

N.J. Kanwar Vs. Ranjit Charles Singh (Since Deceased) and anr.

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Court : Delhi

Decided On : Apr-04-2014

Judge : Manmohan Singh

Appellant : N.J. Kanwar

Respondent : Ranjit Charles Singh (Since Deceased) and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment pronounced on: April 04, 2014 CM(M) No.1161/2012 & C.M. No.18218/2012 (for stay) N.J.

KANWAR Through Petitioner Mr.Arun Khosla, Adv. with Ms.Shreeanka Kakkar, Adv. versus RANJIT CHARLES SINGH (SINCE DECEASED) & ANR Respondents Through Mr.Sandeep Sethi, Sr.Adv. with Mr.Chetan Chawla, Adv. for R-2. AND + CM(M) No.1182/2012 & C.M. No.18468/2012 (for stay) PANCHSHILA HOSPITALITY VENTURES LTD. Petitioner Through Mr.Arun Khosla, Adv. with Ms.Shreeanka Kakkar, Adv. versus RANJIT CHARLES SINGH (SINCE DECEASED) & ANR Respondents Through Mr.Sandeep Sethi, Sr.Adv. with Mr.Chetan Chawla, Adv. for R-2. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The abovementioned petitions have been filed by two petitioners who are the plaintiffs in the learned Trial Court. In the petitions, both have challenged the orders dated 26th September, 2012 whereby their applications under Order 22

Rule 4(4) of the Code of Civil Procedure (hereinafter referred to as the Code) were disposed of.

2. The petitioners filed the suit for specific performance of the Agreement to Lease between previous owner and the petitioner, against respondent No.2 herein seeking direction by way of decree against the previous owner to perform the agreement and execute the lease deed in respect of the suit property as per the site plan at a monthly rental of `1,500/-. The main case of both the petitioners is that the previous owner settled her dispute with the petitioners. The orders dated 18th October, 2007, 5th November, 2007 and 23rd November 2007 evidence the compromise arrived at between them resulting in the dismissal of the eviction petition filed by the previous owner.

3. The suits were filed on 4th August, 2008 on the basis of the oral agreement/lease against them. The suit property was sold to the defendant No.2 (respondent No.2 herein) on 26th July, 2007. Admittedly deceased Smt.Ranjit Charles Singh (defendant No.1 in the suit proceedings and respondent No.1 herein), previous owner, did not appear after the service. No written statement was filed by her. The respondent No.2 in her suit for ejection filed an application under Order XXII Rule 4(4) read with Section 151 of the Code seeking exemption from necessity of substituting the legal representatives of the deceased Smt.Ranjit Charles Singh. The same was granted by order dated 4th June, 2012.

4. It was stated by the respondent No.2 that the suit property has already been sold by previous owner by way of registered sale deed. The respondent No.2 has already terminated the tenancy of the suit property and suit for possession and damages is pending prior to the suits filed by the petitioner. Thus, the respondent No.1 i.e. previous owner Smt.Ranjit Charles Singh was left with no right, title or interest in the suit property. The petitioner on the date of filing of the suit for specific performance was aware that no relief could have been claimed against deceased Smt.Ranjit Charles Singh. The respondent No.2 is contesting the said two suits, being the bonafide purchaser of the suit property and is the only necessary party in the suits to determine the real dispute. According to respondent No.2 both the suits are not maintainable since they have been filed on the basis of

oral agreement which has never been arrived at between the petitioners and the previous owner. Both suits are false and frivolous.

5. It is argued by Mr.Khosla, learned counsel appearing on behalf of the petitioners that Mrs. Ranjit Charles Singh did not enter appearance and did not file her written statement in the suits filed by the petitioners for specific performance. Respondent No.2 has been exempted from substituting her legal heirs in the suit filed by the respondent No.2 for ejectment. The respondent No.2s application was allowed by order dated 4th June, 2012, thus, the learned Trial Court has grossly erred in dismissing the application by observing that more clarity with regard to the veracity of the affidavits by the deceased would emerge if the LRs are brought on record. Counsel argued that more confusion would occur if they are brought on record and veracity of the affidavit is communicated by LRs. The said findings are irrelevant and affidavit filed by Mrs.Ranjit Charles Singh could not be examined in the absence of written statement. Non-filing of written statement confirms that there was a transaction of the oral agreement of lease between her and petitioners. Mr.Kholsa refuted the argument of Mr.Sethi as far as merit of the cases are concerned.

6. It is the admitted position that the petitioners in their application have made alternative prayer that in case, the Court is not inclined to exempt them to bring on record the legal heirs of the deceased, then the legal representatives be brought to be made parties as per details given in the application.

7. To appreciate the controversy between the parties, it would be useful to reproduce Order 22 Rule 4 of the Code which reads as under :

Order XXII-Rule 4:

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where- (a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and (c) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963) for setting aside the abatement and also for the admission of that application under Section 5 of the Act on the ground that he had, by reason of such ignorance sufficient cause for not making the application within the period specified in the said Act. the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved.

8. It is clear from Sub-rule (1) of Rule 4 of Order XXII of the Code that in case of death of one of the defendants, if there are more than one defendants or in the case of death of sole defendant, if the right to sue survives, LRs have to be brought on record by an application made in that behalf. Sub-rule (3) of Rule 4 of Order XXII of the Code provides that where within the time limited by law, no application is made under Sub-rule (1), the suit shall abate as against the deceased defendant. Sub-rule (4) provides that the Court, whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of the deceased/defendant : (a) if he has failed to file a written-statement; or (b) having filed the written-statement has failed to appear and contest the suit at the hearing; 9. It is apparent that if the death occurs of a defendant who has not filed

his written-statement or has remained absent and has not contested the suit, the plaintiff can be exempted from the necessity of substituting the legal heirs of the deceased defendant. Therefore, Rule 4 (4) of the Code is by way of an exception to Rule 4(1) and Rule 4 (3) of Order XXII of the Code providing for the necessity of bringing legal heirs of deceased defendant on record.

10. In the present case, both suits were filed on 4th August, 2008 by the petitioners for specific performance after the suit property was already sold by the previous owner Smt.Ranjit Charles Singh to the respondent No.2. From record it is evident that the petitioners were aware about the said factum of sale in favour of the respondent No.2. Admittedly after the purchase of suit property, the respondent No.2 already filed a suit for possession and damages on 26th May, 2008 who is contesting the suits filed by the petitioners. It is also correct that in her suit, similar prayer in the application for exemption to bring on record LRs of previous owner has been allowed on 4th June, 2012 wherein it was held that the presence of the legal representatives is not required in view of the fact.

11. In view of the above facts and circumstances and after having gone through the provision of Order XXII Rule 4(4) of the Code, it appears to the Court that there is force in the submission of Mr.Khosla, learned counsel appearing on behalf of the petitioners. The learned Trial Court in the impugned order despite of having noticed that neither written statement was filed by deceased Smt.Ranjit Charles Singh nor the suits were contested by her, still passed an order to bring on record the legal representatives of the deceased mainly on the reason that the deceased sent her affidavit along with documents to the Court and in order to clarify with regard to veracity of the said documents. The Court felt that the appearances of legal representatives of the deceased are necessary in order to complete the adjudication of the said suits.

12. I agree with Mr.Khosla that the rejection of the application under Order XXII Rule 4(4) of the Code filed by his client is not correct because the legal representatives of the deceased cannot be expected to prove or disprove an oral agreement of which specific performance is sought. The law is well settled that the legal representatives cannot take a stand different when the deceased herself did

not file the written statement and did not contest the suits.

13. Therefore, the impugned orders passed in both petitions are legally incorrect and contrary to law and facts.

14. Under these circumstances, the prayer made in the application to exempt the petitioners from bringing on record the legal representatives of the deceased is allowed.

15. Both petitions, being CM(M) No.1161/2012 and CM(M) No.1182/2012, are disposed of accordingly. No costs. (MANMOHAN SINGH) JUDGE APRIL04 2014

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