

Devender Kumar Bhardwaj Vs. Sh. Yogesh Chander Bhardwaj and ors.

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SooperKanoon Citation : sooperkanoon.com/1092598

Court : Delhi

Decided On : Sep-26-2013

Judge : S.Ravindra Bhat

Appellant : Devender Kumar Bhardwaj

Respondent : Sh. Yogesh Chander Bhardwaj and ors.

Advocate for Def. : Ms. Ankita Mahajan

Advocate for Pet/Ap. : Ms. Jahanvi Worah

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

26. 09.2013 + RFA(OS) 58/2013 DEVENDER KUMAR BHARDWAJ Appellant Through : Ms. Jahanvi Worah, Advocate. versus SH. YOGESH CHANDER BHARDWAJ & ORS. Respondents Through : Sh. Abdul Samad, Advocate, for Resp. No.1 along with Respondent No.1 in person. Ms. Ankita Mahajan, Advocate, for Resp. Nos. 2 and 4. HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT) % 1. The present appeal is directed against an order dated 02.04.2013 whereby CS (OS) 584/2013 was dismissed on the first hearing. The learned Single Judge was of the opinion that no triable cause of action is disclosed on an overall reading of the plaint. The respondents are present; they agreed that the appeal be heard finally.

2. The facts appearing on the record - on a reading of the plaint, materials and the documents annexed with the plaint, are that a family arrangement was arrived at on 18.02.2007; it was reduced in writing in the form of Memorandum of Understanding or Family Settlement. In terms of the said Family Settlement, inter alia, the plaintiff and the first defendant - who are brothers, were entitled to a plot in Saket, RFA(OS)58/13 Page 1 amongst other family properties. The other parties /signatories to the family arrangement were Defendant Nos. 2 to 4/ sisters, who are arrayed as respondents in this case. The first defendant in the suit is arrayed as the first respondent in the present appeal. He too is represented. The suit further averred that on 15.10.2007, the first defendant misrepresented about the true nature of the documents and managed to secure the plaintiffs signatures on what turned out to be a Relinquishment Deed and that a copy of the said Relinquishment Deed was placed on the file of the suit which sought/claimed a decree for declaration that the Relinquishment Deed was not binding and that it was null and void. A direction for cancellation of the Relinquishment Deed was sought. The other reliefs, such as declaration, partition and permanent injunction too were sought. The averments in the suit had indicated that a previous proceedings had been filed before the learned Civil Judge as Suit No.526/2008; apparently it was preceded by a Public Notice in the newspaper on 08.06.2008 itself claiming that the Relinquishment Deed was not binding and stating that the plaintiff/appellant continued to be partowner of the suit property. Apparently, the suit had to be withdrawn; the suit had proceeded to an advance stage and even issues had been framed when the Court formed the opinion that it lacked pecuniary jurisdiction. Consequently, the plaintiff had to withdraw the suit and file it in this Court. In these circumstances, CS (OS) 584/2013 was presented and entertained on the file of this Court.

3. On the very first hearing, learned Single Judge, by the impugned order, rejected the suit. Learned Single Judge was RFA(OS)58/13 Page 2 impressed by the circumstances that the Relinquishment Deed was a registered document and that the plaintiff had not averred that he was illiterate. Besides, he was of the opinion that the only averment impeaching the Relinquishment Deed was in para 5 of the plaint which nowhere alleged fraud. Learned Judge extracted para 5 of the plaint and proceeded to hold that in the light of such averments and the legal position,

especially by virtue of Sections 91 and 92 of the Evidence Act, the suit does not disclose triable cause of action.

4. This Court has considered the materials. It is evident that the plaintiff had taken steps even prior to the filing of the suit in 2008. As early as on 25.06.2008, the Delhi Development Authority (DDA) had been informed about the newspaper advertisement dated 08.06.2008 contending that the appellant was the true owner of the property along with the first defendant. Close on its heels was the suit filed before the Civil Judge, being Suit No.526/2008. The parties were served with summons; they even entered defence. Apparently, the first defendant did not dispute the family arrangement dated 18.02.2007, though he tried to justify the legality of the Relinquishment Deed impugned in the suit, stating that the said document was executed voluntarily. After issues were framed, the Court formed an opinion that it lacked pecuniary jurisdiction to proceed. Consequently, the plaint had to be withdrawn and it was refiled. The suit leading to the impugned order in the present case, i.e. CS (OS) 584/2013 - besides para 5 also contains the following averments:

6. That in the month of April, 2008, the plaintiff came to know that the defendant No.1 was negotiating for the RFA(OS)58/13 Page 3 sale of the suit property on his own and to the exclusion of the plaintiff and was claiming to be the sole and exclusive owner of the suit property. The plaintiff became suspicious of the designs of the defendant no.1 and applied for a certified copy of the registered relinquishment deed executed by the defendant no.2-4 in favour of the plaintiff and defendant no.1 on 15.10.2007. After obtaining a certified copy of the same on 21.4.2008, the plaintiff was shocked to find out that the relinquishment deed dt. 15.10.2007 stated that the same was executed not only by the defendants 2-4 but also by the plaintiff in favour of the defendant no.1. In this manner the defendant no.1 fraudulently got executed relinquishment deed in his favour by the plaintiff as well.

7. That it is submitted that the relinquishment deed dt. 15.10.2007 was got executed fraudulently and is liable to be declared as null and void/cancelled. The plaintiff never intended to relinquish his share in the suit property in favour of the

defendant no.1. Such an act is also contrary to the terms of the family settlement executed by the parties. The plaintiff in these circumstances issued legal notices dt. 30.5.2008 to the Vice-Chairman, Delhi Development Authority. The Commissioner Land Disposal, Delhi Development Authority, and the Land and Building Department Government of NCT of Delhi calling upon them to refrain from mutating the suit property in favour of the defendant no.1 Mr. Yogesh Chand Bhardwaj.

5. The suit further averred the facts relating to the previous proceedings and how the cause of action arose in April 2008, the issuance of legal notice, publication of notice in the newspaper, etc.

6. It is evident from the above discussion that the learned Single Judge proceeded to narrowly interpret the documents before the Court RFA(OS)58/13 Page 4 and confined his consideration to para 5, to conclude that the suit did not contain the necessary averments for the matter to proceed to trial. Para 7 clearly alleges fraud, which in this Courts opinion, is sufficient to take cognizance of the suit. Equally this Court is conscious of the fact that the Trial Court had proceeded with the matter; the parties had even filed written statement and issues had been framed. All these aspects clearly escaped the notice of the learned Single Judge, who fixed his attention on averments in para 5, and ignored other material averments in the plaint. Consequently, the Court is of the opinion that the impugned order is clearly erroneous in that it holds that the plaint is required to be rejected.

7. As a result of the above discussion, the impugned order is set aside. The suit ought indeed to proceed further. The parties are directed to appear before the learned Single Judge on 09.10.2013 for further proceedings towards filing written statement, etc. in accordance with law. Nothing in this order shall be construed as an expression on the merits and contentions of the case. All parties are entitled to raise such contentions as are available in law. The appeal is accordingly allowed in the above terms. There shall be no order as to costs. S. RAVINDRA BHAT (JUDGE) NAJMI WAZIRI (JUDGE) SEPTEMBER26 2013 RFA(OS)58/13 Page 5