

**Davinder Singh Vs. Ravinder Singh and ors**

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**Court :** Delhi

**Decided On :** Sep-24-2014

**Judge :** G. S. Sistani

**Appellant :** Davinder Singh

**Respondent :** Ravinder Singh and ors

**Judgement :**

\$~9 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 2624/2010  
Date of decision :24th September, 2014 % DAVINDER SINGH ..... Plaintiff  
Through Mr.Karam Chand Dhiman, Adv. versus RAVINDER SINGH & ORS .....  
Defendant Through Mr.P.D.Gupta with Mr.Ashish Gupta, Advs. CORAM:  
HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J.

(ORAL) 1. Plaintiff has filed the present suit for permanent injunction, possession, damages and relief of partition. Plaintiff and defendant no.1 are real brothers and defendant nos.2 & 3 are sisters of plaintiff and defendant no.1.

2. Counsel for the defendants submits that during the pendency of the suit the cause of action has vanished and the present suit should be dismissed.

3. It may be noticed that a categorical assertion was made in the written statement that during the life time of the father of the parties, the suit property was sold and transferred to the defendants for valuable consideration and necessary documents such as duly registered Agreement to Sell, Will etc were executed by the father.

Having regard to the averments so made and the documents relied upon by the defendants, plaintiff instituted a suit being CS(OS) 1689/2013 (hereinafter referred to as the second suit) for declaration and permanent injunction. A certified copy of the plaint of the said suit has been handed over in court in which following reliefs were sought: i) ii) iii) 4. A decree of permanent injunction may be passed in favour of the plaintiff and against the defendants thereby restraining the defendants, their legal heirs, successors, agents, assigns, administrators from selling, alienating, transferring, mortgaging and creating third party interest or parting with possession of the suit property bearing No.2408, HUDSON LANE, KINGSWAY CAMP, DELHI-110009 in the interest of justice. Pass a decree of declaration that the Agreement to Sell dated 15.03.2007, Will dated 15.3.2007, Receipt dated 15.03.2007 and Possession Letter dated 15.03.2007 in respect of property bearing No.2408, Hudson Lane, Kingsway Camp, Delhi-110009 is null and void in the interest of justice. A decree of payment of cost of the present suit may also be awarded in favour of the plaintiff and against the defendants. Issues were framed in the second suit and the plaintiff was directed to lead evidence. Despite repeated opportunities neither list of witnesses nor affidavit by way of evidence was filed by the plaintiff. Resultantly, right of the plaintiff to file evidence was closed on 21.11.2013. The matter (second suit) was listed before this court on 13.5.2014, 8.8.2014, 21.8.2014 and 4.9.2014 and thereafter on 5.9.2014 the suit was dismissed as the plaintiff did not lead evidence to support the averments made in the plaint.

5. Learned counsel for the defendants submits that in view of dismissal of the second suit wherein plaintiff has challenged Agreement to Sell, Will and other documents and the said suit having been dismissed, present suit would also not survive and there would be no cause of action in favour of the plaintiff.

6. Learned counsel for the plaintiff submits that the present suit would very much be maintainable for the reason that simply by an agreement to sell, no title would be conferred on the defendants by the deceased father. It is also contended that since the defendants did not seek specific performance of the agreement to sell executed by the father during his lifetime, the sale would not be complete.

7. It would be useful to reproduce paragraph 2 of the preliminary objection of the written statement:

2. That the plaintiff has no right, title or interest of any nature whatsoever in the suit property i.e. property bearing 2408, Hudson Lane, Kingsway Camp, Delhi-110 009 and as such is not entitled to seek partition thereof. Deceased Amar Singh was the exclusive owner in possession of the ground floor and first floor of the suit property and in his life time itself, i.e. on 15.3.2007 he sold and transferred the suit property to the defendants for a valuable consideration and executed necessary documents in this regard such as Agreement to Sell, Receipt and Will etc. The Agreement to Sell executed in this behalf was duly registered in the office of SubRegistrar VI at No.2218 in Additional Book No.I Volume 784 on pages 115 to 121 on 15.3.2007. It is also not out of place to mention here that while executing the documents for effectually transferring the suit property in favour of the defendants, the deceased father of the parties also executed his last Will dated 15.3.2007. The plaintiff is very much aware of the transfer of the suit property by late Amar Singh during his life in favour of the defendants for valuable consideration and that all necessary documents had also been executed in this behalf. All these facts have been deliberately concealed by the plaintiff from the knowledge of this Honble Court and as such the suit is liable to be dismissed with costs.

8. During the course of hearing, learned counsel for the plaintiff was asked that in case the agreement to sell by which the deceased father sold the property to the defendants was a nullity then why the second suit was instituted. No satisfactory reply has been received.

9. In my view having regard to the written statement filed in the present suit wherein a categorical stand has been taken and having regard to the fact that suit filed by the plaintiff seeking a declaration with respect to the documents on the basis of which said property stands sold to the defendants by the deceased father of the defendants having been dismissed, the present suit for partition would not be maintainable as the plaintiff had himself challenged the aforesaid documents.

10. Further in my view to continue proceedings in the present case would be meaningless in view of the written statement filed by the defendants and as held by the Supreme Court in a number of judgments that vexatious litigation should be nipped in the bud. [See T. Arivandandam v. T.V. Satyapal reported at (1977) 4 SCC467 11. Resultantly, present suit is dismissed as no further cause of action remains in favour of the plaintiff. G.S.SISTANI, J SEPTEMBER24 2014 ssb /2/pdf

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