

(2009) 10 DEL CK 0157

Delhi High Court

Case No: I.A. No. 1721 of 2008 in C.S. OS No. 895 of 1998

Surendra Verma

APPELLANT

Vs

Uma Verma and Others

RESPONDENT

Date of Decision: Oct. 20, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, 141

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: P. Budhiraja, for the Appellant; Manu Nayar and Karan Chauhan, for the Respondent

Judgement

Manmohan Singh, J.

This order shall dispose of the application filed by the plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 to pass a decree in his favour. The plaintiff filed the suit, inter alia, seeking against the defendant a decree for partition of the property bearing No. C-87, Shivaji Park, Village Madipur, Delhi measuring 252 sq. yds. (hereinafter referred to as "the suit property") by metes and bounds in 2/5th and 3/5th respectively to the shares of plaintiff and defendants No. 1-3.

2. The plaintiff is the brother in law of defendant No. 1 and the real uncle of defendant Nos. 2 and 3 and brother of defendant No. 4. The case of the plaintiff is that Smt. Nanti Devi, mother of the plaintiff and wife of Dr. K.S. Verma (father of the plaintiff) purchased the suit property vide registered sale deed dated 8th May, 1964 registered in the office of Sub-Registrar-II, Delhi as document No. 1730 in additional book No. 1, volume 314 on pages from 10 to 13. Smt. Nanti Devi died intestate on 9th June, 1974 leaving behind her husband Dr. K.S. Verma, three sons namely Surendra Verma (plaintiff herein), Sh. P. S. Verma and Sh. Mahendra Singh Verma and one daughter Priya Nandal as her legal heirs and successors. Therefore, on the death of Smt. Nanti Devi, the above said suit property devolved upon her aforesaid legal heirs in equal and undivided shares i.e. 1/5th each. Smt. Mahender Singh

Verma died on 17th July, 1988 leaving behind defendants No. 1, 2 and 3 as his legal heirs and successors and thus his share to the extent of 1/5th in the suit property was devolved upon them.

3. The plaintiff submits that on 8th May, 1997 Sh. P.S. Verma son of Smt. Nanti Devi who inherited 1/5th share in the suit property released/relinquished his share in favour of defendants No. 1, 2 and 3 for a consideration of Rs. 2 lac vide a registered release deed. Maj. K.S. Verma also executed a registered release deed on 30th June, 1997 in favour of defendants No. 1, 2 and 3 relinquishing his 1/5th share. Smt. Priya Nandal, daughter of Smt. Nanti Devi, defendant No. 4 herein also released her 1/5th undivided share in the suit property in favour of the plaintiff vide registered release deed dated 5th September, 1997.

4. The plaintiff's contention is that as a result of the above said release/relinquishment deeds, he became entitled to 2/5th share of the suit property and defendants No. 1, 2 and 3 became the owner of 3/5th share in the suit property.

5. In the written statement filed by the defendants No. 1-3, it is urged that Smt. Nanti Devi had no income of her own and the property was purchased benami by Sh. K.S. Verma who was its true and absolute owner. The construction of the suit property was also raised by the funds provided by Maj. K.S. Verma and Sh. M.S. Verma (deceased husband of defendant No. 1). The defendants No. 1-3 contend that Smt. Priya Nandal relinquished her right in favour of all the legal heirs of Smt. Nanti Devi and not in favour of the plaintiff.

6. It is alleged that Smt. Nanti Devi died intestate but since the property belonged to Sh. K.S. Verma, he made an oral partition/arrangement by requesting the suit property in favour of the plaintiff to the extent of 1/4th share and the shares of Sh. K.S. Verma, Sh. P.S. Verma and Priya Nandal would be relinquished in favour of the defendants No. 1-3. The legal heirs of Sh. Mohinder Singh Verma are therefore, allegedly entitled to 3/4th share in the suit property. The defendants relied upon the Will of Sh. K.S. Verma made on 16th September, 1992 wherein the abovesaid family arrangement was mentioned and was acted upon by the parties. However, in para 6 of the written statement, the defendants No. 1-3 admitted the relinquishment deed executed by Sh. P.S. Verma and Major K.S. Verma relinquishing their respective shares in favour of defendants No. 1-3.

7. It is to be pointed out here that though in para 4 of the written statement, the defendants No. 1-3 pleaded to have been entitled to 3/4th share in the suit property, in para 9 they stated to be entitled to 4/5th share in the suit property referring to the two relinquishment deeds executed by Sh. P.S. Verma and Maj. K.S. Verma. No reason was given by the defendants No. 1-3 as to how they became entitled to 4/5th share in the suit property.

8. During the pendency of the suit the plaintiff filed an application under Order XII Rule 6 of the Code to pass a decree in his favour in view of the admissions made by the defendants No. 1-3. It can be clearly seen in order dated 18th August, 2006 and also the written statement that reference is made to a relinquishment deed dated 8th May, 1997 purportedly executed by Sh. P.S. verma releasing his 1/5th share in favour of the defendants No. 1-3 and a relinquishment deed dated 30th June, 1997 executed by Maj. K.S. Verma also releasing his share in favour of the defendants No. 1-3. Admission/denial of documents is complete. The matter was listed before the Joint Registrar for admission/denial of the above said two relinquishment deeds and the defendant No. 1 admitted the said deeds executed by Sh. P.S. Verma and Maj. K.S. Verma respectively on 25th September, 2006 after comparing the same with the originals which are with her.

9. The plaintiff submits that he filed an application under Order 12 Rule 6 of the Code earlier also but the same was dismissed in default.

10. The plaintiff contends that on one hand, reference has been made by the defendants No. 1-3 to the relinquishment deeds in the written statement and they were also admitted during admission/denial, on the other hand they are alleging the oral family partition. On the basis of the above circumstances, the plaintiff filed an application under Order 12 Rule 6 for decree in his favour.

11. In reply to the application, defendants No. 1-3 reiterated the contentions raised in their written statement. It is stated that the plaintiff earlier also filed an application under Order 12 Rule 6 being IA No. 2506/2007 for decreeing the suit on admission which was dismissed in default on 15th May, 2007. The plaintiff concealed this fact and is guilty of suppressio veri and suggestio falsi. The learned Counsel for the defendants No. 1-3 relied upon Section 141 of the Code to contend that the consequences of the suit having been dismissed in default are equally applicable to the miscellaneous application filed under Order 12 Rule 6 and therefore, the application of the plaintiff is not maintainable.

12. The defendants No. 1-3 stated that after the oral partition, Sh. P.S. Verma entered into an agreement to sell which was witnessed by defendant No. 4, Smt. Priya Nandal but which was later on cancelled and defendants No. 1-3 purchased the said portion from Sh. P.S. Verma. It is also stated that Smt. Priya Nandal has already executed a relinquishment deed in favour of defendants No. 1-3, therefore, she could not execute another relinquishment deed with respect to the same property in favour of the plaintiff.

13. Defendant No. 4 filed the written statement and supported the case of the plaintiff by admitting that she executed a relinquishment deed on 5th September, 1997 releasing her 1/5th share in the suit property in favour of the plaintiff.

14. I have gone through the pleadings carefully and perused the record. The relinquishment deeds in dispute dated 8th May, 1997 and 30th June, 1997 have

been admitted by the defendants No. 1-3 and exhibited as Ex. P-1 and Ex.P-2, however, they have pleaded oral portion as well as challenged the execution of relinquishment deed of Smt. Priya Nandal, who allegedly cancelled the earlier deed and executed another relinquishment deed in respect of the same property in favour of the plaintiff.

15. Considering the overall circumstances of the matter and without going into the merits of the case, this Court is not inclined to exercise its discretion under the provisions of the Order XII Rule 6 of the Code due to reason that there are certain disputed facts where evidence of the parties is required. Under these circumstance, the present application is disposed with the direction that trial in the main suit be expedited. IA is disposed off.

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16. List the matter for framing of issues on 12.01.2010 as well as issuance of direction of trial.