

Jai Singh and anr Vs. Man Singh and ors

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Court : Delhi

Decided On : Jan-09-2014

Judge : Hima Kohli

Appellant : Jai Singh and anr

Respondent : Man Singh and ors

Advocate for Def. : Mr. Kamal Jit Chhiber

Advocate for Pet/Ap. : Mrs. Rekha Palli, Ms. Amrita Prakash, Ms. Ankita Patnaik

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA4132009 Decided on 09.01.2014 IN THE MATTER OF : JAI SINGH AND ANR Appellants Through: Mrs. Rekha Palli, Advocate with Ms. Amrita Prakash and Ms. Ankita Patnaik, Advs. versus MAN SINGH AND ORS Respondents Through: Mr. Kamal Jit Chhiber, Advocate CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.

(Oral) CM APPL. 19404/2013 (by the respondents/defendants u/O XLI Rule 27 read with Section 151 CPC and Section 165 of the Indian Evidence Act) 1. The present application has been filed by the respondents/defendants praying inter alia for permission to produce additional documentary evidence.

2. Learned counsel for the respondents/defendants states that his clients had filed photocopies of twenty five documents under an index dated 22.05.2002, which

was subsequent to their filing the written statement in the trial court. The said list of documents includes copies of the lease deeds dated 11.08.1953 and 11.02.1954 executed by the Delhi Improvement Trust in respect of the subject premises No.11805-11806, Gali No.6, Sat Nagar, Karol Bagh, in favour of the respondents No.1 and 2, who were then minors, under the guardianship of their father, Shri Ram Singh. The said documents also include copies of two sale deeds, both dated 06.09.1940, executed by the legal heirs of Shri Budhu, the original lessee of the subject premises, in favour of the respondents/defendants No.1 and 2, that have been mentioned at Sr. No.1 and 10 of the list of documents. Learned counsel states that the respondents/defendants No.1 and 2 had averred in para 9 of the preliminary objection taken in the written statement that they are owners of the subject plots having purchased the same from the sons of late Shri Budhu by virtue of two separate sale deeds, both dated 06.09.1940 and that they are also owners of the built up structures that were constructed on the said plots. The respondents have further averred in para 3 on merits of the written statement that the subject plots were allotted by the Delhi Improvement Trust on the basis of Indentures dated 11.08.1953 and 16.02.1954.

3. Learned counsel for the respondents/defendants No.1 & 2 states that the aforesaid documents are very material for deciding the suit instituted by the appellants/plaintiffs praying inter alia for a decree of partition of the subject plots. However, the counsel who was conducting the case on behalf of the respondents/defendants in the trial court had committed a blunder by failing to place on record the original documents or producing the same at the time of admission and denial of documents, so that they could have been exhibited. As a result, the trial court did not have an opportunity to examine the aforesaid documents, the defendants having failed to exhibit them. He states that his clients ought not to be made to suffer for the folly of their counsel and interest of justice demands that the said documents be permitted to be produced by way of additional evidence and be taken into consideration.

4. Though notice has not been issued on the present application, learned counsel for the appellants/plaintiffs does not deny the fact that the aforesaid documents are necessary for purposes of adjudicating the suit, particularly, in the light of the

relief prayed for by them in the suit.

5. It is pertinent to note that in the accompanying appeal, the appellants/plaintiffs have assailed the judgment dated 25.09.2009 passed by the trial court dismissing their suit for partition and permanent injunction in respect of the subject properties. It is the case of the appellants/plaintiffs that they are entitled to seek partition of the aforesaid properties that were owned by Shri Ram Singh, father of the appellant/plaintiff No.1 and defendants No.6 and 7 (sons from the second wife of Shri Ram Singh, Smt. Krishna Pyari) and defendants No.1 and 2 (sons of Shri Ram Singh from his first wife, Smt. Badami).

6. The aforesaid suit was contested by the respondents/defendants No.1 & 2 on the ground that the suit properties were not owned by Shri Ram Singh, as alleged, but were owned by them. RFA4132009 above, while filing photocopies of the aforesaid indentures/sale deeds etc., the defendants had failed to file the originals thereof, much less produce the originals at the time of admission and denial. As a result, the trial court did not have the benefit of perusing the said documents for purposes of deciding the issues framed in the suit that are reproduced hereinbelow for ready reference :- 7.

1. Whether the plaintiffs have no locus standi to file the present suit?. OPD2 Whether the present suit is bad for non-joinder of the necessary party?. OPD-7 3. Whether the present suit has not been properly valued for the purpose of court fee?. OPD-7 4. Whether the plaintiffs have no cause of action to file the present suit?. OPD5 Whether the plaintiffs are entitled to a preliminary decree of partition, as prayed for?. OPP6 Whether the plaintiffs are entitled to a decree of permanent injunction, as prayed for?. OPP7 Relief The onus in respect of issues No.1 and 4 pertaining to their locus standi and cause of action for the appellants/plaintiffs to institute the suit was placed on the respondents/defendants and after considering the evidence available on record, the aforesaid issues were decided in favour of the respondents/defendants and against the appellants/plaintiffs. The said decision is mainly based on the deposition of PW-1, i.e., the appellant No.1 and on documents exhibited as Ex.PW-1/3 to PW-1/5, which are the Jamabandies of the suit plots pertaining to the years, 1939-40, 1943, 1944 and 1975-76. The said

documents were placed on record by the appellants/plaintiffs but they had claimed that they had been forged and fabricated at the instance of the defendants No.1 and 2. The impugned judgment also took into consideration Ex.PW-1/8, an election identity card of the respondent No.1 and Ex.PW-1/7, the school leaving certificate of the respondent No.2, apart from the testimony of DW-1(defendant No.1) to observe that during his cross-examination, nothing material had come on record to suggest that the subject properties were not owned by the defendants or the construction was not raised with funds arranged by their mother. Consequently, the trial court concluded that the appellants/plaintiffs had failed to prove that they had any right in the subject properties or had the locus standi to institute the suit, much less any cause of action to seek the relief as prayed for. As a result, the suit was dismissed.

8. Now the respondents/defendants have filed the present application seeking leave to produce the original documents, photocopies whereof were already placed on record by them before the trial court, and grant of permission to have the admission and denial thereof conducted so that they can be exhibited in accordance with law and a fresh decision taken by the trial court.

9. Section 107 of the CPC empowers the appellate court to take additional evidence or to require such evidence to be taken, subject to such conditions and limitations as may be prescribed. Rule 27 of Order 41 of the CPC prescribes the conditions and limitations placed on this discretion. The Rules starts by laying down that the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the appellate court. It then proceeds to carve out two circumstances where the appellate court may allow additional evidence to be produced. The first circumstance is where the court appealed from has refused to admit such evidence that ought to have been admitted and the second circumstance is where the appellate court requires such evidence either to enable it to pronounce judgment or for any other substantial cause. As observed by the Supreme Court in the case of Wadi Vs. Amilal & Ors. reported as 2004 (1) SCALE82 invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record, it feels that admission of

additional evidence is necessary to pronounce a satisfactory judgment in the case.

10. In the present case, for the issue of title of the subject properties to be established satisfactorily, it was necessary that the ownership documents come on record. However, in the absence of the best evidence, the trial court had no option but to decide the issue of the locus standi of the appellants/plaintiffs and cause of action on the basis of secondary evidence including entries made in the revenue records dating back to the year 1939-40 and 1943-44, which could only throw light on the status of occupation of the subject properties. For purposes of dispelling the obscurity on the issue of title, which is of paramount consideration in a suit of partition, interest of justice demands that the documents of title relating to the subject premises and in the power and possession of the respondents/defendants be looked into to arrive at a just and correct decision.

11. Accordingly, the originals of the documents relating to the title of the subject premises, photocopies whereof were filed by the respondents/defendants in the trial court under index dated 22.5.2002 are permitted to be taken on record as additional evidence.

12. However, considering the fact that it is on account of failure on the part of the respondents/defendants to file the original title documents that had an important bearing on the case and were material for the consideration of the trial court, for purposes of satisfactorily adjudicating the present suit, it is deemed appropriate to allow this application subject to payment of Rs.50,000/- as costs to the other side within four weeks.

13. Resultantly, the appeal is allowed and the impugned judgment is set aside. In view of the fact that the additional evidence has been allowed to be produced by the respondents/defendants, the case is remanded back to the trial court for the parties to appear before the said Court, conduct admission and denial of the original title deeds of the subject properties that shall be filed by the defendants and/or produced on the date that may be fixed and for further proceedings in accordance with law.

14. At this stage, counsel for the appellants/plaintiffs states that during the pendency of the suit before the trial court, an interim order had been operating in favour of the appellants/plaintiffs, restraining the respondents/defendants from transferring, selling or alienating the suit properties and the said protection may be extended to her clients till the trial court adjudicates the suit afresh.

15. In response, counsel for the respondents/defendants states that his clients undertake not to sell, transfer or alienate the suit properties in any manner, till fresh adjudication of the suit is undertaken by the trial court.

16. While binding the respondents to their undertaking as recorded above, the appeal is disposed of.

17. The parties are directed to appear before the trial court on 28th February, 2014, for further proceedings.

18. The trial court record be released forthwith. JANUARY9 2014 rkb/mk RFA4132009 (HIMA KOHLI)

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