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SimrIn Singh Vs. Amrit Srinivasan and anr

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Court : Delhi

Decided On : Nov-20-2013

Judge : Jayant Nath

Appellant : SimrIn Singh

Respondent : Amrit Srinivasan and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :06.11.2013 Decided on :

20. 11.2013 + I.A. Nos. 1354/2011 and 6522/2011 in CS(OS) 2258/2010 ..... Plaintiff SIMRIN SINGH Through Mr.Abhijat and Ms.Liza M.Baruah, Advocates versus AMRIT SRINIVASAN & ANR ..... Defendants Through Mr.Vijay Gupta, Mr.B.B.Gupta, Mrs.Geeta Goel and Mr.Chetan Swarup, Advocates for D-1 and D-2 Ms.Rachna Aggarwal, Advocate for D-4 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(

JUDGMENT
) I.A. Nos. 1354/2011 (u/S151CPC) & 6522/2011 (u/O39R1& 2 CPC) 1. By the present order I shall dispose of the aforesaid two applications. These applications are being disposed of by a common order inasmuch as the facts necessary for disposal of the applications are identical.

2. The present Suit is filed seeking a decree of possession pertaining to ground floor of property No.C-777, New Friends Colony, New Delhi 110025 and other reliefs pertaining to other portion of the said property in New Friends Colony and other immoveable properties.

3. IA No.1354/2011 is filed for leave to the plaintiff to rent/lease out to a third party the first floor, barsati, two servant quarters at the second and third floor of the property C-777, New Friends Colony, New Delhi. It is stated that on 2nd November,2010 and 10th November, 2010 parties were directed to maintain status quo with regard to title and possession of various properties including the first floor of property of New Friends Colony. Hence, permission of this Court is sought to lease out the said property.

4. IA No.6522/2011 is filed by the plaintiff seeking a mandatory injunction directing defendants No.1 to 3 to restore status quo as regards possession and to revert the possession of the suit property namely, ground floor of the New Friends Colony property in favour of the plaintiff.

5. The accompanying Suit pertains to the estate of late Shri Sant Singh and Smt..Kusum Kaur. The plaintiffs father late Shri Harkirat Singh, defendant no.1 and defendant no.4 are siblings and the only three children of late Shri Sant Singh and Smt.Kusum Kaur. The issue revolves around various immoveable properties. The present two applications pertain only to the property at New Friends Colony.

6. Regarding the New Friends Colony property, as per the plaint the same originally belonged to one Mr.V.P.Gulati. The said Mr.V.P.Gulati sold the said property jointly to Mr.Sant Singh and Mr.Harkirat Singh (father of the plaintiff). It is further averred that Shri Harkirat Singh partitioned the property by Agreement dated 4.5.1984 whereby the ground floor with garage, mezzanine floor of the servant quarter belonged to Shri Sant Singh and the first floor together with barsati and two servant quarters on second and third floor were to belong exclusively to Shri Harkirat Singh (father of the plaintiff).

7. Vide registered Conveyance Deed dated 28.7.1994, DDA conveyed the absolute perpetual rights of the said property in favour of Shri Sant Singh and Shri

Harkirat Singh.

8. It is further averred that Shri Sant Singh father of Harkirat Singh and defendants No.1 and 4 executed his last Will and Testament dated 5.6.1996. He died on 13.10.2000. As per the said Will his entire estate i.e.moveable and immovable was bequeathed to his wife Smt. Kusum Kaur and she became the absolute owner of the said estate. Smt. Kusum Kaur filed for Probate of the Will of late Shri Sant Singh dated 5.6.1996 being testamentary case No.3/2001. Defendants No.1 to 4 herein have filed objections against the said Will and the matter is pending adjudication and is being heard alongwith the present petition.

9. During pendency of the said Probate Petition Smt.Kusum Kaur died on 4.2.2008 leaving behind her last Will and Testament dated 30.09.2002. In terms of the said Will, all her assets are stated to have been bequeathed in favour of the father of the plaintiff Mr.Harkirat Singh. Hence, it is claimed by the plaintiff that her father late Shri Harkirat Singh became absolute owner of the property C-777, New Friends Colony, New Delhi. It is stated that he was shown as the recorded owner and he continued to pay the house tax for the entire property. On the demise of Smt.Kusum Kaur, the father of the plaintiff also filed an application under Order 1 Rule 10 CPC to transpose himself in the Probate Petition as a petitioner. The petition was resisted by defendants No.1 and 4. However, during pendency of the said application Mr.Harkirat Singh father of the plaintiff died on 19.10.2010. He is stated to have left behind his last Registered Will dated 4.4.2004 bequeathing all his assets in favour of the plaintiff.

10. It is stated that the father of the plaintiff died on 19.10.2010 and as the plaintiff is posted in Bangkok, she arrived in Delhi the next day i.e. on 20.10.2010. However, to her utter shock she found that defendants No.1,2 and 3 i.e. her fathers sister being defendant No.1, her son of defendant No.2 and her daughter in law of defendant no.3 had taken advantage of the plaintiffs absence on 19.10.2010 and had forcibly entered into the suit property and illegally occupied the ground floor.

11. It is claimed that a complaint was registered with SHO New Friends Colony Police Station on 31.10.2010 but to no effect. Hence, the present Suit has been

filed seeking recovery of possession of the said premises.

12. The defendant No.1 has qua the New Friends Colony property averred that defendants No.1 and 4 and Shri Harkirat Singh her brother had reached an amicable out of court partial oral settlement, by virtue of which, defendant no.1 acquired ownership rights with vacant possession of the complete ground floor portion alongwith garage and a servant quarter in the mezzanine floor of the suit property in New Friends Colony. It is averred that based on this oral partial family settlement she alongwith defendants No.2 and 3 moved into the ground floor on 1.9.2010. The other terms and conditions of the oral partial family settlement have also been elaborated upon but need not be gone into for the purposes of the present application. Reliance is placed on an order of the Court in Probate Petition dated 24.5.2010 which records that some settlement has been arrived at regarding both moveable and immovable properties. Hence, it is averred that defendant No.1 has a right, title and interest in the said ground floor of New Friends Colony property and has entered into possession with the consent of late Shri Harkirat Singh and accordingly the plaintiff is not entitled to any relief for the same.

13. Defendant No.4 has denied existence of any oral partial family settlement as claimed by defendant No.1. According to defendant No.4 there is no Will left behind by their father Shri Sant Singh or by Smt.Kusum Kaur. Hence, it is averred that defendant No.4, defendant No.1 and late Shri Harkirat Singh are the joint owners of the entire estate left behind by their father, namely, late Shri Sant Singh and their mother Smt.Kusum Kaur and that the said defendant no.4 has 1/3rd undivided equal share in the property at New Friends Colony.

14. I have heard learned counsel for the parties.

15. Learned counsel for the plaintiff has averred while arguing IA No.6522/2011 that where a party establishes more than a prima facie case, the Court would have power to grant a mandatory injunction as an interim relief. Reliance is placed on judgment of the Honble Supreme Court in the case of Dorab Cawasji Warden versus Coomi Sorab Warden, 1990 (2) SCC117to contend that the Courts have in exceptional cases powers to grant interim mandatory injunction. It is stated that in the present case the plaintiffs have more than a prima facie case and hence a

mandatory injunction may be passed. On facts it is stated that the father of the plaintiff was in exclusive possession of the entire property at New Friends Colony. Defendants No.1 to 3 have taken undue advantage of the fact that the plaintiff was posted at Bangkok and on the death of her father on 19.10.2010 they trespassed into the ground floor. It is strongly argued that the story about an oral partial family settlement on the basis of which the defendant no.1 claims to have entered possession is completely false. Parties were under serious litigation in the Probate Case pertaining to the Will of Shri Sant Singh. The question of parties simply entering into an oral compromise without moving an application under Order 23 Rule 3 CPC or recording it in writing cannot and does not arise. It is averred that this is a completely false story concocted by defendant No.1 to illegally grab physical possession of a valuable real estate. It is further stated that the said act is also in violation of the order of status quo dated 5.12.2005 passed by the probate Court where the parties were directed to maintain status quo with regard to title and possession of the properties referred to. It is further stressed that defendant No.1 who is a professor in IIT was residing in the premises of IIT. Even summons of the present Suit, it is stated, were served on defendant No.1 at her IIT address. Reliance is also placed on the observations of the Local Commissioner appointed by this Court in his report dated 2.3.2011 where the Local Commissioner has asked defendant No.1 to show electricity bills or other documents to ascertain her possession which she has refused to produce.

16. Learned counsel appearing for defendant no.1 has submitted that the plaintiff has not come to Court with clean hands. It is averred that both plaintiff and her mother are American citizens who had deserted late Shri Harkirat Singh all these years. It is stated that on account of the habit of Harkirat Singh of heavy drinking he was hospitalised many times. On each of the occasions it is defendants No.1 and 4 who have looked after their brother whereas plaintiff was nowhere to be seen. It is averred now only out of greed the plaintiff has moved in to try and corner immovable properties owned by her late Grand father Shri Sant Singh. It is strongly urged that even otherwise apart from the family settlement, the Wills propounded by the plaintiff regarding late Shri Sant Singh and Smt.Kusum Kaur are seriously disputed inasmuch as no such Wills have been executed. Even otherwise, de hors the family settlement, it is averred that defendant No.1 has

rights in the estate left behind by her parents including the property at New Friends Colony. It is further stated that the ground floor of the property at New Friends Colony is the only property that defendant No.1 is in possession out of the huge estate left behind by her father and on equity the relief sought of mandatory injunction should not be granted.

17. Regarding the relief to rent out the first floor it is not denied that as per the oral partial family settlement the first floor of the New Friends Colony property belonged to late Shri Harkirat Singh. However, it is averred that letting out of the property would endanger the safety of defendant No.1 and her daughter in-law defendant no.3. It is stated that the son of defendant No.1 is mostly out of town on account of his professional work and hence defendant No.1 and defendant No.3 the two ladies are staying alone in the ground floor. Any attempt to let out would mean that an outsider would access the property and this would gravely endanger the safety of the said defendants.

18. Learned counsel for defendant No.4 has averred that defendant No.4 has equal undivided share in the property at New Friends Colony. It is further stated that her clients were in joint possession of the said property from 1993 till 2010 when plaintiff and defendant No.1 have stopped her from entering the said property. Learned counsel has opposed both the applications filed by the plaintiff. It is stated that despite a huge estate left behind by her parents, she has to survive only on her meagre pension and has been completely ousted from the fruits of the estate.

19. I will first deal with IA No.6522/2011. The facts of the present case show that late Shri Harkirat Singh by virtue of the Conveyance Deed, executed in his favour and in favour of late Shri Sant Singh on 28.07.1994, prima facie can be said to be owner of 50% undivided property at New Friends Colony. Neither defendant No.1 nor defendant No.4 have sought cancellation of this registered Conveyance Deed. The First Floor of the suit property as per the alleged Agreement between Shri Harkirat Singh and Shri Sant Singh dated 4.5.1984 has gone to late Shri Harkirat Singh while the ground floor has gone to the father. Hence, title and possession of the ground floor is claimed by the plaintiff based solely on the will of late Shri Sant

Singh, her grandfather dated 5.6.1996 by which this property was bequeathed to his wife Smt.Kusum Kaur and will of Smt.Kusum Kaur dated 30.09.2002 whereby the said ground floor in the New Friends Colony Property stands bequeathed to Late Sh. Harkirat Singh, the father of the plaintiff.

20. Regarding the Will of late Shri Sant Singh dated 5.6.1996 the said will is seriously contested and probate proceedings regarding the same are still pending and are being heard with the present proceedings. Till the will of late Shri Sant Singh dated 5.6.1996 is passed in probate proceedings and the will of Smt.Kusum Kaur dated 30.09.2002 is duly proved in the present proceedings it will not be possible for the plaintiff to claim absolute right, title or interest in the said ground floor of the property at New Friends Colony.

21. In the case of Dorab Cawasji Warden versus Coomi Sorab Warden (supra) the Honble Supreme Court had held that a mandatory injunction can be granted on an interlocutory application but in the absence of special circumstances it would not normally be granted.

22. In my view there are no special circumstances which would warrant grant of mandatory injunction on an interlocutory application to direct defendants No.1 to 3 to vacate physical possession of ground floor of the property at New Friends Colony. Till the Wills of late Shri Sant Singh and Smt.Kusum Kaur are proved as lawful and valid, it is not possible to conclude that the plaintiff has exclusive title to the full property and possession of the ground floor of the said property. Further, as per defendant No.1, she has taken possession of the ground floor pursuant to some oral partial family settlement. Until evidence is completed, it would not be possible to conclusively conclude whether defendant No.1 has illegally grabbed the physical possession.

23. Hence, there are no grounds made out to grant a mandatory injunction in favour of the plaintiff and against the defendants No.1 to 3 asking them to handover vacant physical possession of the ground floor of the said New Friends Colony property to the plaintiff as claimed.

24. Accordingly IA No.6522/2011 is dismissed 25. Regarding IA No.1354/2011 it is the case of defendant No.1 that an oral partial family settlement took place wherein late Shri Harkirat Singh became absolute owner of the first floor of the property at New Friends Colony. In view of the stand taken by defendant No.1, she cannot now resile from her own admission that late Shri Harkirat Singh was the absolute owner and in possession of the first floor of the New Friends Colony property.

26. Regarding the stand of defendant No.4 she has not accepted the oral family settlement as claimed by defendant No.1. She also disputes the legality and validity of the alleged Will dated 5.6.1996 of late Shri Sant Singh and Will dated 30.9.2012 of Smt.Kusum Kaur. She claims that she is owner of 1/3rd undivided share in the suit property. However, she has also not raised any challenge to the registered Conveyance Deed dated 20.7.1994 executed and registered by DDA in favour of late Shri Harkirat Singh and Shri Sant Singh.

27. Even otherwise, in view of the registered Conveyance Deed dated 20.07.1994, executed and registered by DDA in favour of Late Sh. Harkirat Singh and Shri Sant Singh, Sh. Hirkarat Singh had prima facie undivided 50% share in the said property at New Friends Colony. There has been no challenge to the said Conveyance Deed executed by the DDA.

28. In view of the said prima facie rights of late Shri Harkirat Singh which were inherited by the plaintiff it is appropriate that permission may be granted to the plaintiff to rent out the first floor of the said suit property in New Friends Colony. Even otherwise, leaving the first floor vacant would serve no purpose. Over time the property is likely to deteriorate and may also create other issues pertaining to law and order.

29. The contention of defendant No.1 about her safety and safety of defendant No.3 appears to be a misplaced contention. The entry to the staircase of the first floor is from a common drive way. It is not the case of defendants No.1,2 and 3 that entry to the first floor is through any area in their exclusive possession. The entry to the first floor by a third person does not in any way jeopardise the exclusive possession of defendants 1 to 3 to the ground floor. Hence, the

contention of defendants No.1 to 3 do not appear to be bona fide. Accordingly IA No.1354/2011 is allowed. The plaintiff is permitted to rent out the first floor of New Friends Colony Property including barsati and two servant quarters on the second and third floor. It is, however, clarified that such a letting out shall only be done by a Registered Lease Deed duration of which should not be more than 36 months at a time. A copy of the Registered Lease Deed shall be filed on record with copies to all other parties. All rentals received by the plaintiff would be subject to final orders or directions that may be passed by this Court at the time of final disposal of the Suit. CS(OS) No.2258/2010 List before the Joint Registrar on 03.02.2014 for further proceedings. JAYANT NATH, J NOVEMBER20, 2013 n

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