
(2012) 10 DEL CK 0110

Delhi High Court

Case No: Regular First Appeal (OS) 98 of 2012

Surendra Pal Singh

APPELLANT

Vs

Ravindra Pal Singh

RESPONDENT

Date of Decision: Oct. 31, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 35A
- Delhi Rent Control Act, 1958 - Section 50

Hon'ble Judges: Pradeep Nandrajog, J; Manmohan Singh, J

Bench: Division Bench

Advocate: Rakesh Kumar Singh, for the Appellant; Vijay Gupta, with Mrs. Geeta Goel and Mr. Chetan Swrup, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Caveat No. 1108/2012.

Counsels as above appear for the contesting respondent and thus the caveat is discharged.

CM No. 18402/2012

Allowed, subject to just exceptions.

RFA(OS) 98/2012

1. In the decision reported as JT 2012 (3) SC 451 Maria Margardia Sequeria Fernades & Ors. v. Erasmo Jack de Sequeria (dead) Thru LRs on the subject of pleadings and settlement of issues the Supreme Court observed, in paragraphs 71 to 74, as under:-

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. discovery and production of documents and answers to interrogatories, together within an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

The aforesaid observations/directions by the Supreme Court, as indicated in the subsequent paragraph i.e. 84 of the decision, were keeping in view the fact that false claims and defenses are a serious problem with real estate litigation. Issues are raised for the sake of being raised because parties are aware that due to docket explosion in Courts it takes year for matters, whosoever frivolous may be the claims or the defenses, to be adjudicated upon.

2. In the decision reported as 556 US 662 John D. Ascroft, Former Attorney General v. Javaid Iqbal, the US Supreme Court had observed that the factual allegations must be of a kind which raised a right to relief above the speculative level. It was observed that the pleadings must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action and recitals of the elements of a cause of action, supported by mere conclusory statements, would not suffice.

3. With the aforesaid legal principles in mind we proceed to note the relevant facts which have given birth to the instant appeal.

4. Late S. Mahendra Pal Singh was a perpetual lessee, under L&DO, of a plot of land bearing Municipal No. 15, Babar Road, New Delhi. He constructed a residential house thereon.

5. Late S. Mahendra Pal Singh died on May 15, 1978. He was blessed with five sons and two daughters. The appellant, Surendra Pal Singh and the respondent Ravindra Pal Singh are two of the five sons born to late S. Mahendra Pal Singh. Both of them predicated a claim to the estate of their father under a will dated May 16, 1970 executed by late S. Mahendra Pal Singh. The action initiated by the two brothers succeeded when vide order dated February 17, 1996, deciding Case No. 153/1994, the learned Additional District Judge held that the will in question is the last legal and valid testament executed

by the deceased.

6. Pertaining to the estate of S. Mahendra Pal Singh, the will makes a bequest as under:-

I hereby desire and bequeath up after my death my above self acquired assets to my sons, Surendra Pal Singh aged-50 years and Ravendra Pal Singh aged 45 yrs, both resident of 15, Babar Road, New Delhi-110001. I also appoint both of them as executants of my will.

7. Of the various properties bequeathed under the will, at Sl. No. 1 is residential house bearing Municipal No. 15, Babar Road, New Delhi-110001.

8. After the will was probated, the respondent desired, to give effect to the will executed by the father, that the appellant and he should sit together so that each one of them could occupy 50% of the residential property.

9. The appellant did not agree, compelling the respondent to file suit seeking decree for partition, possession and rendition of accounts with respect to the subject property.

10. In the plaint it was pleaded that after the death of the father the respondent resided in the house in question for five years but shifted later on to 159, New Kavi Nagar, Ghaziabad and at that time he placed locks on such portion of the premises which were in his possession. Reason why the respondent stated that he shifted was paucity of sufficient accommodation resulting in daily quarrels between the family members of the respondent and the appellant.

11. We note that the will records that appellant and respondent reside in the house in question.

12. In the plaint, right to maintain the action was premised on the will in question, probate whereof had been granted by the learned Additional District Judge.

13. On the subject of valuation, pertaining to the relief of partition and possession, the half share of the respondent was valued at Rs.26.5 lacs and Court Fee in sum of Rs.7,224/- was paid.

14. In the written statement filed by the appellant it was pleaded that the suit for possession was not maintainable inasmuch as during the life time of the father, he had let out the subject property to the appellant.

15. But at what rent? Nothing has been stated in the written statement.

16. In preliminary objection No. 2 taken in the written statement, inter alia, it is pleaded:

Late Sh. Mahendra Pal Singh had executed a will in favour of the plaintiff and the defendant, a probate of which has already been granted by the learned competent Court.

Thus, the defendant has become owner of half of the suit property after the death of his father. However, the defendant remains tenant in respect of the half of the property.

17. Needless to state, in the replication filed, the respondent denied that the appellant was ever inducted as a tenant in the said property by his father.

18. The plea of tenancy is patently false and runs in the teeth of the will which clearly records that the appellant and the respondent will live in the property. (Refer the portion of the will extracted in para 7 above.)

19. With respect to the valuation, the appellant challenge the valuation pleaded in the plaint by the respondent and asserted that the property was worth more than Rs.2 crores.

20. On the pleadings of the parties, issues were settled as per order dated July 12, 2007. Six issues were settled. They read as under:-

(1) Whether the suit is undervalued for the purposes of court fee or that the court fee paid is deficient? OPD

(2) Whether the defendant was a tenant under the original owner Sh. Mahender Pal Singh in respect of the entire suit property? If yes, whether suit filed by the plaintiff is not maintainable u/s 50 of the Delhi Rent Control Act? OPD

(3) If issue No. 2 is not proved in favour of the defendant, whether he is not liable to handover possession of half of the suit property to the plaintiff? OPD

(4) Whether the plaintiff is entitled to mesne profits and damages and interest, if so, to what amount, for what period and at what rates? OPD

(5) Whether the defendant is liable to render accounts to the plaintiff. If so, what money-decree is liable to be finally passed in favour of the plaintiff? OPP

(6) Relief.

21. Suffice would it be to state that for us to note that onus of issues No. 1, 2 and 3 was cast upon the appellant, who was the defendant in the suit.

22. While settling the issues it was noted that since the appellant had set up a plea of tenancy and the burden of the issue was on him, the defendant i.e. the appellant was to lead evidence at the first instance.

23. Suffice would it be to state that with reference to the admission made in the written statement with respect to the will executed by the father i.e. that the appellant was half owner of the property, it was obvious that other half share was admitted to be owned by the appellant and this explains no issue being settled as to what is the respective share of the two brothers in the suit property.

24. Within the time granted to the appellant to file affidavit by way of examination-in-chief of his witness, the appellant took no steps. Repeated indulgence was granted to the appellant to do the needful. The appellant did not take any steps to lead evidence and as a result thereof vide order dated March 13, 2009 the evidence of the appellant i.e. the defendant was closed.

25. The plaintiff filed an affidavit by way of evidence of his wife, and needless to state that the affidavit by way of examination-in-chief pertained to the claim for mesne profits.

26. Vide impugned judgment and decree dated August 28, 2012, two distinct adjudications have been made by the learned Single Judge.

27. The first is the decision on IA No. 154/2012 filed by the appellant u/s 151 CPC praying that the affidavit by way of examination-in-chief filed by the respondent i.e. the affidavit filed by the wife of the respondent be struck off. The second issue decided is with respect to the share in the subject property of the two litigating parties, and needless to state, in view of the will executed by the father it has been held that the appellant and the respondent are 50% owner each of the subject property. Preliminary decree has been passed.

28. Before we note the arguments advanced in appeal, we would like to put on record that with respect to interim orders passed requiring appellant to pay Rs.30,000/- per month to the respondent, when the matter was taken up in appeal before a Division Bench an attempt was made by the Division Bench to see that the two brothers are amicably able to either sell the property or one of them could acquire the interest of the other. Orders were passed by the Division Bench to said effect in FAO (OS) No. 570/2009 and regrettably the appellant, who is in possession of the entire property successfully managed to obtain time on one pretext or the other, luring the Court sometime by praying that parties be referred to mediation and sometimes pleading that the two brothers would sit and settle the matter. He ultimately refused to settle. From the hindsight it is clear that the offer to settle was a ruse. It was nothing but an attempt to gain time.

29. Reverting back to the impugned decree and arguments advanced, suffice would it be to state that the conceptual part of the impugned order wherein IA 154/2012 has been dismissed is not an appealable order and thus the instant appeal is held not to be maintainable as regards said part of the impugned order.

30. The second part of the impugned order which admittedly is an appealable part of the impugned order i.e. where the learned Single Judge has held that the appellant as also the respondent are 50% owner each of the subject property, needs to be addressed by us with reference to the submissions advanced.

31. It is firstly urged that in view of the issues settled, without adjudicating on issues No. 1, 2 and 3 the learned Single Judge could not have passed a preliminary decree. It is

urged that the appellant had raised a plea of tenancy and had also raised a plea of the property being undervalued.

32. The learned single Judge has noted, and in our opinion correctly, that onus of issues No. 1, 2 and 3 was on the appellant and he having led no evidence it has to be held that the three issues stand decided against the appellant.

33. The submission urged before us is that notwithstanding the appellant leading no evidence, the pleadings by the appellant could not be ignored by the learned Single Judge.

34. The answer is simple. Pleadings are relevant with respect to what issues need to be settled, and once the issues are settled and onus is cast, the matter has to be then decided with reference to the evidence led, of course keeping the pleadings in mind; but if there is no evidence led a plea by itself means nothing.

35. It is then urged that the will in question simply makes bequest of the subject property in favour of the appellant and the respondent without defining the shares. It is urged that it is settled law that a probate Court is concerned only with the limited issue of the will being the last legal and valid testament and not the issues pertaining to title or interpretation of the will. It is urged that in view of the fact that the will does not defined the share of the two brothers no evidence was led as to what was the share of the two brothers in the subject property and thus the impugned decree could not have been passed.

36. We have extracted herein above in para 17 the plea of the appellant in the written statement wherein the appellant has pleaded 50% share in the subject property under the will executed by the father. This is a complete answer to the submission made. Even otherwise, where there is a joint bequest in favour of two persons without specifying the shares the presumption of law is that each beneficiary would have equal share in the property bequeathed.

37. It is then urged that unless the issue of tenancy is decided the question of the maintainability of the suit with regard to relief of possession could not be decided.

38. But the argument overlooks the fact that the appellant had led no evidence whatsoever to prove that during the life time of the father he had let out the entire property to the appellant. Thus, it has to be held that the appellant has failed to discharge the burden of issue No. 2 and 3.

39. We may note that the order closing appellant's evidence i.e. the order dated March 13, 2009 was challenged right up to the Supreme Court and the challenge had failed.

40. In the aforementioned backdrop and in particular the fact that no documents were filed by the appellant and no attempt was made by the appellant to prove he being a tenant under the father, we are of the opinion that the impugned decree declaring both brothers to be

having 50% share in the subject property is correct.

41. A technical correction needs to be made by us. The technical correction would be that the impugned order does not specifically state that issue No. 1, 2 and 3 are decided against the appellant, though the learned Single Judge has noted the fact that onus of such issues was on the appellant and that the appellant has failed to lead any evidence.

42. We accordingly decree that issues No. 1, 2 and 3, settled as per order dated July 12, 2007, are decided against the appellant and in favour of the respondent. It is held that the suit is neither undervalued for purposes of Court Fee nor deficient Court Fee has been paid. It is held that the appellant is not a tenant under late S. Mahendra Pal Singh and thus the suit is maintainable. On issue No. 3, since issue No. 2 has been decided against the appellant, it is held that the appellant would be liable to hand over possession of half of the suit property to the plaintiff.

43. We clarify, since both brothers are 50% owner of the suit property as per the preliminary decree correctly passed, issue of possession could be finally decided with reference to the property being capable of being divided by metes and bounds.

44. A last plea which was urged needs to be noted and dealt with.

45. It is urged that the father held a lease-hold tenure under L&DO in respect of land and the term of the grant mandated that the land is not capable of being partitioned.

46. The learned Single Judge has noted the law on the subject correctly with reference to the decision reported as [Chiranji Lal and Another Vs. Bhagwan Das and Others](#), as also [Inderjit Singh and Another Vs. Tarlochan Singh and Another](#), The decisions hold that if on land which is impartible a superstructure is constructed, the superstructure is capable of being partitioned.

47. The appeal accordingly fails and is dismissed.

48. But we have to speak something on costs.

49. It has consumed over one hour and thirty minutes to hear arguments and dictate order.

50. A frivolous defence has been taken by the appellant. The father died on May 15, 1978. The appellant joined the respondent in seeking probate of the will. Probate was granted on February 17, 1996. The reason was that the other siblings were contesting the will. Once the probate was granted and the order granting probate attained finality it was expected that as the elder brother the appellant would settle the matter with his brother. Far from doing so, on a frivolous defence, i.e. of an alleged ghost tenancy the appellant has managed to keep the litigation alive. We note that the suit in question was instituted in the year 1998 and since then over 14 years have gone by.

51. A frivolous defense projected before the learned Single Judge and also in appeal needs to be met with adequate costs.

52. Section 35A of the CPC empowers a Court to levy heavy costs where false or vexatious pleas to the knowledge of the party have been put forward.

53. Accordingly we impose costs in sum of Rs.2 lacs upon the appellant; Rs.1 lac out of which shall be paid to the respondent and Rs.1 lac shall be deposited with the Delhi High Court Legal Services Committee. If the costs are not paid/deposited, the same shall be recoverable by way of execution and from the interest of the appellant in the subject property.

CM No. 1803/2012 & 1803/2012

Dismissed as infructuous.