

Ranu Sen Vs. Kandarpa Sen

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Court : Delhi

Decided On : Nov-18-2013

Judge : Manmohan Singh

Appellant : Ranu Sen

Respondent : Kandarpa Sen

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment pronounced on: November 18, 2013 + CM(M) No.1091/2012 RANU SEN Through Petitioner Ms.Indrani Ghosh, Adv. versus KANDARPA SEN Through Respondent Ms.Meena Kumari, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner Ranu Sen (plaintiff No.1 in the suit) wife of the respondent Kandarpa Sen (defendant No.2 in the suit) under Article 227 of the Constitution of India for setting aside the impugned order dated 6th September, 2012 passed in the Civil Judge, Delhi in Suit No.391/2008.

2. The facts of the case in brief are that the petitioner is the wife of the respondent who has a marital dispute with her. The father of the respondent owned a leasehold property bearing No.B-239, Chittaranjan Park, New Delhi, by virtue of his status of a displaced person from the erstwhile East Pakistan. The father of the respondent expired in 1984. After his death, the respondent together with his

mother, sister and younger brother became the joint owners of the said property. In the year 1987, the respondent, his late brother and sister executed a relinquishment deed in favour of their mother for mutation purposes.

3. In 2005, the said property was re-built and four similar flats were constructed each having a separate ingress and egress. Two flats were constructed on the ground floor and two on the second floor while the first floor fell into the share of the builder.

4. The case of the petitioner before the learned trial Court was that as per the family settlement, one second floor flat fell into the share of the respondent and the other one on the second floor fell into the share of his sister, while one of the ground floor flats fell into the share of the respondents mother and the other into the share of his late younger brother who expired in 2008. It was further alleged that the respondent who had fallen into bad habits of drinking etc. used to physical torture the petitioner for money and dowry. Thus, the petitioner filed the suit for injunction being Suit No.391/2008 in May, 2008 against the respondent and his mother, sister etc.

5. The respondent filed the written statement dated 18th August, 2008. In the written statement, the respondent admitted the case of the petitioner in the suit as to 1/4th share for each of the four legal heirs in the suit property, i.e. 1/4th for the respondent and 1/4th each to his mother, brother and sister. Subsequently, the respondent in collusion with his mother, sister etc. by challenging his stand on 21st August, 2008 filed second written statement through another counsel whereby the facts stated in the said written statement are inconsistent with his previous pleadings in the earlier written statement dated 18 th August, 2008.

6. The factum of filing the two written statements by the respondent was pointed out before the learned trial Court on 26 th August, 2009. Learned counsel appearing on behalf of the respondent submitted before the learned trial Court that the written statement dated 21 st August, 2008 be treated as written submissions on behalf of the respondent. The respondent thereafter also filed an application dated 24th October, 2009 under Section 151 CPC wherein, for the first time, he alleged that he was misled and under duress of the petitioner and her counsel, he

had signed few papers without reading the contents and being an illiterate person, he could not read the same. The statement of the respondent was recorded on 24th October, 2009 wherein he has admitted to have filed the two written statements.

7. By the impugned order, the learned trial Court has ordered that the second written statement filed on 21st August, 2008 be taken as the written statement filed by the respondent and not the earlier written statement dated 18th August, 2008 as the same cannot be considered as the written statement of the respondent.

8. Now, the question before this Court is, as to whether the second written statement filed under Order VIII, Rule 1 CPC can give a go by to the first written statement wherein the stand taken by the respondent was in favour of the petitioner.

9. While passing the impugned order, the learned trial Court observed as under:

I perused the WS allegedly filed on behalf of the defendant No.2 on 18.08.2008 in the court and it is found that this WS was prepared on 18.08.2008 alongwith affidavit of defendant No.2 on the same date, then, how this WS was got received by counsel for the plaintiff on 08.08.2008. It shows that endorsements on it regarding receiving of this WS on 08.08.2008 is forged and fabricated. It shows that WS filed on 18.08.2008 allegedly on behalf of the defendant No.2, was not prepared with his free will. Moreover, since no presence has been marked to show as to who had filed it whether defendant No.2 himself or some other person, therefore, WS filed on 18.08.2008 cannot be considered as the WS of defendant No.2 and WS filed on 21.08.2008 on behalf of the defendant No.2 through his counsel Ms. Meena Kumari would be considered as the WS of defendant No.2. The application of plaintiff and of defendant No.2 U/s. 151 CPC are disposed off accordingly.

10. The Trial Court record was also summoned for the purpose of verifying the factual position of the matter. It appears from the record that there was no written statement dated 4th August, 2008 on the record to show that the written statement or affidavit was prepared earlier before filing of the written statement on 21st

August, 2008 which is the second written statement. The same is undated and is not supported by an affidavit of the respondent. The learned trial Court while passing the impugned order ignored the statement of the respondent whereas he has admitted that he has filed two written statements. With regard to the first one, he stated that he had signed certain papers without reading the contents. It is also pertinent to mention that in the second written statement, the factum of filing the earlier written statement is not disclosed. The vakalatnama of the counsel Sh.Gaurav Kumar is also dated 18th August, 2008 so as the written statement. The said vakalatnama is duly signed by the respondent who has also signed the first written statement (as defendant No.2 in the trial Court).

11. It is also pertinent to mention that the petitioner filed an application for taking off from the record the second written statement dated 21st August, 2008, to which the reply was filed on behalf of the respondent wherein it was denied by the respondent that he has filed the second written statement. He stated that he has only filed the written statement through his counsel Ms.Meena Kumari. He did not mention in the reply that he has already signed certain papers without reading the contents and has also engaged the counsel Sh.Gaurav Kumar who prepared the written statement and he has filed the same as well as his vakalatnama.

12. As far as his admission made in the first written statement is concerned wherein he has allegedly stated that he has only 1/4th portion of the property, i.e. portion of the second floor property and is the owner thereof by virtue of the family settlement, the fate of the same would be considered after the trial of the parties. It is also the admitted position that in the year 1987, the respondent as well as his sister and brother executed the relinquishment deed in favour of their mother. It is yet to be decided as to whether the petitioner has any right by virtue of the family settlement arrived at between the respondent and his family members or by way of relinquishment deed which was executed in favour of the mother.

13. As far as the present dispute between the petitioner and the respondent is concerned, I am of the considered view that the written statement filed on 18th August, 2008 has to be considered as the written statement filed by the respondent and not the second written statement filed by the respondent

subsequently on 21 st August, 2008. The findings of the learned trial Court are contrary to the record and against the law. However, the respondent is not debarred to take necessary steps to amend the written statement filed by him on 18th August, 2008 if so necessary as feel proper by him. The said amendment if sought would be considered in accordance with law 14. The present petition is accordingly allowed. The impugned order dated 6th August, 2012 is set-aside. (MANMOHAN SINGH) JUDGE NOVEMBER18 2013

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