

Maninder Singh Maker and Ors vs.ajit Singh Maker and Ors

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Court : Delhi

Decided On : Nov-20-2017

Appellant : Maninder Singh Maker and Ors

Respondent : Ajit Singh Maker and Ors

Judgement :

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

14. h November, 2017 Pronounced on:

20. h November, 2017 + CS(OS) 3121/2011, IA No.8178/2017 SUJAN MOHINDER CHARITABLE TRUST AND ANOTHER Plaintiffs Through : Mr.Prashant Mehta and Mr.Alok Tripathi, Advocates. versus MOHINDER KAUR AND OTHERS Defendants Through : Mr.Sandeep Sethi, Sr Advocate Miglani, Mr.Pratush with Advocate for defendant No.3. Mr.Uday Pratap Singh, Advocate for defendant No.2. + CS(OS) 558/2014, CRL.M.A. 8598/2016, IA No.4962/2015 MANINDER SINGH MAKER AND ORS Plaintiffs Through : Ms.Kajal Chandra and Ms.Pruna Chopra and Mr.Vivek Kapur, Advocates. versus AJIT SINGH MAKER AND ORS Defendants Through : Mr.Sandeep Sethi, Sr Advocate Miglani, with Advocate for defendant No.1. Mr.Uday Pratap Singh, Advocate for defendant No.2. Mr.Pratush CORAM: HON'BLE MR. JUSTICE YOGESH KHANNA YOGESH KHANNA, J.

CS(OS) Nos. 3121/2011 and 558/2014 Page 1 of 8 1. The issue concern in the present case(s) is to secure an amount of 19.2 Crores viz. the sale consideration of plot admeasuring 1132 square yards at 1, Community Center New Friends Colony, New Delhi.

2. The said plot belongs to a trust namely Sujan Mohinder Charitable Trust. The trust came into existence on 06.03.1978 with certain objectives. The trust constructed a building over the said land comprising of basement, ground, first floor and second floor. The 1st and 2nd floor of the building were let out to Yes Bank and OXFAM from whom a total yearly rent of 2 Crore was being collected. The trust is running a hospital from this very premises. It is averred the trust property was illegally sold by defendant no.1 to his wife, illegally for a partly sum of 19.2 Crores. The order dated 05.08.2014 notes the trust deed did not allow any trustee to sell the property, hence leave under Section 92 CPC was sought and granted to file this suit and defendants were restrained from creating any third party interest in the property.

3. On 05.08.2014 it was observed by this Court that since the sale deed has been executed by the defendant No.1 in favour of the defendant No.5, which prima facie appears to be not permissible, the defendants No.1 to 6 were restrained from creating any third party interest in the suit property. Further the order notes since the plaintiffs have prayed for deposit of 19.2 Crores in the Court and since the execution of the sale deed have been challenged by the plaintiffs, the defendant No.1 will decide as to whether to keep this amount in the Fixed Deposit Receipts (FDRs) and shall not raise any plea that this amount has been spent on the activities of the trust. CS(OS) Nos. 3121/2011 and 558/2014 Page 2 of 8 4. On 09.09.2016, the Court disposed of the IA No.6620/2016 on the ground that earlier application filed by the plaintiff No.1 for directions to the defendant No.1 to deposit an amount of 19.2 Crores and place it in the FDR (IA No.23822/2014) is pending adjudication, there was no reason for this Court to entertain this application and hence the IA No.6620/2016 was disposed of.

5. On 21.04.2017 this Court disposed of IA Nos.23822/2014 and 13224/2016 while noting as under:-

"These are two applications filed by the plaintiff seeking implementation of the directions given by this Court in its order dated 05.08.2014 and subsequent order dated 09.09.2016. Reply has been filed by the defendant to both the aforementioned applications. In reply to IA No.23822/2014 it is reiterated that the amount of Rs.19.2 crores (as reflected in the order dated 05.08.2014 as also in the order dated 09.09.2016) is secured. This statement is also reiterated by the learned counsel for the defendant who has instructions from his client. It is lying in an account of defendant no.1/ defendant no.2. Learned counsel for defendant no.1 is not sure whether this amount is lying in savings bank account or current account of the defendant. Submission is however reiterated that this amount is lying secured and this amount will always remain alive during the pendency of the suit and will be not spent in the activities of the Trust. This Court is of the view that to further advance the import of the order dated 05.08.2014 and 09.09.2016 defendant No.1/defendant no.2 shall place on record the details on an affidavit of defendant no.1/defendant no.2 as to where this amount is kept/secured. Both applications are disposed of. CS(OS) Nos. 3121/2011 and 558/2014 Page 3 of 8 6. On 26.09.2017 this Court further noted as under:-

"8. Learned senior counsel for the plaintiff contends that there are two eventualities that may happen on the final conclusion of the suit. Either the sale of the subject property would be declared null and void or the sale would be held to be valid.

9. In case the sale is held to be null and void then the Sale Deed would be liable to be cancelled and the property would revert back to the Trust or would be declared to have always remained with the Trust, in which eventuality, the defendant Mrs.Jupinder Kaur would seek refund of the sale consideration of Rs. 19.2 Crores alleged to have been paid under the said Sale Deed.

10. In case the sale is held to be valid then the said sale consideration of Rs.19.2 cores would have to be brought back to the Trust.

11. It is contended that in either eventuality the said amount of Rs.19.2 Crores would have to be secured and the admitted position is that the said amount of Rs.19.2 crores is not available in liquid form and it would not be possible either for

the Trust to either recover the same or repay the same to the Defendant Mrs.Jupinder Kaur who is the wife of Mr.Ajit Singh Maker.

12. Learned senior counsels appearing for Mr.Ajit Singh Maker and Mrs.Jupinder Kaur, under instructions from Mr.Ajit Singh Maker and Mrs.Jupinder Kaur, respectively, who are present in Court, undertake: (i) that Mrs. Jupinder Kaur shall not sell, alienate, transfer, encumber or create any third party rights in the property known as Plot No.NH-I, measuring 1332.11 sq. meters situated in the layout plan of Community Centre, Friends Colony, now known as CS(OS) Nos. 3121/2011 and 558/2014 Page 4 of 8 New Friends Colony during the pendency of the suit; (ii) in case the plaintiffs succeeds and the Sale Deed is declared to be null and void and the said property shall be reverted to the Trust and Mrs. Jupinder Kaur shall not stake a claim or seek refund of the said amount of Rs.19.2 crores from the Trust or the other Trustees (other than Mr. Ajit Singh Maker); (iii) in case the Sale Deed is upheld and the sale is held to be valid then Mr. Ajit Singh Maker shall deposit the said amount of Rs.19.2 crores in the Trust account, alongwith such interest and within such period as the court may direct; (iv) in case Mr. Ajit Singh Maker, fails to deposit the said amount, within the stipulated period, Mrs.Jupinder Kaur shall deposit the said amount of Rs.19.2 crores (alongwith interest as directed) in the Trust account within the such period as may be stipulated by the Court; (v) till such time the deposit is made in the trust account, the said amount of Rs.19.2 Crores (alongwith interest as directed), shall be a charge on the subject property and would be recoverable from the sale, alienation, transfer of the said property.

13. It is submitted by learned senior counsel for the defendants that this undertaking is without prejudice to the stand of Mr.Ajit Singh Maker that the said amount of Rs.19.2 crores and other amounts were disbursed in accordance with law and with the knowledge and consent of the other Trustees. This is disputed by learned senior counsel for the plaintiffs. the Trust from 14. Though, learned counsel for the plaintiffs have expressed apprehension on the above undertakings on the ground that the orders that have been CS(OS) Nos. 3121/2011 and 558/2014 Page 5 of 8 violated by Mr.Ajit Singh Maker, they pray for time to consider the said offer, the undertakings are accepted as an interim measures to

secure the property and the sum of Rs. 19.2 Crores. 7. Now, on 21.04.2017, the learned counsel for the defendant No.1 though reiterated the said amount is lying secured in the account of the defendant No.1/defendant No.2 and rather on 19.07.2017 had sought time to take instructions as to how it could be further secured, but yet on 26.09.2017 made the abovesaid statement without actually disclosing where such money is. The statement made on 26.09.2017 was accepted only as an interim measure and the plaintiffs were given time to consider the offer. The plaintiff thereafter allege such statement is not acceptable to them as Ajit Singh Maker has been disobeying the orders of this Court and whatever on record today is mere statements and nothing else and what would happen if the defendants, admittedly neither are residing in India nor have property in India, refuse to abide by their statements.

8. Admittedly, the defendant No.1 has been taking dates making the Court believe the amount is lying secured in his account and shall always remain alive during the course of the proceedings but now during the course of the arguments, strangely enough, it was stated such amount was disbursed as donations to various organizations and nothing is lying with the trust. This statement made during the course of the arguments is contrary to what was recorded earlier by this Court. The defendant No.1 time and again had reiterated the amount is lying secured with defendant No.1. CS(OS) Nos. 3121/2011 and 558/2014 Page 6 of 8 9. Admittedly, the object of the trust never gave any power to sell the property. The original trust deed dated 06.03.1978 notes the powers of the trust and nowhere it gives any right to dispose of the property in any manner. What appears from the record is by a meeting dated 26.01.2010, the defendants reframed the rules and regulations of the trust giving more powers to the trustees including the power to sell its property. The new trust deed was prepared and was got registered on 09.02.2010; clause No.9 of the amended trust deed empowered the trust that a simple majority would require to purchase / sell any immovable property of the trust, though initially the trustees did not had any such power to amend the rules giving them power to sell immovable property of the trust. In fact, the trust deed dated 06.03.1978 though gave power to the trustees to frame rules but such power was only limited to the conduct and management of the trust. Clause No.9 of the original trust deed specifically notes the trust shall be managed by the

managing trustees and shall have the powers of day to day management and administration of the trust.

10. Thus enjoining themselves with the power to dispose of the property of the trust and then to sell it by its managing trustee in favour of his wife on 18.07.2011 for a petty sum of 19.2 crores when undisputedly such property was earning an annual rental of 2.00 crores and without any imminent need of funds in the trust, prima facie appears to be suspicious. Moreover, the amount of 19.2 Crores till now have not seen the light of the day. The bank statements have not been CS(OS) Nos. 3121/2011 and 558/2014 Page 7 of 8 filed as yet and rather the defendants are making contrary statements qua the status of such amount.

11. No doubt the defendants shall be bound by undertakings given, but considering the overall scenario, especially in a situation where if the sale deed is held to be valid, then who shall deposit the amount of 19.2 Crores with the trust is not answered as yet by defendant No.1. Rather the defendant No.1 claims to have donated the entire money.

12. Hence considering the manner in which rules were amended to the benefit of the trustees; the way the property was hurriedly disposed of without any cogent reason or imminent need, and considering the defendant no.1 is not disclosing the exact location of such amount and rather is making contradictory statements every now and then, it would be appropriate in the facts of the case if the amount of 19.2 Crores be deposited by the defendant No.1 in court (as has admitted such amount is lying in his account per orders dated 05.08.2014 and 09.09.2016) or alternatively the defendant No.1 shall furnish the bank guarantee to the extent of 19.2 Crores with the Registrar General of this Court within four weeks from today.

13. List on 08.02.2018. YOGESH KHANNA, J NOVEMBER20 2017 DU/M CS(OS) Nos. 3121/2011 and 558/2014 Page 8 of 8

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