

Smt. Basanti Devi Vs. Smt. Chandrawati

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Court : Delhi

Decided On : Jan-06-2014

Judge : Manmohan Singh

Appellant : Smt. Basanti Devi

Respondent : Smt. Chandrawati

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment pronounced on: January 06, 2014 + CM(M) No.908/2013 SMT BASANTI DEVI Through Petitioner Mr.Sumeet Verma, Adv. with Ms.Charu Verma, Adv. versus SMT CHANDRAWATI Through Respondent Mr.Varun Sharma, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The petitioner has challenged the order dated 15th May, 2013 whereby the application filed by the petitioner under Section 151 CPC directing the respondent to accept the payment as per the settlement has been dismissed.

2. Brief facts of the matter are that the petitioner who is the plaintiff in the learned trial Court is a widow aged above 75 years. She is the owner of the property bearing No.16/992, Bapa Nagar, Pyare Lal Road, Karol Bagh, New Delhi which was purchased by her from one Sh.Om Dutt.

3. In April, 1985, the petitioner was in need of some money and she borrowed a sum of `22,000/- from the respondent, on the condition that the respondent would

be given the possession of two rooms as part of the suit property, one of which the respondent would keep for her occasional personal use and the other one was to be used by the respondents daughter on rent basis.

4. It was decided that the rent due from the room used by the respondents daughter @ `150/- per month and the rent received from another tenant @ `200/- per month would be adjusted towards repayment of the loan.

5. The case of the petitioner is that the respondent got her thumb impressions on some blank papers and also secured a General Power of Attorney (GPA) dated 30th July, 1985 in favour of respondents son, namely, Sh.Diwan Chand as a lien towards repayment of the loan. There was no time frame stipulated for repayment of the loan.

6. In January, 1988, the petitioner approached the respondent for the return of property documents and issuance of clearance certificate with respect to the aforesaid repayment of the loan of `22,000/-. However, the respondent refused to return the property and informed the petitioner that she had secured an agreement to sell dated 15 th January, 1988 in her favour through petitioners attorney, namely, Sh.Diwan Chand (who is the son of the respondent) and thus, threatened to sell the suit property to a third person.

7. Left with no option, the petitioner filed a suit for declaration being Suit No.422/1988 in August, 1988 with a prayer that she may be declared as the owner of the suit property which is in possession of the respondent.

8. The respondent filed the written statement and averred that the suit property had been transferred to the respondent against the repayment of the loan of `22,000/- by executing an agreement to sell dated 15th January, 1988 executed by the power of attorney holder of the petitioner. After filing of the written statement, the petitioner filed the amended plaint in March, 1994 thereby adding consequential relief of possession of the part of the suit property which is retained by the respondent.

9. In the replication, the petitioner denied the execution of any power of attorney to sell the property or any agreement to sell by power of attorney holder Sh.Diwan Chand who is the son of the respondent.

10. Ultimately, both the parties finally decided to settle their disputes. Consequently, an application under Order XXIII Rule 3 CPC was filed jointly by both the parties on 28th April, 2005 along with a compromise deed signed by both the parties and an appropriate order for disposal of the suit in terms of the said compromise deed was passed on the same date. The compromise stipulated that the parties have settled their disputes and the petitioner would pay a total sum of `5 lac to the respondent as full and final settlement, out of which `4 lac were to be paid by the petitioner on or before 27th May, 2005 and the balance amount of `1 lac would be paid by the petitioner within six months, i.e. by 27th November, 2005. The respondent after receiving the said amount as per settlement would hand over the vacant and peaceful possession of the portion of the property in her possession to the petitioner. It was also mentioned in the settlement that in the event of failure of the petitioner/plaintiff to pay the stipulated amount of `5 lac, the respondent would be entitled to the ownership of the suit property on the basis of the transfer documents duly executed by the petitioner in favour of the respondent. There was no time frame contemplated for the invocation of the forfeiture clause except a penalty was to be imposed in the event of complete failure of the petitioner to pay the fixed amount of `5 lac.

11. It is the case of the petitioner that due to some personal difficulties, she was not able to pay the said amount, so she sought extension of time for payment of the decreed amount by filing an application before the learned trial Court.

12. The said application was allowed by order dated 16 th May, 2005 and the petitioner was allowed to make the payment in two installments by 28 th August, 2005. However, due to her ill-health, the petitioner could not coordinate with her son, who lived elsewhere and was not able to arrange said amount. It is alleged by the petitioner that when it was intimated to the respondent, she assured that she would honour the compromise agreement and there is no hurry to make the payment. However, after couple of years, when the full amount of `5 lac was

offered to the respondent, she refused to accept the same inter alia for the reasons that since the petitioner failed to comply the terms of compromise recorded in the Court, the respondent has now become the owner of the portion of the property which was given to her by the petitioner in lieu of loan of `22,000/-.

13. The petitioner thereafter moved an application dated 15 th October, 2008 before the learned trial Court seeking a direction to the respondent to accept the full compromise amount of `5 lac and in case of her refusal, the petitioner be allowed to deposit the said amount in Court itself.

14. The said application was listed for hearing on 20 th October, 2008 and a notice was issued to the respondent, who appeared in the Court on 1 st November, 2008. On that day, both the parties expressed their willingness to settle their disputes.

15. The matter was sent for mediation on 5th December, 2008 as agreed by the parties. However, in between December, 2008 and January, 2013, the matter kept on adjourning before the Mediation Cell but the parties could not be able to resolve their disputes.

16. The petitioner has stated that even when the matter was again listed on 10th January, 2013 in the Court for arguments on the petitioners application, again the respondent expressed her intention to settle the matter and once again the matter was sent for mediation.

17. However, the mediation was declared failed on 12th February, 2013 due to non-appearance of the respondent and the matter was re-sent and listed before Court on 23rd February, 2013 on which date the matter was posted for 15th May, 2013 for final arguments on the application.

18. On 15th May, 2013, the application filed by the petitioner seeking a direction to the respondent to accept the payment under compromise or alternatively a liberty to deposit the payment in Court was argued and the same was dismissed, mainly, on the reason that the petitioner had not been able to explain the delay in payment as settlement. The said order has been challenged by the petitioner before this Court in the present case.

19. It is the admitted position that the settlement was recorded in the joint application filed by the parties under Order XXIII Rule 3 CPC and the suit, under those circumstances, was decreed as per terms and conditions mentioned in the settlement agreement which was a part of the application.

20. As the petitioner failed to make the payment of `5 lac as per settlement, the respondent did not initiate any action by way of execution proceedings or otherwise for invocation of forfeiture clause which is in the nature of penalty imposed on the petitioner.

21. Notice was issued to the respondent who after receiving the same was represented by her Advocate. During the course of the arguments, the learned counsel for the respondent has not disputed the fact that the part of the suit property where the respondent is residing is owned by the petitioner. He has also admitted about the settlement arrived at between the parties by virtue of the compromise deed and the order passed thereon on 28 th April, 2005 in the application under Order XXIII Rule 3 CPC. He has also not denied the fact that thereafter, the parties were trying to settle their disputes during the years 2008 to 2013.

22. His main submission is that since the petitioner has failed to make the payment as agreed in terms of the earlier settlement, thus, his client/respondent is justified in not accepting the payment and as per settlement, she became the owner of the said property.

23. On the other hand, the learned counsel for the petitioner states that the respondent always had her eyes on the property given to her by the petitioner who had never intended to give the power of attorney to Mr.Diwan Chand the son of the respondent to sell the suit property. Mr.Diwan Chand is admittedly not the owner of the property in question. The agreement to sell dated 15th January, 1988 was unauthorized and without the permission of the petitioner and he, in fact, executed the said agreement in breach of trust in connivance with the respondent.

24. As far as the making of payment of `5 lac is concerned, it was admitted by the petitioner that there was a delay of couple of years for offering the said amount as

per settlement. It is explained by counsel that the said amount could not be arranged due to the petitioners bad health and other reasons given in the application, but the same were not discussed and considered by the learned trial Court. Counsel states that the petitioner is prepared to pay double of the said amount to the respondent in order to comply the said term of settlement.

25. The matter was adjourned from time to time for the purpose of settlement to consider the proposal given by the learned counsel for the petitioner. When the same was listed before Court on 20th December, 2013, the learned counsel for the respondent informed the Court that his client is not ready to settle the disputes and matter be considered on merit.

26. Having considered the pleading the rival submissions of the parties, it is admitted position that the learned trial Court had dismissed the application of the petitioner, on the reason that since the petitioner failed to comply with the condition of the settlement arrived at between the parties vide order dated 28th April, 2005 (even extension of time by order dated 16th May, 2005 up to 28th August, 2005) hence the application filed by the petitioner on 15th October, 2008 was not maintainable as the petitioner failed to satisfy the Court as to what steps were taken by the petitioner to make the payment in time.

27. From the impugned order, it appears that the difficulties explained by the petitioner in the application have not been considered, as the application of the petitioner was simply dismissed on the reason that the respondent is not willing to accept the payment. In the application, it was specifically mentioned that due to illness and weakness, the petitioner could not contact her son for a very long time, therefore, it was difficult for her to pay the settled amount within the stipulated time. Secondly, it was stated in the application that when the payment was not made in time, the respondent assured the petitioner that she had no objection on extension of time for making the said payment and the possession of the suit premises would only be handed over by the respondent to the petitioner after receiving the payment and there was no hurry. It was suggested to the petitioner that as and when the petitioner will pay the said agreed amount of `5 lac, the respondent will accept the same and hand over the peaceful possession of the suit

premises as per the settlement recorded in the Court on 28 th April, 2005. Despite of sufficient cause shown in the application, the learned trial Court had chosen not to discuss anything in the order. The application was dismissed without discussing the grounds stated in the application. Thus, I am of the view that the impugned order suffers from infirmity and is setaside.

28. So far as the application filed by the petitioner is concerned, the learned counsel for the petitioner upon instruction and in presence of the petitioner has made a statement that the petitioner is prepared to make the payment of the agreed amount along with penal interest fixed by this Court or the petitioner is even willing to pay double the amount i.e. `10 lacs fixed by the Court.

29. It is the admitted position that the petitioner is the owner of the suit property. The respondent has not denied the fact that two rooms were originally provided to the respondent against the loan of total sum of `2,200/- recorded by the petitioner in the year 1987. When the petitioner tried to return the said loan to the respondent in January 2008, the respondent refused to hand over the possession and did not accept the amount on the pretext that his son who is power of attorney of the petitioner had entered into the agreement to sell with the respondent. It is also the admitted position that the respondent has enjoyed the petitioners part of the property more than 28 years without paying any rent.

30. The settlement was recorded in the Court and the decree was passed accordingly in the application under Order 23 Rule 3 CPC and the same has not been denied by the respondent. The respondent has also not denied the position that from 2008 till 2013, both the parties were negotiating for settlement. The default of the petitioner is that as per the terms of settlement, there was a delay in making the payment.

31. The petitioner is now offering double amount in Court or any amount fixed, she undertakes to pay the same. However, the respondent is now reluctant to settle the dispute in view of the impugned order passed in her favour.

32. In the impugned order, the learned Trial Court has not discussed the grounds stated in para 2 to 6 of the application where the difficulties had been explained by

the petitioner. The application was dismissed without any valid reason.

33. From the entire gamut of the matter, I feel that the conduct of the respondent is not reasonable. Firstly, she did not accept the loan of `2,200/when offered in January 2008 and she made an execution by placing a copy of agreement to sell between herself and her son who was admittedly holding the power of attorney on behalf of the petitioner which was given to him for other purposes but he in breach of trust entered into an agreement with his mother. The conduct of the respondent speaks for itself.

34. In view of aforesaid reasons and facts of the present case, I am inclined to allow the application and to condone the delay on the application filed by the petitioner by allowing the present petition with the following conditions: a) That the petitioner shall pay a sum of `5 lac alongwith simple interest of 18% per annum from 29th August 2005 till the date of payment which shall now be made within three months from today. By this rate of interest, the respondent would be getting more than double amount as offered by the petitioner now. b) The respondent shall handover the peaceful and vacant possession of 2 rooms i.e. part of the suit property within six months from today. She shall not sub-let or create third party interest in the suit property.

35. With these directions, the present petition is disposed of.

36. No costs (MANMOHAN SINGH) JUDGE JANUARY06 2014

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