

Hardev Kaur Jando vs.m/s Upper Land and Constructions Pvt Ltd & Ors

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SooperKanoon Citation : sooperkanoon.com/1212629

Court : Delhi

Decided On : Feb-07-2018

Appellant : Hardev Kaur Jando

Respondent : M/S Upper Land and Constructions Pvt Ltd & Ors

Judgement :

\$~15 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CS(OS) 2200/2015
HARDEV KAUR JANDO Plaintiff Through Ms.Swati Bhardwaj with Ms.Bina
Madhavan, Advocates. versus M/S UPPER LAND AND CONSTRUCTIONS PVT
LTD & ORS Defendants Through Mr.Avneesh Garg, Advocate for D-1 to 3. %
CORAM: HON'BLE MR. JUSTICE MANMOHAN Date of Decision:

7. h February, 2018 MANMOHAN, J: (Oral)

JUDGMENT

1 Present suit has been filed for declaration as well as for possession and permanent injunction.

2. On 04th May, 2016, the learned predecessor of this Court had not only framed the issues but also passed a detailed order with regard to handing over the possession of the suit property. The relevant paragraphs of the said order are being reproduced hereinbelow:-

"11. Learned counsel for the plaintiff is agreeable that the plaintiff may be examined through video conferencing by the learned Joint Registrar so as to verify

the power of attorney attributed to the plaintiff dated 26.03.2012, and to establish the authority of the attorney to file the suit and to take CS (OS) 2200/2015 Page 1 of 5 possession of the owners possession on her behalf, from the defendant builders. The plaintiff has filed the photocopy thereof on record. The plaintiff/ power of attorney shall file the said document in original before the Court within two weeks.

12. List the matter before the Joint Registrar on 22.07.2016, when he shall fix the time for recording the solemn statement of the plaintiff through video conferencing. The plaintiff shall make arrangement for recording of evidence through video conferencing at both ends. The plaintiff Hardev Kaur Jando shall file her photographic proof of identity duly attested. While recording the statement of the plaintiff, the learned Joint Registrar shall ensure that: (i) The video conferencing shall be arranged in such a manner that the entire room in which the plaintiff is sitting is captured on camera. The plaintiff shall be alone in this room and there should be no table or other obstruction in front of the chair of the plaintiff. (ii) Considering the time difference between India and United Kingdom, the recording of evidence through video conferencing shall be undertaken at 03:00 p.m. IST onwards. (iii) The recording of evidence shall be carried out within the precincts of the High Court.

13. After the recording has been done, the learned Joint Registrar shall return the finding on the basis of the said recording, whether the plaintiff has appointed Mr.Jatinder Bir Singh as her attorney and whether he is authorised to file the present suit and take possession of the owners portions in the aforesaid properties from the defendant builders. In case these finding are returned in favour of the plaintiff/ attorney, the defendant builder shall deliver possession of the portions falling to the shares of the owners, as aforesaid, to the CS (OS) 2200/2015 Page 2 of 5 attorney holder Mr. Jatinder Bir Singh without any further delay. (emphasis supplied) In pursuance to the said order, the plaintiff has been examined 3. by the learned Joint Registrar by way of video conferencing and she has confirmed her signatures at four points on the general power of attorney dated 26th March, 2012.

4. However, learned counsel for defendant nos.1 to 3 (the builders) still refuses to hand over the possession of the suit property on the ground that even though the signatures have been admitted by the plaintiff on the Power of Attorney, the contents of the said Power of Attorney have not been accepted by the plaintiff.

5. He further states that the property in question needs to be first partitioned between the plaintiff and defendant nos.4 to 6 before the possession can be handed over.

6. This Court is of the opinion that it is not an Appellate Court of the Court that passed the order dated 04th May, 2016.

7. The order dated 04th May, 2016 makes it clear that the Joint Registrar shall examine the plaintiff to establish the authority of the attorney to file the suit and to take possession. The plaintiff in her video conferencing has admitted to the execution of the power of attorney.

8. The fact that the plaintiff has deposed by way of video conferencing, leaves this Court in no doubt that the plaintiff was aware of the contents of the present plaint as well as the order dated 04th May, 2016 and the controversy herein. CS (OS) 2200/2015 Page 3 of 5 9. The plaintiff in her deposition has nowhere stated that the possession of the property should not be handed over to the plaintiff- attorney holder.

10. A perusal of the file also reveals that vide order dated 03rd June, 2016, the learned Predecessor of this Court has clearly stipulated as to which portion of the property shall fall to the share of the plaintiff and which share shall fall to the defendant nos. 4 to 6. The relevant portion of the order dated 03rd June, 2016 is reproduced hereinbelow:-

"It has been agreed that the plaintiff shall be entitled to the entire second floor in the property No.B-64, NDSE Part II, New Delhi and to the entire first floor in the property No.B- 63, NDSE Part II, New Delhi. It has also been agreed that defendant nos.4 to 6 shall be entitled to the entire ground floor in the property No.B-64, NDSE Part II, New Delhi and the entire third floor in the same property. It

has been further agreed that the terrace in the property bearing No.B-64, NDSE Part II shall be shared equally between the plaintiff on the one hand and defendant nos.4 to 6 on the other hand, such that the plaintiff shall take the front 50% area and defendant nos.4 to 6 shall take the rear 50% area of the said terrace. Defendant nos.1 to 3 shall deliver possession of the portions as agreed between the plaintiff and defendant nos.4 to 6 on tendering the demand draft of Rs.2 lacs by the plaintiff on the one hand and defendant nos.4 to 6 on the other hand, and subject to verification of the power of attorney on behalf of the plaintiff in favour of Mr. J.B. Singh as already ordered.... (emphasis supplied) 11. Consequently, this Court is of the view that the defences raised by defendant nos.1 to 3-builders are only an attempt to somehow ensure that the owners of the suit property do not get the possession of CS (OS) 2200/2015 Page 4 of 5 their share.

12. Keeping in view the binding orders dated 04th May, 2016 and 03rd June, 2016, the defendant nos.1 to 3 are directed to forthwith hand over to the plaintiffs attorney the possession of the property falling to the shares of the plaintiff. Since the property is lying locked, the possession shall be handed over to the attorney holder not later than one week from today.

13. In view of the aforesaid directions, learned counsel for the plaintiff does not wish to press for any other or further relief against the defendants in the present suit. Even the learned counsel for defendant nos.1 to 3, without prejudice to his rights and contentions, states that in view of the aforesaid directions, the present suit should be disposed of.

14. Consequently, the present suit is disposed of in terms of the aforesaid directions. Registry is directed to prepare a decree sheet accordingly. MANMOHAN, J FEBRUARY07 2018 KA CS (OS) 2200/2015 Page 5 of 5