

Smt.Kamlesh Aggarwal and ors. Vs. Smt.Veena Rani Aggarwal and ors

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Court : Delhi

Decided On : May-29-2014

Judge : Jayant Nath

Appellant : Smt.Kamlesh Aggarwal and ors.

Respondent : Smt.Veena Rani Aggarwal and ors

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Pronounced on :

29. 05.2014 + CS(OS)2337/2008 SMT.KAMLESH AGGARWAL & ORS. Plaintiff Through Mr.Himanshu Upadhyay, Advocate. versus SMT.VEENA RANI AGGARWAL & ORS. Defendants Through Mr.J.P.Gupta, Advocate. CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

IA No.7431/2011 (u/O7R11CPC) in CS(OS)2337/2008 1. This is an application filed by defendant No.4 under Order 7 Rule 11 CPC for rejection of the plaint on the ground of not having paid adequate court fees.

2. Plaintiff No.1 is the mother of plaintiffs No.2 and 3. The plaintiffs are the legal representatives of late Sh.Vijay Kumar Aggarwal. The dispute pertains to the estate pertaining to late Sh.Vijay Kumar Aggarwal. It is urged that the mother of late Sh.Vijay Kumar Aggarwal vide Will dated 17.11.1969 of her father, inherited 55% share in the property bearing No.C40, South Extension, Part-I, New Delhi. On the death of the mother on 04.10.2002, her estate intestate devolved upon the

legal heirs being late Sh.Vijay Kumar Aggarwal, the deceased husband of plaintiff No.1 and father of plaintiffs No.2 and 3 and the defendants in equal proportion. CS(OS) No.2337/2008 page 1 of 4 3. It is further urged that defendant No.4 has mischievously got executed some stamp papers and some documents in good faith from her late husband Vijay Kumar Aggarwal. Later on, it is urged that defendant No.4 is claiming that late Sh.Vijay Kumar Aggarwal executed a Relinquishment Deed dated 09.12.2002 whereby he relinquished his share in the South Extension property in favour of defendant No.4. It is urged that the Relinquishment Deed dated 09.12.2002 is either forged or fabricated.

4. The rights are also claimed in a farm house and other properties which are mentioned in Schedule A of the plaint.

5. The plaintiff seeks the relief of declaration that the Relinquishment Deed dated 09.12.2002 allegedly executed by the husband of plaintiff No.1 be declared null and void and a preliminary decree of partition be passed declaring plaintiffs share as 1/5th in the properties left behind by the parents of the deceased husband of plaintiff No.1 and father of plaintiffs No.2 and 3. Other connected reliefs are also sought.

6. There was much delay in filing of the court fees by the plaintiff. None of the parties has so far filed written statement.

7. Instead defendant No.4 has filed the present application. It is stated in the application that the plaintiffs are claiming 1/5th share in the property No.C-40, South Extension, Part-I, New Delhi and other properties detailed in Annexure-A to the plaint. Reliance is placed on para 36 of the plaint to claim that though the properties are valued at `1.50 crore, the plaintiff has filed a court fees of `90/- only. It is further urged that from a reading of the plaint it is amply clear that there is complete ouster of possession from the suit property and hence, it is urged that ad valorem court fee is required to be paid. Based on the same it is urged that an order be passed rejecting the plaint filed by the plaintiff being insufficiently stamped. CS(OS) No.2337/2008 page 2 of 4 8. A perusal of the plaint shows that the plaintiffs have very vaguely drafted the para pertaining to court fees. Para 36 of the plaint reads as follows:

36. That for the purpose of jurisdiction, for the relief of partition the suit is valued at `1.5 crore for the purpose of relief of rendition of account at `200/- for the relief of Mandatory injunction at `130/- for the relief of permanent injunction at `130/- and the requisite court fee has been paid.

Though the suit is valued for the purposes of jurisdiction for partition of property at `1.50 crore, value of the requisite court fees which is to be paid on this valuation of `1.50 crore appears to have been left out. Presumably this might be due to inadvertence. However, it transpires that the plaintiff has after filing of the present application based on a valuation of `1.5 crore, paid the ad valorem court fees of `1,48,744/-. The present application was filed on 29.04.2011. The issue of non-payment of court fees is discussed in various orders passed by the court including order dated 09.11.2011, 06.01.2012 and 05.10.2012. It appears that the court fee has been filed without seeking an extension of time from the court. Be that as it may, the court fee is now on record since 18.01.2012. Hence, it cannot be said that the plaintiff has not filed ad valorem court fees based on the valuation given to the properties in the plaint. In light of the above fact, in my view there is no merit in the application filed by defendant No.4 under Order 7 Rule 11 CPC. The plaintiff having valued the relief for partition at `1.50 crore has paid ad valorem court fees on the said amount.

9. That apart, the legal position is that in case of co-owners, possession by one is in law of all. Unless ouster or exclusion is proved, a co-owner is deemed to be in joint possession in law. It is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally, CS(OS) No.2337/2008 page 3 of 4 it is not necessary that he should be getting a share or some income from the property (Reference: Neelavathi and Ors. vs. N. Natarajan and Ors., (1980) 2 SCC247. It would be a disputed question of fact as to whether there is complete ouster of the plaintiff from the possession of the suit property. This issue cannot be decided at this stage. It would be open to the defendants to press for an issue on the same and seek to prove the same in the course of evidence.

10. Learned counsel for the defendants has relied upon the judgments of this court in the case of Saroj Salkan vs. Sanjeev Singh & Ors., 2008 (155) DLT300 and Anil

Kumar Bansal vs. R.K.Bansal, 2013 (198) DLT723to contend that where there is complete ouster of a joint owner from possession, it would be necessary for such a person to pay requisite ad valorem court fees. None of these judgments would be applicable to the facts of the present case as the plaintiffs have paid the ad valorem court fees.

11. The application is accordingly dismissed.

12. No order as to costs. CS(OS)2337/2008 List before the Joint Registrar on 06.08.2014. JAYANT NATH (JUDGE) MAY29 2014 rb CS(OS) No.2337/2008 page 4 of 4

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