

Mohinder Pal Singh Vs. Dda and ors

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Court : Delhi

Decided On : Sep-18-2013

Judge : Reva Khetrapal

Appellant : Mohinder Pal Singh

Respondent : Dda and ors

Advocate for Def. : Mr. Padam Kant Saxena

Advocate for Pet/Ap. : Mr. Saket Sikri

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA(OS) 93/2013 and CM No.12036/2013 (stay) MOHINDER PAL SINGH Through: Appellant Mr. Saket Sikri, Advocate. versus DDA AND ORS Through: Respondents Mr. Padam Kant Saxena, Advocate for the Respondent No.1. CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

(ORAL) : REVA KHETRAPAL, J.

1. This appeal is directed against the order dated 18th September, 2012 whereby the suit of the Appellant was dismissed.

2. The facts germane to the decision of the present appeal are as follows. The Appellant/Plaintiff filed the suit seeking declaration, possession and injunction with respect to property bearing No.1/31 Shanti Niketan, New Delhi situated on a plot of land admeasuring 2,000 sq. yds. The said property was acquired by the Appellants father Shri Kewal Singh, who died on 18.10.1991. During his lifetime, Shri Kewal Singh had invested in various immovable properties including the suit property. Sometime in 1966, Shri Kewal Singh became a member of the Government Servants Cooperative House Building Society and was allotted a residential plot in Shanti Niketan. A sub-lease in respect of the property was executed in the name of Shri Kewal Singh and registered in the office of the SubRegistrar, Asaf Ali Road, New Delhi on 24.10.1967 upon payment by him of the original purchase price.

3. It is the case of the Appellant/Plaintiff that on 23.2.2009, the Appellant/Plaintiff applied to the office of Delhi Development Authority (Respondent No.1) for mutation of the said property in his name. Sometime in August, 2010, the Appellant learnt from the office of the Respondent No.1 that his application for mutation was pending and no decision had been taken thereon. The Appellant further learnt that the perpetual sub-lease deed in favour of his late father Shri Kewal Singh was illegally and unlawfully cancelled by the Respondent No.1 and a fresh perpetual sub-lease deed was executed in favour of Mrs. Shamie Singh, being the perpetual sub-lease deed dated 26.5.1969 registered as document No.3806 in Additional book No.1, Volume 2202 on 6.6.1969.

4. The Appellant alleges that the said sub-lease deed was without any lawful transfer of the property by late Shri Kewal Singh in favour of Mrs. Shamie Singh and it was as a result of fraud and deceit. As per the Appellant, it was falsely represented to the Respondent No.1 that Mrs. Shamie Singh was the wife of late Shri Kewal Singh whereas it was the mother of the Appellant, namely, Smt. Dalbir Kaur who was the wife of late Shri Kewal Singh and, Mrs. Shamie Singh was not and could not have been a wife of late Shri Kewal Singh during the subsistence of the marriage between Shri Kewal Singh and Smt. Dalbir Kaur. The Appellant also learnt from the office of the Respondent No.1 that Mrs. Shamie Singh died on 18.5.2004 and that Ms. Geeta Abhyankar (Respondent No.2) is in occupation of

the suit property as the daughter of Mrs. Shamie Singh. The Appellant accordingly seeks cancellation of the perpetual sub-lease deed dated 26.5.1969 executed by Respondent No.1 in favour of Mrs. Shamie Singh, predecessor-in-interest of the Respondent No.2.

5. It is relevant to note that Shri Kewal Singh, father of the Appellant, died on 18.10.1991, i.e., roughly about 22 years after the execution of the perpetual sub-lease deed dated 26.5.1969 in favour of Mrs. Shamie Singh. Thus, Shri Kewal Singh lived for about 22 years after the execution of this perpetual sub-lease deed. Throughout this period he was aware of the fact that property stood transferred in the name of Mrs. Shamie Singh, yet he did not take any action to challenge this sub-lease deed in favour of Mrs. Shamie Singh. For the first time, the Appellant seeks cancellation of the same after 41 years of its execution. In the aforesaid circumstances, in our opinion, the learned Single Judge has rightly held the suit to be grossly barred by limitation.

6. Article 59 of the Limitation Act, 1963 stipulates that if a document stands against a person, cancellation of the said document has to be sought within three years. The Appellant claims that it was in August, 2010 that the Appellant learnt that a fresh perpetual sublease deed was executed in favour of Mrs. Shamie Singh. The father of the Appellant died way back on 18.10.1991. Assuming that the Appellant did not come to know of the execution of the perpetual sublease deed in favour of mother of Respondent No.2 i.e Mrs. Shamie Singh during the lifetime of his father, that is, for the period intervening 26.5.1969 till 18.10.1991 (for about 22 years), it is hard to believe that even thereafter from 1991 till 2010 the Appellant was oblivious of the fact that his father Shri Kewal Singh had passed on the said property by transfer to his second wife Mrs. Shamie Singh, i.e., for another 19 years, in all for about 41 years. The learned Single Judge has rightly observed that by the passage of time valuable evidences are lost and, therefore, if there are legal rights existing, they have to be exercised within the limitation prescribed. The subject suit effectively seeks cancellation of a perpetual sub-lease deed in favour of the mother of the Respondent No.2 after the lapse of more than four decades of its execution by the father of the Appellant and the Respondent No.2. Even assuming that the Appellant has any legal rights in the said property, the non-exercise of the

same for such a long period, in our opinion, has effectively extinguished the same.

7. In view of the aforesaid, we do not find any merit in the present appeal, which is accordingly dismissed. CM No.12036/2013 also stands disposed of. REVA KHETRAPAL JUDGE PRATIBHA RANI JUDGE September 18, 2013 km

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