

(2008) 11 DEL CK 0200

Delhi High Court

Case No: Regular First Appeal 433 of 2008

Ravinder Ahuja and Another

APPELLANT

Vs

Anu Grover and Another

RESPONDENT

Date of Decision: Nov. 21, 2008

Hon'ble Judges: Pradeep Nandrajog, J; J.R. Midha, J

Bench: Division Bench

Advocate: H. Banerjee, for the Appellant;

Judgement

Pradeep Nandrajog, J.

Vide order dated 7.11.2008 the trial Court record had been summoned. The same has been received. Unfortunately, it reveals a pathetic state of affairs in the manner the same has been kept and in particular the plaint and vital documents proved at the trial being missing. We are of the opinion that an inquiry needs to be conducted by the Registrar (Vigilance) who may also take the help of the Officer on Special Duty.

2. But, before we deal with the our reasons as to why an inquiry needs to be held, since the appeal is listed for hearing on admission and for said purpose we had called for the trial Court record, we have requested learned Counsel for the appellant to hand over to us the copy of the plaint as also the documents which were exhibited at the trial and in particular Ex.PW-1/1, being the certified copies of the order dated 10.7.1990 and statements recorded of the litigating parties in Suit No. 140/1985.

3. Learned Counsel for the appellant has handed over to us a copy of the plaint and the certified copy of Ex.PW-1/1 i.e. the statements recorded on 10.7.1990 and the order passed thereon in Suit No. 140/1985.

4. Briefly noted, facts are that late Bodh Raj Ahuja died on 23.7.1984. He left behind an immovable property bearing Municipal No. 438, Gali Chandni Wali, Paharganj, New Delhi-110055. He was survived by two daughters, Anu Grover and Kamlesh

Srivastava i.e. the respondents and three sons namely Surender Kumar Ahuja, Abhi Kumar Ahuja and Sunil Kumar Ahuja. Abhi Kumar Ahuja was unmarried and died thus succession of the estate of Bodh Raj Ahuja had to be on the two surviving daughters and the two surviving sons.

5. During the lifetime of Surender Kumar Ahuja, a suit for partition was filed by the two daughters, namely Anu Grover and Kamlesh Srivastava. For unexplainable reasons they claimed 1/3rd share in the property left behind by their father, notwithstanding the assertions in the plaint that Bodh Raj Ahuja died leaving behind three sons and two daughters and that Abhi Kumar Ahuja had died issueless.

6. Be that as it may, the suit in question which was registered as Suit No. 140/1985, resulted in a compromise between Anu Grover and Kamlesh Srivastava on the one hand and their brother Surender Kumar Ahuja on the other hand. The learned Judge dealing with the suit recorded the statement of the parties on 10.7.1990 to the effect that the parties had settled their dispute and had partitioned the property No. 438, Gali Chandniwali, Paharganj, New Delhi-110055 as per shares allocated to the parties reflected in the site plan annexed with the application.

7. The suit was disposed of recording a settlement and hence no claim surviving to be litigated upon i.e. was dismissed as withdrawn as settled as per the compromise, vide order dated 10.7.1990.

8. Anu Grover and Kamlesh Srivastava, the respondents in the instant appeal, filed the suit in the year 2003 out of which the instant appeal arises, inter alia, after pleading the afore-noted facts set forth their case by pleading in para 9 of the plaint as under:

9. That plaintiffs, being the married sister of Late Sh. Surender Kumar Ahuja had put their locks to their respective portions in property bearing No. 438, Gali Chandniwali, Paharganj, New Delhi after taking the physical possession from his late brother Sh. Surender Kumar Ahuja, prior to filing the compromise application dt. 10.7.90. The said respective portions of the plaintiff remained unused because the plaintiffs had been residing at their matrimonial house and reason by Late Sh. Surender Kumar Ahuja approached the plaintiffs in the early of January, 1991 and made requests to allow him to use the portions belonging to the plaintiffs for the time being with the assurance that the said portions will be vacated as and when required by the plaintiffs, after considering the blood relationship and conduct of Late Sh. Surender Kumar Ahuja, the plaintiffs duly allowed him to use the same as per his own convenience.

9. The appellants, who are the legal heirs of late Shri Surender Kumar Ahuja, the brother of the respondents, filed a written statement not controverting the filing of the suit by Anu Grover and Kamlesh Srivastava in the year 1985 or the order passed thereon on 10.7.1990 and in respect of para 9 of the plaint responded as under:

That the contents of para 9 as stated are wrong and denied.

10. Relevant would it be to note that there are no pleadings in the written statement filed by the appellants that the settlement recorded between the two sisters and their brother in the year 1990 was not given effect to, or that by a subsequent agreement the two sisters transferred their rights in favour of their brother.

11. On the pleadings of the parties, issues settled were:

1. Whether the plaintiffs are exclusive owners of the suit property as claimed by them? OPP

2. Whether the plaintiffs are entitled to recover the possession of the suit premises from the defendants? OPP

3. If issue No. 2 is decided in favour of plaintiff whether the plaintiff is entitled to recovery any amount on account of damages and mesne profits for use/occupation by the defendant? If so, at what rate and for what period? OPP

4. Relief.

12. The respondents examined Ashok Grover, the attorney of the plaintiffs as PW-1. The witness proved various documents and in particular the compromise application and the order dated 10.7.1990 as also the statement of the parties in Suit No. 140/85 by tendering certified copies thereof which were exhibited as PW-1/I.

13. The witness also proved a legal notice dated 28.4.2003, Ex.PW-1/D, served upon the appellants terminating the licence to occupy the subject property, which needless to state is the share of the sisters assigned to them in the compromise recorded in the year 1990.

14. The appellants examined one Gulshan Kapoor as DW-1. Appellant No. 1 examined herself as DW-2. Appellant No. 2 examined himself as DW-3.

15. In her deposition, appellant No. 1 stated that there was a settlement in the year 1990, but went on to state that thereafter respondent No. 1 i.e. plaintiff No. 1, voluntarily proposed that the consideration amount of shops belonging to plaintiff No. 1 in property bearing No. 438, Gali Chandniwali, Paharganj, New Delhi should be that of her husband.

16. The deposition of appellant No. 1 is most unhappily worded and hence we reproduce the same in verbatim as per the language spoken by appellant No. 1. The same reads as under:

That the deponent affirms that in the year 1990 that a family dispute was arose among the parties in related to the joint property, for the same the plaintiff No. 1 herein filed a suit for partition and separation and in response of the said dispute, amicable settlement was made between the plaintiff herein and the defendant and as per the settlement, the husband of the defendant No. 1/deponent along with the

plaintiff No. 1 herein moved an application for compromise the dispute, settled the dispute amicably but thereafter the plaintiff No. 1 herein voluntarily proposed that the consideration amount of shops belongs to the plaintiff No. 1 herein and property bearing No. 438, Chandni Wali, Pahar Ganj, New Delhi goes to the husband of the deponent, accordingly the family settlement was made and property in question goes to the share of the husband of the defendant.

17. It appears to be the intention of appellant No. 1 to convey that after the settlement was recorded in the year 1990 for money value received by respondent No. 1 from the husband of appellant No. 1 i.e. late Shri Surender Kumar Ahuja the right in the subject property was abandoned by her.

18. We say so, because we find no other meaning which can be assigned to the sentence "but thereafter the plaintiff No. 1 herein voluntarily proposed that the consideration amount of shops belongs to the plaintiff No. 1 herein and property bearing No. 438, Chandni Wali, Pahar Ganj, New Delhi goes to the husband of the defendant."

19. Vide impugned judgment and decree dated 1.8.2008, the learned Trial Judge has decreed the suit for possession. Needless to state, the possession relates to the part of the property which was assigned to the respondents in the settlement which had taken place in the year 1990. Mesne profits @Rs. 1,500/- per month have also been awarded, but from the date of the suit till possession is handed over.

20. Learned Counsel for the appellant concedes that he is handicapped in making any submissions predicated on the evidence of the appellants save and except to urge that in her testimony, appellant No. 1 clearly deposed to the fact that after the settlement took place in the year 1990 it was followed by a subsequent agreement where under the respondent No. 1 received money from late Shri Surender Kumar Ahuja and abandoned her interest in the portion of the property assigned to her under the settlement.

21. We are afraid, the appellants cannot urge the said plea to challenge the impugned judgment and decree. The reason is obvious. No such defence was predicated in the written statement. Thus, no issue was settled to the effect whether the respondent No. 1 abandoned her share in the suit property by receiving consideration from her brother.

22. Needless to state, if case of the appellants was that after the settlement took place in the month of July 1990, the plaintiffs received money value for their share from their brother and hence had no right to claim any title in the property, the same had to be first pleaded, issue got settled and only then the Court could be called upon to decide on the issue.

23. We note that the appellants have not disputed that a settlement took place in the year 1990. They have not disputed the terms of the settlement. They have not

disputed the compromise application and the statements recorded when Suit No. 140/1985 was disposed of in the year 1990.

24. We accordingly hold that the learned Trial Judge has arrived at a correct decision. The sole plea sought to be urged in the appeal, namely that, after taking money the respondents had abandoned their interest in the subject property, as noted herein above cannot be urged by the appellants.

25. The appeal is accordingly dismissed in limine.

26. We need to write a few further lines to complete the present decision.

27. As noted herein above, the trial Court record which has been received reflects a very sorry state of affairs.

28. Trial Court Record sent to this Court, as per index, is from page No. 1 to 172.

29. The original suit plaint and the injunction application filed along with the plaint is missing from the Trial Court Record.

30. Exhibits PW-1/A to Ex.PW-1/I proved by the respondents are missing from the Trial Court Record.

31. Not only that.

32. The casual manner in which the learned Trial Judge has been receiving documents is also evidenced from the Trial Court Record.

33. The defendants i.e. the appellants had proved a document, Ex.DW-1/1, being a power of attorney executed by appellant No. 1 in favour of Gulshan to represent her.

34. The said power of attorney was tendered in evidence by DW-1 when he appeared in Court as the witness of the appellants on 10.10.2007.

35. As per the rules applicable for subordinate Courts in Delhi, when ever a document is received by a learned Judge, an endorsement is made at the rear of the document with the stamp of the Court affixed and signatures of the Presiding Officer, evidencing the receipt of the document. The reason is to maintain the purity of the document received, for the reason, if this is not done the document can be replaced at any time.

36. We do not find any endorsement as afore-required at the rear of any page on Ex.DW-1/1.

37. We note that the document has been filed under cover of an index dated 10.10.2007. Even on the index or on its rear, we find no endorsement of the document being received by the learned Trial Judge.

38. We further note that even on the written statement and the vakalatnama filed along therewith, the learned Judge who received the same has not cared to affix his signatures, to maintain the purity of the document. We find that the stamp of the Court stands affixed at the rear of each page of the written statement but without the signatures of the learned Judge who received the same in Court.

39. We also note that at the rear of the page on which the evidence has been recorded, no signatures of the learned Judge who recorded the evidence stand appended. Only a tick mark has been put.

40. We accordingly direct that the Trial Court Record which has been received would be transmitted to the Registrar (Vigilance) who is directed to conduct an inquiry and submit a report on the judicial side.

41. The Registrar (Vigilance) would conduct the inquiry with respect to the improper manner in which the Trial Court Record has been maintained and in particular would fix the responsibility on the officer concerned who is responsible for not placing the plaint and the proved documents on the judicial file.