

Malti Varma and anr Vs. Manoj Varma

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Court : Delhi

Decided On : Jan-09-2014

Judge : V.K.Shali

Appellant : Malti Varma and anr

Respondent : Manoj Varma

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + C.S. (OS) No.481/2012 Decided on
:

09. 01.2014 MALTI VARMA & ANR Through: Plaintiff Mr.Jagjit Singh, Adv.
versus MANOJ VARMA Through: Defendant Mr.Mrityunjay Kumar and
Mr.Rishi Bhatnagar, Advs. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K.
SHALI, J.

(ORAL) 1. This is a suit for declaration and permanent injunction.

2. I have heard the learned counsel for the parties with regard to maintainability of
the suit on account of lack of cause of action. Before dealing with the said issue, it
may be pertinent to give a brief background of the case.

3. The suit for declaration and permanent injunction was filed by Ms.Malti Varma
and Mrs.Amita Kapoor against Sh.Manoj Varma. C.S. (OS) No.481/2012 Smt.Malti
Varma is the mother of Page 1 of 9 Mrs.Amita Kapoor and Mr.Manoj Varma. The

husband of Smt.Malti Varma was stated to be employed in Indian Army as a Major and he had seriously got injured in the year 1965 during the Indo-Pak war. On account of having suffered serious injuries in his spine he had become paralytic. The husband of Smt.Malti Varma died after a prolonged illness on 11.11.1971. At the time of death of the husband of Smt.Malti Varma/plaintiff No.1,the plaintiff No.2/Mrs.Amita Kapoor was aged 9 years and the defendant/Mr.Manoj Varma was aged around 7 years. Smt.Malti Varma was allotted a gas agency in terms of the policy of the Government of India in order to provide scour to war widows. In addition to this, she was also allotted a plot measuring 210 square metres by way of a perpetual lease on 23.05.1972 and supplementary perpetual lease deed dated 16.11.1972. This plot of land was numbered as 97, Uday Park, Masjid Moth, New Delhi (hereinafter referred to as the suit property). The total sale consideration of the aforesaid suit property was stated to be Rs.3,150/-. 25% each of the total cost of the aforesaid plot of land was paid by DDA and Delhi Jawans Welfare Fund and the balance 50% was paid by plaintiff No.1/Smt.Malti Varma. Subsequent thereto, Smt.Malti Varma got the structure raised on the said plot from her income earned from the gas agency and the family pension which she used to get from Government of India. The structure raised on the aforesaid plot of land by the end of 1973 was ground floor, first floor and the second floor with mumty on the terrace. In 2001, the plaintiff No.1 got the aforesaid property converted into freehold and thus the conveyance deed was in her name. The plaintiff No.2 got married on 09.12.1984 and is living with her husband while as the defendant got married in September, 1991 and had been initially living on the ground floor along with his mother, but thereafter shifted to the first floor while as the mother kept on staying on the ground floor. In between, the defendant had got transferred to Taiwan, Korea and then permanently shifted to the USA on account of exigency of service. It was alleged in the plaint that the plaintiff No.1 on 30.04.2010 executed a Will by virtue of which she bequeathed 50% of the share in her immovable assets to plaintiff No.2, her daughter and the balance 50% in favour of the defendant, her son. It is alleged that in the month of June, 2010, the defendant came to India and stayed with his mother/plaintiff No.1 till the first week of August whereafter he left. It is alleged that around that time, the plaintiff No.1 got a gift deed executed of the entire property from plaintiff No.1 in favour of the defendant. It is alleged that the

plaintiffs were shocked to learn that this gift deed was got signed by the defendant from plaintiff No.1 by misrepresentation, fraud and undue influence on 28.07.2010 and the plaintiff No.1 did not know that she was transacting the property in favour of the defendant. On learning these facts, the plaintiffs challenged this gift deed as they alleged that this fact was discovered by them for the first time in the second week of January, 2012 and accordingly the present suit was filed seeking a declaration that the gift deed dated 28.07.2010 registered with the Sub Registrar and purported to have been executed by plaintiff No.1 in favour of defendant be declared null and void and the suit property be declared a joint family property. Consequently, the relief of permanent injunction is prayed. The plaint is signed by the plaintiffs and is duly supported by the affidavits of the plaintiffs.

4. After the service of the defendant, plaintiff No.1 appeared in the court on 02.08.2013 and she was identified by her counsel and she stated before the learned Joint Registrar that she had never agreed to file the present suit nor did she ever sign the plaint. The statement of plaintiff No.1, after verifying her identity through photocopies of the passport, election ID and PAN card, was recorded. She had also seen her signatures on the plaint as well as the vakalatnama and stated that she could not say if the same were her signatures or not. She had also denied having ever signed such papers. After recording of her statement, the plaintiff No.1 filed IA Nos.12156/2013 and IS No.14064/2013. Both these applications were taken up by the learned Joint Registrar on 28.09.2013 when her statement was recorded afresh wherein she stated that she does not wish to continue with the litigation and wants to withdraw her vakalatnama in the name of Mr.Jagjit Singh, Adv. and further stated that she wants to withdraw all the allegations leveled in both the IAs. Thus, her name was deleted from the array of plaintiffs and the suit survived only between plaintiff No.2 and the defendant.

5. I have heard Mr.Jagjit Singh, the learned counsel for plaintiff No.2, who has stated that the suit property is a joint Hindu family and, therefore, the suit has to continue. As against this, the learned counsel for the defendant, who is a resident of USA, has contended that in view of the fact that plaintiff No.1 has withdrawn her name from the array of plaintiffs who admittedly was the owner of a property and is purported to have gifted the suit property in favour of the defendant voluntarily way

back in 2010, therefore, the present suit seeking challenge to the gift deed by the plaintiff No.2 itself is not maintainable as he has no locus to file the suit. In this regard, he has drawn the attention of the court to Order 7 Rule 11(a) CPC which enables the court to reject the plaint if it is filed without any cause of action.

6. I have carefully considered the submissions made by the respective sides. I find force in the statement made by the learned counsel for the defendant that the suit is liable to be rejected as it is without any cause of action. The cause of action is a bundle of facts which gives an occasion to an aggrieved party to come to the court for redressal of his grievance. In the instant case, it is not in dispute that that the suit property was allotted to plaintiff No.1 (since deleted). It is also not in dispute that the suit property was got converted by her into freehold in 2001 and thus she being the sole owner of the property and the title or the status of the property not being in question as an individual property of plaintiff No.1, it was open only to plaintiff No.1 to file a suit challenging the gift deed which was purported to have been made by her in favour of her son. She is alleged to have made the gift deed in respect of the suit property on 28.07.2010 in favour of her son which she tried to retract by alleging that the said gift deed had been signed by her on the basis of misrepresentation, fraud or undue influence. These allegations were subsequently withdrawn by her and as it seems that the wisdom dawned on her not to be a party to the dispute between the brother and the sister, who happen to be her children. Having successfully got her name deleted from the array of parties and not pursuing the applications which she chose to file making allegations against the defendant/her son or plaintiff No.2/her daughter, it is not open to anybody else to continue with the suit and thus because of these reasons, I feel that the suit which has been filed by plaintiff No.2, who is daughter of plaintiff No.1 and sister of the defendant, is without any cause of action. Such suit has to be dealt with under Order 7 Rule 11(a) CPC and the only order which can be passed is that the plaint is liable to be rejected.

7. For the above reasons, I accordingly reject the plaint under Order 7 Rule 11(a) CPC on account of there being no cause of action. IA Nos.3729/2012, 12157/2013 & 13033/2013 1. In view of the plaint having been rejected, no further directions are called for on these applications.

2. The applications stand disposed of. V.K. SHALI, J.

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