

(2005) 11 DEL CK 0147

Delhi High Court

Case No: I.A. No. 6510 of 2005 in CS (OS) No. 795 of 2005

Ms. Madhu Puri and Another

APPELLANT

Vs

Shri Moti Lal Puri and Others

RESPONDENT

Date of Decision: Nov. 8, 2005**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 3

Hon'ble Judges: Anil Kumar, J**Bench:** Single Bench

Advocate: R.P. Bansal, Rakesh Mahajan, Deepali Chandihoke and Pankaj Aggarwal, for the Appellant; Alok Aggarwal and Ashok Chawla for Defendant Nos. 1 to 3, A.A. Monga, for Defendant No. 5 and R.P. Bansal and Rakesh Mahajan, for the Defendant No. 8, for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar, J.

This is an application by an owner for his impleadment in a suit, pertaining to his flat alleging to be in his possession bearing No. A-302 (3rd Floor) Mayur Dhwaj Cooperative Group Housing Society, Plot No. 60, Patparganj, IP Extension, New Delhi 11009

2. The suit for Permanent and Mandatory injunction and for declaration and possession is filed by the daughter in law along with her daughter against the father and brother and sister of her deceased husband, who have allegedly sold the flat of the deceased to the applicant.

2. plaintiff Nos. 1 and 2 are the widow and daughter of deceased Mr. Pradeep Puri. Defendants No. 1 and 2 are the brother and sister of deceased Mr. Pradeep Puri and defendant No. 3 is his father. The plaintiffs have contended that they were residing in the United States of America at the time of death of Mr. Pradeep Puri. She continued to be the wife of the deceased and plaintiff No. 2 is the daughter.

Therefore, after the demise of late Shri Pradeep Puri, his movable and immovable properties have devolved upon them as the marriage between late Shri Pradeep Puri and the plaintiff No. 1 was never dissolved. plaintiffs contended that defendant Nos. 1 to 3 with an ulterior intent and malicious motive of dishonestly misappropriating the properties of the deceased M. Praveen Puri, have house trespassed and removed valuable movables from the said flat and have also put a lock illegally on the entrance door of the said flat. It was also contended that fraudulent misrepresentation has been made to defendant No. 4 Society, where the flat is located that the defendant Nos. 1 to 3 are the owners of the said flat upon the demise of Mr. Pradeep Puri. plaintiffs also contended that they have learnt that the defendant Nos. 1 to 3 are attempting to sell the flat of the deceased and are trying to create third party rights, title and interest. The plaintiffs, Therefore, prayed for permanent injunction against the defendants restraining them from alienating and creating any third-party rights in the properties of late to Mr. Pradeep Puri.

3. Pursuant to an application of the plaintiffs, by order dated 30th May, 2005 a local commissioner was appointed to visit the flat of the deceased and prepare an inventory of the goods lying there. The local Commissioner was also authorized to break open the lock, in case the flat was found to be locked.

4. The local commissioner on visiting the premises of the deceased found the door to be locked and in compliance with the order of the Court, got the lock broken open and prepared the inventory of the goods lying there and thereafter locked the door again with a new lock and sealed the flat.

5. The applicant has, thereafter, filed the above noted application contending that he is the absolute owner of the flat after having purchased the same from defendant No. 1 to 3 by a sale deed dated 15th April, 2005 executed in his favor. He contended that he purchased the property from the defendant Nos. 1 to 3 on the basis of an unregistered will dated 26th September, 2004 devising rights in the property by the deceased in favor of said defendants. Shri Pradeep Puri had died on 11th March 2005, in Delhi and the sale deed was executed on 15th April, 2005. Applicant contended that he was away in June 2005 and had locked his property and later on learnt that the local commissioner without any notice to him has sealed his property unauthorizedly.

6. Applicant contended that on contacting the defendant Nos. 1 to 3 it was disclosed that the litigation has been initiated by the widow of late Shri Pradeep Kumar. Applicant asserted that the office bearers of defendant No. 4 are also not permitting the applicant to enter into his flat and to use and enjoy the same. He stated that he also approached the police officials, and despite no injunction being granted against him, he has been deprived of use and enjoyment of his flat. He contended that he is on possession of the flat and Therefore, he is a necessary party and should be impleaded as a defendant and the seal of the flat be removed as the Court had not passed any order in the suit directing the Society, defendant No. 4 to come in the

way of enjoyment of the flat in dispute and has sought direction to the respondent No. 4, not to cause any interference in the ingress and egress of the applicant. Along with the application, a copy of the registered sale deed was also filed by the applicant.

7. The plaintiffs/non-applicants have contested the prayer of the applicant to remove the seal put up by the local commissioner on the property which has been purchased by the applicant by a registered sale deed. The plaintiffs have not contested the prayer of the applicant to be impleaded as a party, defendant to the suit.

8. The plaintiffs stated that the sale of the flat to the applicant is a sham transaction and does not confer any title and rights in respect of the Immovable property of the deceased. The will dated 26th September, 2004 was stated to be forged and fabricated. The plaintiffs stated that the flat which is worth Rs. 45 lakhs has been sold for a paltry sum of Rs. 8,50,000/- only. They alleged that the defendant Nos. 1 to 3 immediately after receipt of legal notice dated 5th April, 2005, executed the sale dated 15th April, 2005 to deprive the plaintiffs from their rights in the property. plaintiffs also asserted that bare perusal and comparison of the signatures of the deceased on the alleged will with other signatures of the deceased appearing on other documents, it will be apparent that the signatures on the will are forged. The plaintiffs have also relied on the averment of defendant Nos. 1 to 3 that their belongings and articles are still lying in the said flat. The plaintiffs have contended that if the flat has already been sold, then how their articles are still lying in the said Immovable property. Regarding breaking the lock by the local commissioner and sealing it thereafter, it was contended that after preparation of inventory, the local commissioner had to lock and seal the flat as it could not be left open.

9. Father, brother and sister of the deceased have not filed any reply to the application, however, in the written statement filed by them they contended that late Shri Praveen Puri married to the plaintiff No. 1 in 1986. Marriage between the plaintiff No. 1 and late Shri Pradeep Puri was an unhappy marriage. plaintiff No. 1 was more interested in staying in United States of America and repeatedly deserted the deceased. She had been constantly harassing and pressurizing the deceased to leave India and settle in United States of America. plaintiff No. 1 on 9th May, 1995, deserted the deceased and left him and also took away the daughter of the deceased and her belongings and valuables. The plaintiff No. 1 has obtained a green card and she is settled in America. The deceased was greatly disturbed during his lifetime with the behavior of plaintiff No. 1 and had given a notice in June, 1995 for dissolution of marriage with the plaintiff No. 1. On desertion of the deceased by the plaintiff No. 1 a report was also lodged by the deceased with Chanjan Park police station.

10. The defendant Nos. 1 to 3 contended that plaintiff No. 1 did not come back to India nor sent the daughter despite the fact that the deceased suffered from cancer

of pancreas. During his illness, the deceased several times tried to contact plaintiff No. 1, however, she did not answer his calls, rather she complained about repeated calls made by the deceased who was in a critical condition. Despite communication to the plaintiff No. 1 that her husband was a terminal case, she did not come to India nor send the daughter nor attended the funeral despite being intimated about it. During the terminal illness of the deceased, he was looked after by her brother, sister, uncle and father. The deceased during his lifetime had converted his bank accounts into joint accounts where Shri Moti Lal Puri was nominated. He was nominated not only in bank accounts but also in shares, debentures, fixed deposits etc. Regarding the goods of the deceased in the flat which was sold to the applicant, it was contended that same of the goods were not removed as the purchaser did not require the flat immediately. It was, however, asserted that the applicant is the sole and exclusive owner and the suit has been filed by the plaintiffs with mala fide intention and in an attempt to grab the property of the deceased and to humiliate and embarrass the defendants.

11. I have heard the learned Counsels for the parties and have also perused the application, reply and the pleadings. The plaintiffs have not objected to implead the applicant as a party to the suit. Order 1 Rule 10 has been expressly provided in the CPC to meet with situations so as to implead all the parties which may be effected by any litigation so that the rendering of justice is not hampered. plaintiff is dominus litis and he is bound to sue every possible adverse claimant in the same suit whom he wishes to proceed under Order 1 Rule 3, to avoid multiplicity of suit and needless expenses. All persons against whom the right to relief is alleged to exist may be joined as defendants. If the plaintiffs do not object to impleadment of applicant as a party, the applicant must be impleaded as defendant to the suit.

12. Even the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

13. In order to ascertain whether a person is a necessary party or not what is to be seen is whether in absence of such person, conflicting decrees may be passed by the Court. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled. The question to be settled must be a question in the action which cannot be effectually and completely settled unless he is a party. A line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, Therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. Applying any test in respect of applicant, the inference is that he is a necessary party to the present disputes and even the plaintiffs do not object to his imp leaded. Consequently the applicant is imp leaded as defendant No. 8 to the suit of the plaintiffs.

14. The next dispute is whether the flat should be the de-sealed and the key of the lock on the flat put up by the local commissioner, after preparation of inventory be given to the applicant or not? It has not been disputed by the plaintiffs that the flat has been sold by defendant Nos. 1 to 3 to the applicant by the sale deed dated 15th April, 2005. The plaintiffs have filed the application for amendment of the plaint seeking cancellation of the sale deed and other relief and for interim injunction against defendant Nos. 1 to 3 and the applicant, seeking restrain against them from transferring, alienating, and dealing with or creating any third-party rights, title or interests or any encumbrance in respect of the flat. The notice on the application was issued to non applicants, however, no interim order was passed. To ascertain whether the applicant is entitled for the de-sealing of the premises and return of the key of the lock put up by the local commissioner after inventorying the goods lying there, what is to be seen, is the order passed by this Court appointing the local commissioner. By order dated 30th May, 2005 the local Commissioner was appointed to visit the flat and prepare an inventory of all movable assets lying there. The Local commissioner was also authorized to break open the lock, in case the premises was found to be locked. As the premises was lying locked, the lock of the premises was broken open and the inventory of the goods was prepared. Thereafter as the flat could not be left open, the local commissioner had put another lock and sealed the premises.

15. It is not disputed that a sale deed has been executed in favor of the applicant which categorically stipulates that possession of the flat was given to the applicant. Had the applicant being present, the day the local commissioner had gone to prepare an inventory of the assets lying there, the local commissioner could not have put another lock and sealed the premises. If that be so, the applicant shall be entitled for de-sealing of the premises and return of the key of the lock put up by the local commissioner in absence of the applicant. The local commissioner has prepared an inventory of the assets lying and no objection to the inventory has been

filed by the applicant. The contention of the plaintiffs that some of the goods of the deceased are still lying in the flat would also not disentitle the applicant from getting the key of the lock put up on the flat by the local commissioner. The defendant Nos. 1 to 3 have also contended that they have sold the flat to the applicant and given possession of the same to the applicant, however, some of the goods of the deceased are still lying there. No restraint order of any type has been passed against the defendant Nos. 1 to 3. Therefore, some of the goods of the deceased lying in the flat will not militate against transfer of rights by a sale deed in favor of applicant.

16. The allegations of the plaintiffs regarding will of the deceased being forged and fabricated are yet to be determined. Pending determination of legality and validity of the will, at this stage, it can not be inferred that the applicant is not entitled for the key of the lock put up on the flat in his absence by the local commissioner after preparation of inventory. Considering it under any perspective, the inevitable inference is that the applicant is entitled for the key of lock put up on his premises by the local commissioner after preparation of the inventory of the goods. The Court had not passed any order sealing the flat of the premises or any other restraint against the defendants or in respect of flat.

17. Therefore, in the facts and circumstances, the application is allowed and the applicant is impleaded as defendant No. 8 to the suit. The plaintiff to file amended memo of parties within two weeks. It is also directed that the applicant shall be entitled to key of the lock put up by the local commissioner after preparation of the inventory of goods lying there. The Local Commissioner is, Therefore, directed to handover the key of the flat forthwith to the applicant and also remove the seal, if any put up by the local commissioner. With these observations, the application is allowed.