

Surinder Kaur Vs. Ram Narula and Others

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Court : Delhi

Decided On : Jan-04-2016

Judge : Pradeep Nandrajog & the Honourable Ms. Justice Mukta Gupta

Appeal No. : RFA(OS) No. 7 of 2014

Appellant : Surinder Kaur

Respondent : Ram Narula and Others

Judgement :

Mukta Gupta, J.

1. The appellant Surinder Kaur filed a suit being CS(OS) 651/2009 for declaration, partition, injunction, rendition of accounts in respect of the estate of late Smt.Jasbir Kaur. Mrs.Jasbir Kaur died leaving behind one son Jai Singh defendant No.2 and six daughters including the plaintiff Surinder Kaur. The other 5 daughters Sukhvinder Pal Kaur, Simrat Kaur, Rajinder Pal Kaur and Harsharon Kaur were impleaded as D-3, D-4, D-5 and D-6. The sixth daughter Smt.Avninder Kaur has since passed away, thus her legal heirs were impleaded as defendant No.7 to 17. Son of defendant No.2 i.e. Ram Narula was also impleaded as defendant No.1. Surinder Kaur claimed that Ajit Singh her father died in the year 1975 leaving behind assets, immovable and movable properties. Vide his Will he bequeathed half of his estate to defendant No.2 his son and other half to Smt.Jasbir Kaur his wife with the declared understanding that Jasbir Kaur would make a bequest in

favour of her six daughters. Thus, Jai Singh who was living in Bangkok got properties and assets located at Bangkok whereas Smt.Jasbir Kaur who was living in Delhi got immovable properties at Delhi besides agriculture land in village Amritsar, District Sirsa etc. Smt.Jasbir Kaur made a Will dated November 03, 1989 bequeathing her estate to her six daughters and her son in following manner:

Immovable properties

- a) My one-half share in 15A/2, 3 and 4, WEA Karol Bagh, New Delhi to my aforesaid son and daughters in equal proportion, i.e. one seventh share each.
- b) My one-fourth share in 10197, Ajmal Khan Road, Karol Bagh, New Delhi, to my aforesaid six daughters in equal proportion, i.e. one-sixth share each.
- c) My one-fourth share in 12A/1, WEA, Karol Bagh, New Delhi to my aforesaid six daughters in equal proportion, i.e. one-sixth share each.
- d) My agricultural land in village Amritsar, District Sirsa (Haryana) to my said six daughters in equal proportion, i.e. one-sixth share each.

Moveable properties.

All my under-mentioned moveable properties to my said son and six daughters in equal proportion, i.e. one-seventh share each.

- a) amount lying in S.B.A/c No.453 as well as Fixed Deposits with Bank of Baroda, Karol Bagh, New Delhi.
- b) Amount lying in S.B.A/c No.436 as well as fixed deposits with oriental Bank of Commerce, East Patel Nagar, New Delhi.
- c) Contents of Locker No.50 with Bank of Baroda, Karol Bagh, New Delhi.
- d) Contents of Locker No.171 with Oriental Bank of Commerce, East Patel Nagar, New Delhi. ?

2. After demise of Smt.Jasbir Kaur, Jai Singh defendant No.2 disclaimed succession for himself in the estate of Jasbir Kaur for the reason he had already

been given the Lion's share and with the assurance that the estate of Jasbir Kaur would come to the six sisters. Jai Singh assured that since some immovable properties were jointly with the son of Shri Mohar Singh, the brother of Shri Ajit Singh Narula, he would ensure that they are disposed of and the share given to the sisters. Since no action was taken by Jai Singh despite passage of time, the daughters of Jasbir Kaur became suspicious. When Surinder Kaur and her sisters checked they found that Jai Singh had got mutated the name of his son Ram Narula defendant No.1 in place of Smt.Jagir Kaur in the municipal records in respect of immovable properties at Delhi. On the complaints made Shri Rajveer Singh Dahiya, Assistant Collector vide order dated August 03, 2001 withdrew/ cancelled mutation dated June 11, 1998 in respect of property No.15A/2, 3, 4 and 12A/1 WEA Karol Bagh, New Delhi and property No.10197 Ajmal Khan Road, Karol Bagh.

3. Plaintiff along with her sisters defendant No.2 and 4 preferred probate petition No.206/2001 in the Court of District Judge, Delhi impleading defendant No.2 and other sisters Rajinder Pal Kaur, Smt.Harsharon Kaur as defendant No.5 and 6 and the legal heirs of Smt.Arvinnder Kaur i.e. defendant No.7 to 17. Jai Singh appeared in the probate petition and filed the preliminary objection stating that the petition was barred by limitation and that by the Will dated January 14, 1996 Smt.Jasbir Kaur bequeathed all her properties in India and Thailand to her grand-son Ram Narula i.e. defendant No.1 on the basis of which mutations were affected. However, no copy of the Will dated January 14, 1996 was filed. On further search the plaintiff and her sisters who are residents of Bangkok found the following fraud practised on them:

a) By deed of sale dated 21st June, 2001 Shri Ram Narula, defendant No.1 acting through his attorney, sold 1/4th share in joint property No.12A/1, WEA, Karol Bagh, New Delhi to M/s.V.R.D. Constructions Pvt. Ltd., defendant No.29.

b) By deed of sale dated 31st January, 2005 M/s.V.R.D. Constructions Pvt. Ltd., defendant No.29 sold 1/4th share in joint property No.12A/1 aforesaid to Smt. Jai Shree, defendant No.26.

c) By deed of sale dated 21st February, 2005 Shri Jai Singh, defendant No.2 sold 1/4th share in property No.12A/1 aforesaid to Smt. Jai Shree, defendant No.26. The deed refers to mutation No.27829 by DDA in respect of transfer by Shri Ram Narula, defendant No.1 and conveyance deed dated 15.05.2005 in regard to conversion of Lease hold into Free hold.

d) By deed of sale dated 31st January, 2005 Shri Kirpal Singh alias Kirapal Narula, defendant No.30 sold 1/4th share aforesaid and Smt.Taranjit Kaur alias Amornrattana Narula wife of Shri Bachiter Singh, defendant No.31 sold her 1/4th share in property No.12A/1 to Mrs.Manju Gupta, defendant No.32.

e) By deed of sale dated 28th August, 2006 Smt.Manju Gupta, defendant No.32 sold her 1/4th share in property No.12A/1 aforesaid to M/s Satya Parkash and Bros Pvt. Ltd., defendant No.35.

f) By deed of sale dated 28th August, 2006 Mrs.Manju Gupta, defendant No.32 sold her 1/4th share in property No.12A/1 aforesaid to M/s Satya Parkash and Bros Pvt. Ltd., defendant No.35.

g) By procuring conveyance deed dated 27th August, 2002, Shri Ram Narula, defendant No.1 and Shri Sukhdev Singh, defendant No.33 on conversion of lease hold right in 15A/4, WEA, Karol Bagh, New Delhi into freehold.

h) By procuring conveyance deed dated 27th February, 2002, Shri Sukhdev Singh, defendant No.33 and Shri Ram Narula, defendant No.1 got property No.15A/3, WEA, Karol Bagh, New Delhi converted from leasehold to freehold.

i) By sale deed dated 21st June, 2001 Shri Ram Narula, defendant No.1 sold Shri Ram Narula, defendant No.1 sold 28 square yards area of property No.15A/4 aforesaid to M/s Virgin Exports and Imports Pvt. Ltd., defendant No.18. Reference is to mutation No.13372.

j) By sale deed dated 24th February, 2008 M/s Virgin Exports and Imports Pvt. Ltd., defendant No.18 sold share in property No.15A/4 aforesaid to Shri Amit Chopra, defendant No.36.

k) By sale deed dated 24th February, 2005 M/s. Virgin Exports and Imports Pvt. Ltd. defendant No.18 sold 1/4th share in property No.15A/4 aforesaid to Shri Amit Chopra, defendant No.36.

l) By sale deed dated 24th February, 2008 M/s Virgin Exports and Imports Pvt. Ltd., defendant No.18 sold 1/4th share in property No.15A/4 aforesaid to Shri Bhupinder Pal Singh, defendant No.38.

m) By sale deed dated 24th February, 2005 M/s Virgin Exports and Imports Pvt. Ltd., defendant No.18 sold 1/4th share in property No.15A/4 aforesaid to Shri Raghubir Singh, defendant No.37.

n) By sale deed dated 19th December, 2005 Shri Amit Chopra, defendant No.16 sold share in property No.15A/4 aforesaid to Shri Ajay Mehra, defendant No.20.

o) By sale deed dated 19th December, 2002 Shri Ajay Mehra sold 1/4th share in property No.15A/4 aforesaid to Shri Bhupinder Pal Singh, defendant No.38.

p) By sale deed dated 19th December, 2005 Shri Bhupinder Pal Singh, defendant No.38 sold 1/4th share in property No.15A/4 aforesaid to Shri Ajay Mehra, defendant No.20.

q) By sale deed dated 7th July, 2001 Shri Ram Narula, defendant No.1 sold share in property No.15A/3 aforesaid to M/s Virgin Exports and Imports Pvt. Ltd. defendant No.18.

r) By sale deed dated 14th January, 2005, M/s Virgin Exports and Imports Pvt. Ltd., defendant No.18 sold share share in property No.15A/3 aforesaid to Shri Shiv Kumar, defendant No.19.

s) By sale deed dated 19th December, 2005, Shri Shiv Kumar, defendant No.19 sold his share in property No.15A/3 aforesaid to Shri Ajay Mehra, defendant No.20.

t) By sale deed dated 30th April, 2008 Shri Ajay Mehra, defendant No.20 sold share in property No.15A/3 aforesaid to Smt. Shobha Maskara, defendant No.21.

u) By sale deed dated 30th April, 2008 Shri Ajay Mehra, defendant No.20 sold his share in property No.15A/3 aforesaid to Mrs. Bhawana Goel, defendant No.22.

v) By sale deed dated 30th April, 2008 Shri Ajay Mehra, defendant No.20 sold his share in property No.15A/3 aforesaid to Shri Jitender Kumar Sachdeva, defendant No.23.

w) By sale deed dated 30th April, 2008 Shri Ajay Mehra, defendant No.20 sold his share in property No.15A/3 aforesaid to Shri Manish Pahuja, defendant No.24.

4. Thus, claiming fraud the plaintiff preferred the suit noting therein that plaintiff and defendant No.3 to 17 were joint co-owners in possession of the property. Further they were entitled to exclusion of time under Section 17 of the Limitation Act as fraud was discovered in the year 2001 and could not be discovered earlier.

5. Written statements were filed by defendant No.3, 5, 6 admitting the averments in the plaint. In the meantime an application was filed by the plaintiff seeking impleadment of M/s.BMRC Construction Private Limited (in short the BMRC) as one of the defendants along with an application for amendment of the plaint. Besides some of the defendants who had purchased the various properties also filed various applications under Order I Rule 10 CPC.

6. BMRC being defendant No.41 filed written statement and also an application under Order VII Rule 11 CPC. It is this application of BMRC under Order VII Rule 11 CPC which has been decided in its favour and the learned Single Judge vide impugned judgment dated October 30, 2013 held the suit to be barred by provisions of Specific Relief Act, Order II Rule 2 CPC, as well as by limitation and thus rejected the plaint under Order VII Rule 11(d) CPC.

7. In I.A.No.16878/2012 under Order VII Rule 11 CPC filed by defendant No.41 the pleas taken were that admittedly the suit properties had been sold by registered sale deeds and the suit filed prayed for simplicitor declaration of title and partition, thus in the absence of the relief of cancellation of sale deeds, the suit was liable to be dismissed in terms of Sections 31 and 34 of the Specific Relief Act and under Order II Rule 2 CPC as well. It was further pleaded that

besides being barred by Section 34 of the Specific Relief Act the suit was also barred by limitation as all suits for declaration must be filed within three years from the date of knowledge of the sale deeds or from the date the right to sue first accrues. Admittedly the date of knowledge of alleged sale by registered sale deeds executed by defendant No.1 was in 2001 and the present suit was filed in the year 2009 thus beyond the period of limitation. The pleas of suit being grossly undervalued and insufficient stamp fee were taken however, they are not relevant for the reason that the application was not decided on these pleas.

8. Learned counsel for the appellant/plaintiff contends that the learned Single Judge failed to notice that amendment had been carried out in para " 20 of the suit as per which the knowledge of fraud and the acts of transfer of the suit properties could only be discovered in mid 2008 hence the suit is not barred by limitation. The other pleas taken on merits are that the transaction was nullity as the Will propounded by defendant No.1 was not probated and the title of defendant No.1 being in cloud the subsequent purchaser cannot get a better title. These pleas are not relevant for the present appeal because the suit has been dismissed not on merits but allowing the application of defendant No.41 under Order VII Rule 11 CPC.

9. After the defendant No.41 filed an application under Order VII Rule 11 CPC being I.A. No.16878/2012 the plaintiff/appellant filed an application under Order VI Rule 17 CPC being I.A. No.2019/2013. Though in the application it was claimed that the said application seeks to incorporate the consequential amendment by impleadment of defendant No.41 pursuant whereunto amendments were sought in memo of parties and amendments to para-19 however, the application also introduced amendment to para-20.

10. Para 20 of the amended plaint reads as under:

20. That the plaintiff and defendants 3 to 17 being joint owners in possession, the suit is within time. They also entitled to exclusion or extension of time under Section 17 of the Limitation Act, 1963 as fraud was perpetrated and fraud of mutation was discovered in the year 2001 and fraud of act of transfer could only be discovered in mid 2008 and could not be discovered earlier with due diligence.

?

11. Vide the order dated October 01, 2013 the learned Single Judge allowed I.A.No.2019/2013 and the order on the application notes as under:

6. This is an application for consequential amendment in the plaint vis-a-vis Defendant No.41 who had already been impleaded as party to the petition. Without prejudice to the rights and contention of the parties, this application is allowed. ?

12. Though we note that the amendment in para-20 was not consequential to the impleadment of D-41 and was a substantial amendment to the main suit however, since there is no challenge to the order dated October 01, 2013 by the defendants, application having been allowed the amended suit would thus have to be read to include para-20 as per the amendment as noted above.

13. In view of the amended para-20 which claims that the fraud of act of transfer could only be discovered in mid 2008 and could not be discovered earlier with due diligence, the order of the learned Single Judge dismissing the suit being barred by limitation deserves to be set aside on this aspect. It is trite law that while deciding an application under Order VII Rule 11 CPC the averments in the plaint have to be read by way of demurer and the merits thereof cannot be looked into.

14. This leaves us with the question whether the suit was liable to be dismissed on the ground the appellant/plaintiff had not claimed the relief of cancellation of sale deeds and had simplicitor sought declaration and partition.

15. The High Court of Madras in the decision reported as (1939) 2 MLJ 400 Vellayya Konar (died) and Anr. Vs. Ramaswami Konar and Anr. held:

When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has, been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void in toto and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for a declaration. But when he is seeking to establish a title and

finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled in toto. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore, in order to clear the way with a view to establish his title is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed. ?

16. In the decision reported as (1940) 1 MLJ 32 Minor C.R.Ramaswami Aiyangar, represented by his mother and next friend Lakshmi Ammal vs.C.S.Rangachariar and Ors. the Full Bench of Madras High Court approved the legal position laid down by the learned Single Judge in the decision reported as ILR (1890) 14 Mad.26 Unni vs.Kunchi Amma noting if a person not having authority to execute a deed, or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it to sue to set it aside, for it cannot be used against them. They may treat it as non-existent and sue for their right as if it did not exist. ?

17. Clarifying the legal position on suits for cancellation of instruments the High Court of Madras in the decision reported as (1970) 1 MLJ 207 Kaka Hajee Md. Ishaque Sahib Vs. Kaka Md.Saddiq Sahib and Ors. held:

9. The law on the subject of cancellation of instruments is thus fairly clear. Normally a transaction will bind a person if he or persons under whom he derives title are eo nomine parties to the same, and must be set aside before any relief is claimed thereunder. This, however, is subject to two important, exceptions: (1) Where the transaction is only a sham and nominal one, not intended to be given effect to; and (2) Where the transaction is void in law. It necessarily follows that (1) transactions to which a person or persons under whom the said persons derive title are not eo nomine parties; (2) transactions which are challenged as sham and nominal and (3) transactions which are void ab initio are not legally binding in character need not be cancelled and set aside, before any claim is made thereunder. The reason is fairly obvious. In the first group of cases, there can be no difficulty, as it is an elementary principle of law that transactions to which a

person or persons under whom the said person derives title are not parties cannot bind them. In the case of sham and nominal or void transactions comprised in the second and third group of cases, title has not passed to the transferees. Prayer for setting aside such transactions will be superfluous and the plaintiff will be entitled to ignore them altogether. The case is otherwise in respect of voidable transactions and benami transactions. In such cases the law will uphold the ostensible title conferred by those instruments; and the said title will prevail until the transactions are challenged with success by seeking appropriate reliefs declaratory or otherwise in Court of law. ?

18. The High Court of Andhra Pradesh in the decision reported as 2012 (2) ALT 470 Mandadi Sammi Reddy Vs. Bokkala Ravinder Reddy and Ors. held:

9. Now remains the last question on which the relief was rejected. It was observed that the appellant did not pray for the relief of cancellation of certain documents. It may be true that it is only a person who is not a party to the document that can file a suit for cancellation of such documents. However it is different from saying that any person who asserts the title in respect of a property must invariably pray for the relief of cancellation of documents, if any, executed by the third parties vis-a-vis the said property. ?

19. The appellant not being the party to the sale deeds was thus not required to seek cancellation of the sale deeds and the learned Single Judge erred in rejecting the plaint also under Order II Rule 2 CPC and being contrary to Section 31 and 34 of the Specific Relief Act. The impugned judgment is thus set aside. The application of BMRC being I.A.No.16878/2012 under Order VII Rule 11 CPC is dismissed. The suit is restored to its original position and be listed before the learned Single Judge as per the Roster on January 11, 2016.

20. Before concluding we would like to note a disturbing fact in the matter. The present suit was filed by Smt.Surinder Kaur through Ms.Geetanali Chauhan and Ms.Richa Kapoor, Advocate on February 26, 2009 whereafter Ms.Richa Kapoor, Advocate was appointed as Local Commissioner vide order dated March 09, 2009 by the Additional District Judge-05, Tis Hazari Courts, Delhi in the probate case No.03/06/01 as stated in para-21 of the present plaint, to record the statement of

Smt.Balbir M.S.Sethi. In the probate petition Ms.Surinder Kaur was also one of the petitioners. After executing a vakalatnama for a party, it was improper on the part of the learned counsel to accept a Local Commission in another matter, that is, the probate petition filed by the same party.

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