

Vijay Kumar vs.alka Kapoor

Vijay Kumar vs.alka Kapoor

SooperKanoon Citation : sooperkanoon.com/1209714

Court : Delhi

Decided On : Oct-13-2017

Appellant : Vijay Kumar

Respondent : Alka Kapoor

Advocate for Def. : Mr. S.C. Singhal

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI RFA No.712/2017 and C.M. No.35552/2017 (for directions % VIJAY KUMAR ALKA KAPOOR13h October, 2017 Through: Mr. Appellant Nanavaty, Shekhar Advocate. versus Through: Mr. S.C. Singhal, Advocate. Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the Trial Court dated 4.7.2017 by which trial court has decreed one relief claimed in the suit of possession and has by the self-same impugned judgment held that so far as the aspect of awarding of mense profits/damages is concerned, further enquiry will be held. The suit property is property bearing no.RZ-100, Vashist Park, Gali No.26, Pankha Road, New Delhi admeasuring 111 sq. yards RFA No.712/2017 Page 1 of 10 out of Khasra no.23/8, situated in the village Dabri, New Delhi now known as Vashisht Park West, New Delhi.

2. The facts of the case are that the respondent/plaintiff filed the suit pleading that respondent/plaintiff is the owner of the suit property because she had purchased the same by a registered sale deed dated 12.8.1999 executed in her favour by her mother-in-law Smt. Krishna Kumari. Respondent/plaintiff pleaded that the appellant/defendant, who is the son of Smt. Krishna Kumari, was only a gratuitous licensee in the suit property and this licence was terminated and since the appellant/defendant failed to vacate the suit property, the subject suit for possession and mesne profits was filed.

3. Written statement was filed by the appellant/defendant. In the written statement filed by the appellant/defendant it is seen that in para 1 of reply on merits, the appellant/defendant has denied the ownership of the suit property of his mother Smt. Krishna Kumari, the mother-in-law of the respondent/plaintiff. In para 1 of the written statement there is no denial by the appellant/defendant of the fact that the respondent/plaintiff had purchased the suit property from her mother-in-law Smt. Krishan Kumari by the sale deed dated 12.8.1999. RFA No.712/2017 Page 2 of 10 Para 1 of the plaint and the reply on merits thereof by the appellant/defendant in the written statement read as under:-

"Para 1 of the plaint 1. That the property bearing No.RZ-100, Vashisht Park, Gali No.26, Pankha Road, New Delhi measuring 111 Sq. Yds out of K. No.23/8, situated in the Village Dabri, New Delhi now known as Vashisht Park West, New Delhi was purchased by plaintiffs mother-in-law, namely Smt. Krishna Kumari W/o Shri Harjit Lal out of her own funds from Shri Singh Ram and Shri Kanshi Ram. The mother-in-law of plaintiff sold the same to plaintiff on 12.08.1999 vide registered Sale Deed dated 12.08.1999 vide Registered Document No.5459 in Addl. Book No.1 Vol. No.9307 on pages 95 to 100 in the office of Sub Registrar-II, Delhi for a consideration of Rs.1.00 Lakh (Rupees one lakh only). Para 1 of reply on merits 1. That Para 1 of the Suit is wrong & denied, as alleged. That it is wrong & denied that the property bearing No.RZ-100, Vashisht Park, Gali No.26, Pankha Road, New Delhi measuring 111 Sq. Yds out of K. No.23/8, situated in the Village Dabri, New Delhi now known as Vashisht Park West, New Delhi was purchased by the Plaintiffs mother-in-law, namely Smt. Krishna Kumari, W/O Shri Harjit Lal out of her own funds from Shri Singh Ram and Shri Kanshi Ram, as alleged. It is

submitted that she was neither earning nor had purchased the demised premise from her own funds and the said property was purchased by her husband and the father of the defendant, namely Sh. Harjit Singh. That rest of the Para is matter of record. 4. Therefore, it is seen that the only issue for denying the entitlement of the possession of the suit property to the respondent/plaintiff was that it was pleaded that Smt. Krishna Kumari from whom the respondent/plaintiff purchased the suit property was herself not the owner of the suit property and hence Smt. Krishna Kumari could not transfer title of the suit property to the respondent/plaintiff. RFA No.712/2017 Page 3 of 10 5. The admitted facts are that the appellant/defendant as a plaintiff had filed a suit for partition, declaration etc being suit no.365/1999 in the court of civil judge, Delhi. In this suit which was filed by the appellant as the plaintiff Sh. Vijay Kumar, there were three defendants. The first defendant was Smt. Krishna Kumari being the mother of Sh. Vijay Kumar, the appellant herein and mother-in-law of the respondent/plaintiff. Defendant no.2 in the suit no.365/1999 filed by the appellant herein was his brother, one other son of Smt. Krishna Kumari and husband of respondent/plaintiff Sh. Satish Kumar. Defendant no.3 in the earlier suit no.365/1999 was the sister of the appellant herein Smt. Kiran Bala. In this earlier suit no.365/1999 the appellant as the plaintiff pleaded that the suit property was not owned by his mother Smt. Krishna Kumari but was owned by the father Sh. Harjit Lal who had purchased the suit property by a sale deed dated 12.3.1979. In this suit, the mother-in-law of the present respondent/plaintiff namely Smt. Krishna Kumari, and who is the mother of appellant herein, contested the suit by filing a joint written statement with the defendant no.2 in that suit. Defendant no.2 in the earlier suit no.365/1999, as already stated above, is the brother of the RFA No.712/2017 Page 4 of 10 appellant. In the written statement filed Smt. Krishna Kumari pleaded that she was the owner of the suit property and not her husband Sh. Harjit Lal and it was pleaded by Smt. Krishna Kumari that she had already sold the suit property to the wife of the defendant no.2 in that suit i.e wife of Sh. Satish Kumar i.e respondent/plaintiff in the present case. The aforesaid suit no.365/1999 was contested to the hilt and that suit filed by the present appellant, after trial, was dismissed in terms of the judgment of civil court dated 12.12.2003. Admittedly, there was no challenge by the present appellant to the judgment dated 12.12.2003

and this judgment is hence final.

6. It is necessary at this stage to refer to paras 1 to 9 of the said judgment dated 12.12.2003 as also paras 12 and 13 thereof, and these paras read as under:-

"1. This is a suit for partition, declaration and permanent injunction filed by the plaintiff against the defendants seeking partition of property no.RZ-100, Gali no.25, Vashisht Park, Pankha Road, New Delhi as shown in red in the site plan; declaring the plaintiff as sole and absolute owner of his one fourth share in the said property and further restraining the defendants from selling, alienating or disposing off the suit property or from creating any type of charge or lien over the said suit property.

2. Briefly stated the facts as alleged in the plaint are that Father of the plaintiff Sh. Harjit Lal was the sole and absolute owner of property no.RZ-100, Gali no.25, Vashisht Park, Pankha Road, New Delhi being self acquired property of his father by purchasing the same vide Sale deed dt.12.3.79 which is registered in the record of MCD.

3. It is further alleged that late Sh. Harjit Lal died on 13.5.93 leaving behind following legal heirs namely Smt. Krishna Kumari, widow, Sh. RFA No.712/2017 Page 5 of 10 Vijay Kumar and Satish Kumar son and Smt. Kiran Bala daughter. It is further stated that said property is devolved upon plaintiff and defendants in equal shares; that there was another son namely Inderjit whose whereabouts are not known as he run away from the house about 20 years back.

4. It is further alleged that in 1990 father of plaintiff gave a built up property in Gulab Bagh to the defendant no.3 and plaintiff. And defendant no.2 are running separate shops in suit property and there is joint bank account in the name of plaintiff and defendant no.1 which is operated by plaintiff by his own funds. That many times plaintiff asked for his shares in suit property but defendants avoided it; that on 17.7.1999 after a quarrel a written agreement was entered into between the parties in presence of other persons. According to this agreement, suit property was divided between both brothers and bank account was allotted to defendant no.1.

5. That on 1.9.99 the plaintiff found that lock has been fixed upon the main door of the suit property. Police was called and matter was settled; that again on 4.9.99 defendant no.2 made hue and cry and report was made to police on 5.9.99. that after death of father of plaintiff a registered Will was executed by defendant no.1 on 26.10.95 and suit property was distributed between both the brothers. The plaintiff wanted to separate his portion so he demanded 6. partition but on 28.9.99 he was finally refused by the defendants, hence this suit.

7. Suit was contested by the defendant nos.1 and 2 by filing joint W.S. Taking certain preliminary objections like improper valuation of suit and non maintainability etc on merits it was submitted that Smt. Krishna Kumari defendant no.1 was the absolute owner of the suit property and; now it has been sold to wife of defendant no.2. Other contents of the plaint have also been denied.

8. Defendant no.3 contested the suit by filing separate W.S. The crux of her statement is that she also has a right in the said property and it cannot be divided only among the brothers.

9. 1.8.2000; On the basis of pleadings following issues were framed on 1. Whether the plaintiff is entitled to the relief of partition as prayed?. OPP2 Whether the plaintiff is entitled to declaration as prayed for?. OPP3 Whether the plaintiff is entitled to equitable relief of Permanent Injunction?. OPP4 Whether the suit property has been properly valued for the purposes of court fee and jurisdiction?. OPP5 Relief. xxxxx xxxxx xxxxx 12. Since these issues are interrelated hence being decided together. The onus to prove these issues was upon the plaintiff. The plaintiff has RFA No.712/2017 Page 6 of 10 averred in the plaint that suit property was owned by his late father Sh. Harjit Lal who acquired it through registered sale deed dated 12.3.79 and that suit property devolved upon plaintiff and defendants in equal shares and that after death of said Sh. Harjit Lal the plaintiff is one of the co-owner/co- sharer in the property no.RZ-100, Gali no.25, Vashisht Park, Pankha Road, New Delhi and has one fourth share in the suit property. He also claims that suit property was divided between him and his brother Satish Kumar and bank account was allotted to the mother and defendant no.3 sister had already been given a built up property in Gulab Bagh. Reference to a registered Will dated

26.10.95 by defendant no.1 has also been made. It is also averred that now the defendants are not allowing him to partition the suit property and interfering in his peaceful possession.

13. The plaintiff has miserably failed to prove any of the said facts by oral or any documentary evidence. Few facts which have been stated by himself as PW-1. PW-2 also did not state in support of plaintiff case. He does not seem to be much aware of the things and he proved to be totally not helpful to the plaintiff. No other witness or document as to prove his case has been placed on record by the plaintiff. Only simple statement by plaintiff that his suit is correct cannot be treated as corroboration of the facts. On the other hand, defendants 1 and 2 have denied on oath the averments of the plaintiff. It is the plaintiff who has to prove his case, at least to a reasonable extent and specific onus has been fixed upon the plaintiff to prove these issues but he has miserably failed to do so. Hence these issues are decided against the plaintiff and in favour of the defendants. (emphasis added) 7. Trial court in the impugned judgment has relied upon paras 12 and 13 above of the judgment dated 12.12.2003 and held that earlier judgment dated 12.12.2003 will operate as res judicata against the appellant/defendant for him to not deny the ownership of Smt. Krishna Kumari of the suit property. Trial court has in its impugned judgment reproduced paras 12 and 13 however I have also additionally reproduced paras 1 to 9 of the judgment of the civil judge dated 12.12.2003 inasmuch as paras 1 to 9 show the stand of the present RFA No.712/2017 Page 7 of 10 appellant as plaintiff in the earlier suit and stand of his mother Smt. Krishna Kumari who was defendant no.1 in the earlier suit.

8. In my opinion, the judgment dated 12.12.2003 in the aforesaid suit while giving findings on issue nos. 1 to 3 holding that the present appellant as plaintiff in the earlier suit has failed to prove his case that his father Sh. Harjit Lal was the owner, in my opinion, would also contain a clearly implied finding that in fact Smt. Krishna Kumari, defendant no.1 in the subject suit would be the owner of the suit property and which was Krishna Kumaris case. Para 7 of the judgment dated 12.12.2003 has been reproduced above and which shows the stand of Smt. Krishna Kumari in the earlier suit that she was the owner of the suit property and that she had sold the suit property to the present respondent/plaintiff. In my opinion though

discussion in paras 12 and 13 of the impugned judgment dated 12.12.2003 does not state that it is Smt. Krishna Kumari who is the owner of the suit property, however, this finding is very much implied when it is held that father Sh. Harjit Lal, i.e the husband of Smt. Krishna Kumari, was not the owner of the suit property. Once Sh. Harjit Lal is not the owner of the suit property as claimed by the appellant as plaintiff in RFA No.712/2017 Page 8 of 10 the earlier suit obviously it means that defence of the defendant no.1 in the subject suit Smt. Krishna Kumari has been believed and consequently it would be Smt.Krishna Kumari who would be the owner of the suit property. Once Smt. Krishna Kumari was the owner of the suit property, and that was really the only dispute requiring decision in the present suit, inasmuch as I have already reproduced above para 1 of the plaint and reply to para 1 of the written statement which showed that the appellant has not denied execution of the sale deed by Smt. Krishna Kumari in favour of the respondent/plaintiff, there was no handicap upon the trial court decreeing the suit under Order XII Rule 6 CPC on the basis of admitted facts and the fact that earlier judgment dated 12.12.2003 passed in suit no.365/1999 filed by the appellant herein as a plaintiff had become final against the present appellant.

9. Counsel for the appellant again sought to argue that Smt. Krishna Kumari is not the owner because she only had a power of attorney in her favour, however, the issues on merits which are once decided are res judicata between the parties cannot be said to be raised in a subsequent suit in one form or the other, and therefore, I refuse to RFA No.712/2017 Page 9 of 10 go into the issue as to lack of title in Smt. Krishna Kumari of the suit property for disentitlement of the respondent/plaintiff to become owner of the suit property by purchase from Smt. Krishna Kumari.

10. In view of the above, there is no merit in the appeal. The appeal being wholly frivolous, being an endeavor to only re-agitate issues which have become final, is dismissed with costs of Rs.50,000/-. Costs shall be paid within six weeks from today. OCTOBER13 2017 Ne VALMIKI J.

MEHTA, J RFA No.712/2017 Page 10 of 10