

Neelam Saluja Vs Delhi Development Authority

Suit No. 1247 of 1986

Court: Delhi High Court

Date of Decision: April 9, 1997

Acts Referred:

Delhi Development Act, 1957 & Section 53#Specific Relief Act, 1963 & Section 41

Citation: (1997) 4 AD 153 : (1997) 67 DLT 553 : (1997) 42 DRJ 118

Hon'ble Judges: A.D. Singh, J

Bench: Single Bench

Advocate: V.K. Makhija, B.S. Nanda and A. Salwan, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a suit for permanent injunction filed by the plaintiff and against the defendant for restraining the defendant from enforcing the latter's

demand as per its letters dated April 14, 1986 and May 8, 1986 for payment of 50% of the unearned increase in the market value of the plot No

A-63, New Friends Cooperative House Building Society. The facts giving rise to the suit are as follows:-

(2) Diyal Singh Narag was member of a house building cooperative society known as New Friends Cooperative House Building Society Ltd.,

Mathura Road, New Delhi. A perpetual sub-lease deed dated April 23, 1975 in respect of the said plot was executed by the President of India

and the Society in favor of Shri Diyal Singh Narag. During his life time he nominated the plaintiff as his nominee in respect of his membership in the

Society as also perpetual leasehold rights in the said plot. The name of the plaintiff as nominee of Diyal Singh Narag was entered into the records

of the Society. Besides nominating the plaintiff as his nominee, Diyal Singh Narag executed a Will dated November 18, 1978 bequeathing the

perpetual leasehold rights in the plot in question in favor of the plaintiff. Diyal Singh Narag died on October 26, 1980 leaving behind the plaintiff as

the sole legatee and beneficiary of the said plot. The plaintiff informed the defendant about the devolution of perpetual sub-leasehold rights in the

said plot on her on account of her being the sole legatee and beneficiary of Diyal Singh Narag in so far as the said plot is concerned. The Society

to whom the plaintiff applied for entering her name as the sole perpetual sub lessee of the said plot & also as member of Society after scrutinising

the documents and papers submitted by the plaintiff forwarded the same to the defendant for the mutation of the plot in favor of the plaintiff. The

defendant by its letter dated August 12, 1981 informed the plaintiff that the plot in question has been mutated in her name being the nominee of the

deceased Diyal Singh Narag. Thereafter, the plaintiff on receipt of this letter and on getting the plans sanctioned from the concerned authority

constructed the building thereon and applied for a completion certificate vide his application dated October 6, 1983. During riots of 1984 the

entire house was burnt by miscreants. The plaintiff again raised the building after taking loan from the New Bank of India for which purpose

sanction was taken from the defendant. The defendant by its letter dated April 14, 1986 suspended the mutation earlier granted in favor of the

plaintiff in respect of the plot in question on the ground that the will submitted by the plaintiff for the purposes of securing the mutation tantamounts

to sale. The defendant by a subsequent letter dated May 8, 1986 asked the plaintiff to pay 50% of the unearned increase in the market value of the

land for the restoration of the mutation. It is this demand of the defendant which has been challenged by the plaintiff in this suit for permanent

injunction restraining the defendant from enforcing the demand and the threats as contained in its letters dated April 14, 1986 and May 8, 1986.

(3) The defendant in its written statement, inter alia, averred that the plaintiff is not the blood relation of the original sub-lessee and as such parting

with possession of the plot by way of a Will will tantamount to sale of the plot and Therefore the defendant was justified in suspending the mutation

and claiming the unearned increase.

(4) On the pleadings of the parties, the following issues were framed by the Court on July 28, 1987 :-

1. Whether this Court has no jurisdiction to entertain this suit ? 2. Whether the plaintiff has no cause of action and as such the suit is not

maintainable ?

3. Whether the suit is not maintainable in the present form u/s 53 of the Delhi Development Act, 1957, and u/s 41 of the Specific Relief Act ?

4. Whether the demand of the defendant contained in letters dated 14th April, 1986 and 8th May, 1986 is illegal as alleged ?

5. To what relief is the plaintiff entitled in this suit ?

Since the controversy fell in a narrow compass the parties were permitted to file evidence by way of affidavits in respect of their respective claims.

ISSUENO.1: Justifying the objection set out in the written statement that the court has no jurisdiction to entertain the suit, the learned counsel

submitted that as per clause VIII of the sub-lease deed all questions, disputes or differences arising under the sub-lease deed, have to be referred to

the sole arbitration of the Lt. Governor or any other person appointed by him. This plea is not available to the defendant as the defendant took step

in the proceedings by filing the written statement. In this view of the matter, issue No. 1 is decided against the defendant and it is held that this court

has jurisdiction to entertain the suit.

ISSUE No.2: The defendant has not been able to show as to how the plaintiff did not have any cause of action to maintain the suit. Accordingly,

this issue is decided against the defendant.

ISSUE No.3: Since this is a suit for injunction it was not necessary to serve a notice on the defendant u/s 53(b) of the Delhi Development Act,

1957. Accordingly, the issue is decided against the defendant.

ISSUE No.4: As would be seen, the facts are not disputed. The only question for determination is whether bequeathing of rights in respect of the

leasehold property under a Will tantamount to sale of the property. In order to consider this question it will be advantageous to refer to the

decision of the Division Bench of this Court in Mrs. Vijaya G. Gursahaney v. Delhi Development Authority and others, Cwp No. 3696/92,

decided on May 10, 1994. The facts of that case were similar to the facts of the instant case. The petitioner in that case had acquired leasehold

rights under a Will executed by the lessee. The respondent-DDA claimed the unearned increase from the petitioner on the ground that the

transaction between the petitioner and the sub-lessee amounted to a sale of the immovable property and, Therefore, the respondent was entitled to

unearned increase in the value of the land for the purpose of transferring leasehold rights in her favour. The Division Bench came to the conclusion

that the decision of the respondent requiring the petitioner to pay unearned increase and interest thereon was not legal and the communication of

the respondent in this regard had no validity in law. Accordingly, the demand for payment of unearned increase was set aside. In the instant case it

is important to note that the Will executed by deceased Diyal Singh Narag is not in dispute. It is also not in dispute that under the Will the deceased

bequeathed all his rights in the plot in favor of the plaintiff. It may also be noted that one Mrs. Amarjeet Kaur and other natural heirs of Diyal Singh

Narag filed a suit being Suit No. 410/81 claiming rights in the property in question. The said suit was compromised and under the compromise

decree it was declared that Mrs. Neelam Saluja, the plaintiff, was the owner of the suit property in question. In the compromise the statement of

the natural heirs of Diyal Singh Narag, namely, Mrs. Amarjit Kaur, Ms. Neena Narag, Mr. Amrish Pal Singh, Joginder Singh Narag were also

recorded. As per the compromise decree the plaintiff has been declared to be the owner of the property under the Will of Diyal Singh Narag.

Having regard to the decision of the above said decision of the Division Bench the contention of the learned counsel for the defendant that the

plaintiff was not a blood relation of the deceased and, Therefore, the Will was not executed by the testator out of any love and affection for the

petitioner would be of no relevance. It would also be immaterial as to what considerations prevailed with the deceased for bequeathing his plot to

the plaintiff. According, the demand of the defendant as contained in its letter dated April 15, 1986 and May 8, 1996 is held to be illegal.

ISSUENO.5: In view of the findings on issues No. 1 to 4, I hold the plaintiff to be entitled to a decree in terms of prayer clause of the plaint. I order

accordingly.