

Om Kumari Vs. Sanjeev Kumar Kapoor and ors

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Court : Delhi

Decided On : Sep-09-2014

Judge : G. S. Sistani

Appellant : Om Kumari

Respondent : Sanjeev Kumar Kapoor and ors

Judgement :

\$~ 18 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 1977/2013
Date of decision :

09. h September, 2014 % OM KUMARI Through: Plaintiff Mr.Manish Makhija, Advocate versus SANJEEV KUMAR KAPOOR & ORS Defendant Through: Mr.R.Y. Kalia, Advocate CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J.

(ORAL) I.A. 16472/2013 (EXEMPTION) 1. Allowed, subject to just exceptions.

2. Application stands disposed of. I.A. 6382/2014 3. This is an application filed by the plaintiff under Order 12 Rule 6 CPC seeking a judgment on admission.

4. The necessary facts which have led to filing of the present suit are that the plaintiff is the mother of defendant no.1 and mother-in-law of defendant no.2. She claims ownership over the flat in question being No.80/7B, first floor, Malviya Nagar, Delhi, containing two bed rooms, one drawing room, two toilets, one

kitchen and a balcony.

5. According to the plaint, this flat was purchased by the plaintiff from her own funds by means of a registered GPA, SPA, Will and agreement to sell of 31.3.2004. On account of a family discord, the plaintiff, who is residing in the said flat along with her old and ailing husband pray for possession of the flat. According to them, the conduct and behaviour of the defendant is extremely rude and unbecoming of a son and daughter-inlaw.

6. It is also the case of the plaintiff that repeated requests to vacate the premises have been made, which have not yielded any fruitful result. On account of their behaviour and threatening attitude, the plaintiff also lodged a complaint with the police, however, the defendants continue to extend threats to the plaintiff and her husband and they have made their old age miserable.

7. It is also the case of the plaintiff that the defendants have been continuously harassing and humiliating the plaintiff and her old husband and also they are living under constant fear and threat. The plaintiffs also claim to have disowned the defendants by issuing a public notice on 28.3.2012 published in Veer Arjun newspaper. Plaintiff also filed a suit for injunction, which has since been withdrawn. Counsel for the plaintiff submits that the documents with regard to ownership i.e. agreement to sell, GPA, SPA have not been disputed by the defendants, hence the plaintiff is entitled to a decree under Order 12 Rule 6 CPC.

8. Counsel also submits that in the absence of any plausible defence, no issue really arises for consideration and the court can pass a decree under Order XII Rule 6 and also under Order XV CPC.

9. The present application under Order 12 Rule 6 CPC is opposed by counsel for the defendant on the ground that to take aid of Order XII Rule 6 CPC, the plaintiff must show that the admission is unqualified, clear and without any reservation. Counsel for the defendant further submits that the defendant had contributed a sum of Rs.3.0 lacs towards purchase of the flat in question with an oral understanding that he and his family would be permitted to reside at the flat for their lifetime.

10. Counsel for the defendant also submits that the agreement to sell sought to be relied upon by the defendant is not admissible in evidence, as the same has not been registered.

11. Counsel for the plaintiff submits that the defendant has taken the plea that the plaintiff is not the owner of the suit property and he has contributed towards the purchase of suit flat, which is also evident from his signatures on the agreement to sell as a witness.

12. Counsel for the plaintiff has placed reliance in the case of Vimal Khanna & Anr. Vs. Kishan Chand Khanna 2010 (116) DRJ251(DB). In the aforesaid matter, an appeal was preferred against the order of the Single Judge, in which case the Single Judge in similar circumstances in a suit filed by senior citizen against his son and daughter-in-law sought a decree on admission, which was granted by the Single Judge. In the appeal the order of the Single Judge was upheld. The defence sought to be raised in the abovesaid judgment and in the present case is incidentally similar, except that in the present case contribution is stated to be made for purchase of the flat by the defendant.

13. The only defence raised by the defendants in the written statement in this case is that the defendant had contributed a sum of Rs.3.0 lacs for the purchase of the flat. This defence of the defendant is baseless, as not a single document has been filed to lend support. Further the agreement to sell placed on record by the plaintiff shows that the total sale consideration was fixed at Rs.5.25 lacs, which was paid by demand draft no.404254 dated 5.2.2004. The second plea which has been raised by the defendant is that the plaintiff had agreed to allow the defendants to stay in the flat for life. This plea is also not substantiated by any document which has been placed on record.

14. In my view there is no defence raised by the defendants, which requires trial in the matter and the present suit can well be decreed under Order XII Rule 6 CPC. As far as the objection with regard to the registration of the agreement to sell is concerned, the same is also without any force, as the agreement to sell placed on record stands duly registered in the office of Sub-Registrar in Book No.1 Volume No.3, 926 at pages 1 to 8 on 31.2.2004.

15. In a similar situation, this Court in the case of Ashoka Estate Pvt. Ltd. & Ors. Vs. Dewan Chand Builders Pvt. Ltd. and Ors., reported at 159 (2009) DLT233 has held as under:

26. The plaintiffs if otherwise found entitled to a decree on admissions, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon. This court is to read the pleadings of the parties meaningfully. Issues are to be framed on material and not all propositions of law and fact. A plea, which on the face of it is found by the court to be untenable, does not require the framing of any issue. The pleas of the defendants in the present case are found by me to be such, without calling for any trial whatsoever. If the said pleas of the defendants on the basis whereof the admitted liability of the defendants is sought to be defeated, are found to be untenable, naturally the impediment to the passing off a decree on the basis of admissions disappear. The apex court in T. Arvindam Vs. T.V. Satyapal AIR 1977 SC2421 has held that if on a meaningful-not formal-reading, claim is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial court should ensure that bogus litigation is shot down at the earliest stage. Again, in Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I & Another (2004) 9 SCC512 it was held that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of suit; the court should interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the courts resources being used up in cases which will serve no useful purpose. It was further held that a litigation which in the opinion of the court is doomed to fail should not further be allowed to be used as a device to harass. The said propositions equally apply to written statements/defence to the claim also.

16. At this stage, counsel for the defendants on instructions from the defendants submits that in case six months time is granted, they will hand over vacant peaceful possession of the flat in question to the plaintiff.

17. The statement made by the defendants shall be treated as an undertaking to the court. Since there is only one kitchen and to avoid any dispute, it is also agreed that the plaintiff will be entitled to prepare all meals first and then the

defendants will prepare their meals. All electricity and water bills shall be paid by the defendants. Defendant No.1 undertakes to the court that he would not cause any harassment or humiliation to his parents in any manner whatsoever. The statement made by the defendant no.1 is accepted and taken on record. Defendants shall remain bound by the statement made in court today. The defendants have been explained the consequences of breach of undertaking. The parties will cooperate with each other.

18. Concerned Magistrate of the area shall appoint a protection officer, who will visit the house of the plaintiff initially once a week to ensure that there is no harassment to the plaintiff and her old husband and render protection to the plaintiff, if required. The plaintiff is also present in court and also undertakes to the court that she will not precipitate the matter any further; and she will permit her son and daughter-in-law (defendants herein) to stay peacefully for six months.

19. In case the defendants vacate the premises within six months, plaintiff will not claim any mesne profit or damages for use and occupation (past or future).

20. The present application stands allowed and the suit [CS(OS) 1977/2013]. stands decreed in above terms. G.S.SISTANI, J SEPTEMBER09 2014 ssn /pdf

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