

Sukhinder Kaur and anr Vs. Vaneet Kaur

Sukhinder Kaur and anr Vs. Vaneet Kaur

SooperKanoon Citation : sooperkanoon.com/1171854

Court : Delhi

Decided On : Nov-10-2014

Judge : Najmi Waziri

Appellant : Sukhinder Kaur and anr

Respondent : Vaneet Kaur

Advocate for Def. : Mr. A.S.Dateer

Advocate for Pet/Ap. : Mr. Rakesh Taneja

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

12. 05.2014 Date of Decision:

10. 11.2014 + CM(M) 1258/2012, CM APPL. 19471/2012 SUKHINDER KAUR & ANR Petitioner Through: Mr. Rakesh Taneja, Adv. versus VANEET KAUR Through: Respondent Mr. A.S.Dateer, Adv. CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI NAJMI WAZIRI, J.

1. This petition impugns the order dated 25.10.2012 by which petitioner No.1 was impleaded as defendant No.2 in a suit for permanent injunction filed by the respondent (plaintiff) seeking restraintment of the defendant from selling or parting with possession or handing-over of flat No.J-59, B.K. Butta Colony, J-Block,

Karbala, New Delhi - 110 003 and for further restraintment of taking any amount from the Saving Account, Current Accounts or Fixed Deposits lying with the Centurion Bank of Punjab Ltd. and other banks, and from selling the vehicles which were in the name of the plaintiffs late husband, namely Shri S. Parminder Singh.

2. The plaintiffs case was that her husband died on 19.08.2007 only after five months of their marriage; that the suit property was her matrimonial home; that she had not been allowed to enter into the aforesaid matrimonial home some time after her husbands demise and that her father-in-law, i.e. the present petitioner No.2 was attempting to sell off or otherwise appropriate the estate of her late husband; the estate comprised of several cars and other travel vehicles.

3. The plaintiff sought to amend the plaint by impleading petitioner No.1, Smt. Sukhinder Kaur, as she was alleged by petitioner No.2 to be the owner of the suit premises, alongwith certain consequent grammatical changes such as expression defendant to be read in the plural; date of marriage to be corrected to 18.03.2007 instead of 28.03.2007; the details of vehicles belonging to the estate of her husband and finally that the suit premises were purchased from the funds of her late husband as benami in the name of Smt. Sukhinder Kaur.

4. The impugned order allowed the impleadment on the ground that Smt. Sukhinder Kaur was the owner of the suit premises but disallowed the amendment sought in para 5 of the plaint because it was not considered imperative and authentic for the proper and effective adjudication of the case, especially since the plaintiff had failed to bring on record any document to show that her deceased husband was the owner of the property and had a bank account with Bank of Baroda, Patparganj. The impugned order records that the suit was filed in November, 2007, the Written Statement (WS) was filed in January 2008 while and the application for amendment was filed in November 2010 i.e., after a lapse of almost two years from the date of filing the WS.

5. The learned counsel for the petitioners would contend that in the first place, the plaintiff had no cause of action to file the suit and by refusing permission to amend paragraph 5 of the plaint, the impugned order had itself wiped out the whole basis

for impleadment of petitioner No.1 as defendant No.2 in the suit; therefore, the order impleading petitioner No.1 as a party to the suit is liable to be set aside. Furthermore, it is contended that the impugned order itself records that the plaintiff had failed to bring on record anything to show that she has a right, title or interest in the suit property nor had she brought on record any document to show that her deceased husband was the owner of property J-59, B.K. Dutt Colony, Karbala, New Delhi-110003, hence there was no basis for either filing or pursuing the matter with respect to the suit property. The learned counsel further submits that in the five years since the demise of the late husband of the plaintiff, she had brought nothing on record for claiming entitlement of the relief sought in the suit and petitioner No.1 has been dragged into the litigation only for the purpose of causing harassment and humiliation to her.

6. In reply, the learned counsel for the respondent submits that the plaintiff is dominus litis and is the best judge of her interest and she has the right to choose her opponents in the suit; that apart from the said property, there are a number of movable properties like vehicles, fixed deposits, bank accounts etc. for the possession of which petitioner No.1 has filed a petition for succession certificate; hence, it was prudent for the plaintiff that petitioner No.1 too be impleaded as a defendant in the present suit. The counsel further submits that an application filed under Order VII, Rule 11 of CPC by petitioner No.2 had already been dismissed by the Trial Court on 08.01.2010 since the Court found that the suit ex facie disclosed a cause of action. He submits that the rule governing amendment is that the Court should try the merits of the case before it would allow all amendments as may be necessary for determining the real question in controversy between the parties. He further submits that the trial of the case is yet to commence and issues had not yet been framed. It is also submitted that the widow did not know as to in whose name the property was recorded since she was a new bride in the matrimonial family/home and had incomplete information about the property; that she has a share in her husband's property. The learned counsel for the respondent relied upon the dicta of the Supreme Court in *Cherotte Sugathan and others v. Cherotte Bharathi and others*, (2008) 2 SCC 610 to contend that upon the death of the husband of the respondent (widow), his share vested in his widow absolutely. Such absolute vesting of property in her could not be subjected to divestment,

save and except by reason of a statute.

7. This Court is of the view that when petitioner No.1 herself had sought a Succession Certificate apropos the suit property claiming herself to be the owner of the premises as against the plaintiff, therefore the Trial Court rightly impleaded her as a necessary party. The reasons for and the conclusion arrived at in the impugned order one are unexceptionable. Besides, the Supreme Courts dicta in Cherotte Sugathan and others (supra) holding that upon the death of the husband, his share vested in his widow absolutely and could not be subjected to divestment, save and except by reason of a statute, would squarely be applicable in this case. This Court finds that no ground is made out for interference with the impugned order under Article 227 of the Constitution of India. This petition is without merit and is accordingly dismissed. NOVEMBER10 2014 acm CM (M) No.1258/2012

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com