suit property. Â

12. The only issue which is now required to be determined is as to whether or not the appellant/defendant and his other brother, Sh. Shyam Sunder

Puri, who is the second appellant/defendant in the connected RFA No. 831/2018, were or were not the legal heirs under the Indian Succession Act, or

they were beneficiaries under the probated Will dated 17.09.2004 executed by the father, Sh. Rajinder Nath Puri. In this regard, the contention of the

appellant/defendant and his brother, Sh. Shyam Sunder Puri, was that the Will states that the disputed portions with the appellant/defendant and his

brother, Sh. Shyam Sunder Puri, were in their possession and distributing such portions will be decided upon once the possession of these portions is

received from the appellant/defendant and his brother, Sh. Shyam Sunder Puri, and therefore, it is argued that there is no bequest by the Will dated

17.09.2004 by the father, Sh. Rajinder Nath Puri, qua the portions in possession of the appellant/defendant and Sh. Shyam Sunder Puri. It is further

argued that once there is no bequest of the disputed portions, hence, the father, Sh. Rajinder Nath Puri, is deemed to have died intestate qua the

portions in possession of the appellant/defendant and his brother, Sh. Shyam Sunder Puri. In the opinion of this Court, this issue has, however, been

rightly rejected by the trial court by specifically referring to the language of the Will dated 17.09.2004 which specifically disinherited/disavowed the

appellant/defendant and also his brother (other son of Sh. Rajinder Nath Puri) Sh. Shyam Sunder Puri. Once the appellant/defendant and Sh. Shyam

Sunder Puri were specifically disinherited by the father vide Will dated 17.09.2004 from his properties, then resultantly the appellant/defendant and his

brother, Sh. Shyam Sunder Puri, will not have any right, title and interest in the suit property. Therefore, merely because the father, Sh. Rajinder Nath

Puri, left the issue to be decided by his legal heirs, after possession is received from the appellant/defendant and his brother, Sh. Shyam Sunder Puri,

of the portions in their illegal possession, the same will not mean that the appellant/defendant and his brother, Sh. Shyam Sunder Puri, will become the

owners by intestate succession of the portions in their illegal possession.

13. No other issue has been urged or argued before this Court except as

discussed above.

14. Unfortunately, this litigation is symptomatic of the delays which are caused in the litigations in this country. The appellant/defendant and his

brother, Sh. Shyam Sunder Puri, first of all, had gumption, nerve and dishonesty to refuse to vacate the portions of the property owned by the father,

and the father was, therefore, forced to file two suits against the appellant/defendant and his brother, Sh. Shyam Sunder Puri, one being the subject

suit for mesne profits and the second suit for a mandatory injunction asking the appellant/defendant and his brother Sh. Shyam Sunder Puri to vacate

the portions in their illegal possession which is the subject matter of RFA No. 831/2018. As is the ways of the world in todayâ??s age, on the death

of the father, the appellant/defendant and his brother, thereafter, had no compunction to claim ownership of the property in their possession on the

ground that the father died intestate. This plea of the appellant/defendant and his brother, Sh. Shyam Sunder Puri, that their father died intestate was

also rejected when the probate was granted by the probate court of the registered Will of the father dated 17.09.2004, and this position has been

sustained right till the Supreme Court. Therefore, clearly the defences of the appellant/defendant and his brother, Sh. Shyam Sunder Puri, as also the

two appeals filed are an abuse of the process of law, and have only been filed for taking undue advantage of the delay in completion of the process of

courts. Â

15. There is no merit in the appeal. Since the appeal is an abuse of the process of law, the present appeal is dismissed with costs of Rs. 1,00,000/-, and

such costs shall be deposited by the appellant/defendant with the website www.bharatkeveer.gov.in within a period of four weeks from today. In case

the costs are not deposited by the appellant/defendant within four weeks, and the receipt for the same is not filed in this Court within one week

thereafter, the Registry will list the matter before this Court for proceeding appropriately against the appellant/defendant.

RFA No. 831/2018

CM No. 41147/2018 (Exemption)

16. Â Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 41148/2018 (delay in re-filing) & CM No.41149/2018(delay)

17. For the reasons stated in the applications, delays in refiling and filing are condoned.

CMs stands disposed of.

RFA No. 831/2018 & CM No. 41146/2018 (stay)

18. Adopting the reasoning given while deciding RFA No. 833/2018, this appeal will also stand dismissed noting that this appeal arises from the

impugned Judgment dated 27.04.2018 filed by the father, Sh. Rajinder Nath Puri (since deceased and now represented by his legal heirs) seeking

mandatory injunction against Sh. Vijay Kumar Puri, the appellant/defendant in RFA No. 833/2018, and the other brother, Sh. Shyam Sunder Puri, with

respect to the portions in illegal possession of Sh. Vijay Kumar Puri and Sh. Shyam Sunder Puri in the Kamla Nagar Property. All the issues which

arise in this appeal are already discussed and decided in terms of the judgment passed in RFA No. 833/2018. This appeal is also therefore being an

abuse of the process of law is dismissed with costs of Rs. 1,00,000/- to be deposited with the website www.bharatkeveer.gov.in within four weeks. In

case the costs are not deposited by the appellant/defendant within four weeks, and receipt for the same is not filed in this Court within one week

thereafter, the Registry will list the matter before Court proceeding appropriately against the appellant/defendant.

