

(2013) 07 DEL CK 0430

Delhi High Court

Case No: CS (OS) 3176 of 2012

Seema Seth and Another

APPELLANT

Vs

A.L. Seth and Another

RESPONDENT

Date of Decision: July 15, 2013

Acts Referred:

- Hindu Marriage Act, 1955 - Section 14(1), 25

Citation: (2013) 6 AD 656

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: Dinesh Garg and Ms. Surbhi Sharma, for the Appellant; Vandana Sharma, for the Respondent

Final Decision: Disposed Off

Judgement

M.L. Mehta, J.

The plaintiffs have filed this suit for mandatory injunction or in the alternative for declaration. Plaintiff No. 1, Seema Seth, was married to Rajeev Seth on 15th February, 1987 and plaintiff No. 2, Ms. Karishma Seth, was born out of the wedlock on 24th May, 1989. Rajeev Seth suffered serious head injuries resulting in his mental disorder and consequent thereto their marriage getting dissolved by a decree of divorce on 1st November, 1996. In the said divorce proceedings plaintiff No. 1, Ms. Seema Seth filed an application u/s 25 of Hindu Marriage Act for grant of permanent alimony and maintenance for herself and her then minor daughter Ms. Karishma Seth, the plaintiff No. 2. Ultimately, the matter was compromised by the plaintiffs with defendant No. 1 who is the father of Rajeev Seth and who was appointed his Guardian ad litem in those proceedings. As per the compromise, that was arrived at between the parties, entire first floor of the property bearing No. D-65, Gulmohar Park Extension, New Delhi, measuring 200 sq. yds., consisting of three bed rooms accommodation, was given by defendant No. 1 to the plaintiffs towards their claims of permanent alimony and maintenance.

2. The grievance of the plaintiffs is that despite that they have become the absolute owners of the said property, they do not have any marketable title in respect thereto and the defendant No. 1, though willing, but, has shown reluctance to execute the required documents on account of his ill-health. The defendant No. 1 had purchased the said property from defendant No. 2 by virtue of documents such as power of attorney, agreement to sell etc. Now, the said property is stated to be in possession of the plaintiffs. The defendant No. 1 for himself and defendant No. 2 admitted the case of the plaintiffs and stated that he being not in physical possession to move has no objection to the appointment of Court Commissioner for the purpose of execution of the documents in favour of the plaintiffs in terms of the compromise that was arrived between them in the aforesaid divorce petition.

3. I have heard learned counsel for the plaintiffs and defendants.

4. There is no dispute that suit property, comprising of entire first floor of property bearing No. D-65, Gulmohar Park Extension, New Delhi, was given by defendant No. 1, who is the natural guardian ad litem of his son Rajeev Seth, to the plaintiffs as towards their claims of permanent alimony and maintenance against Rajeev Seth. The plaintiffs are in possession of the said property. That being so, the plaintiffs have become the absolute owners thereof by virtue of Section 14(1) of the Hindu Succession Act. Since defendant No. 1 has no objection to the relief prayed by the plaintiffs, the latter are entitled to marketable title of the suit property. In such a situation either the defendant No. 1 is required to execute the sale deed in favour of the plaintiffs or in the alternative the plaintiffs can be declared to be owners of the suit property and have the title of absolute owners thereof. Since, due to ill health the defendant No. 1 is unable to do the needful on his own or even through any attorney, the plaintiffs would be entitled to alternative relief of declaration.

5. Consequently, the suit of the plaintiffs is decreed in that they are declared as lawful owners of the entire First Floor of property D-65, Gulmohar Park Extension, New Delhi, measuring 200 sq. yds. consisting of the existing construction as also other rights and interest therein, which are owned and possessed by the defendant No. 1.

6. The decree will be drawn accordingly and will be required to be stamped by the plaintiffs as per the Stamp Act. The office may draw the decree and call upon the plaintiffs to get the same stamped as per law. The suit stands disposed accordingly.