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

Arvind Kaur Bedi vs.paramjit Singh Bedi & Ors

Arvind Kaur Bedi vs.paramjit Singh Bedi & Ors

SooperKanoon Citation : sooperkanoon.com/1216983

Court : Delhi

Decided On : Aug-10-2018

Appellant : Arvind Kaur Bedi

Respondent : Paramjit Singh Bedi & Ors

Judgement :

$~OS-4 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + CS(OS) 375/2017 Date of decision:

10. 08.2018 ..... Plaintiff ARVIND KAUR BEDI Through Mr.Sushant,Mahajan, Adv. PARAMJIT SINGH BEDI & ORS versus ..... Defendants Through Mr.Rajvinder Singh, Adv. for D-1 and D-3 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.(ORAL) IA No.9282/2017 1. This application is filed under Order 39 Rules 1 and 2 CPC seeking interim injunction to restrain the defendants or its nominee from transferring, selling, alienating or parting with possession of the immoveable properties bearing Nos.Flat EB200 SFS Flats, Maya Enclave, G-8 Area, Rajouri Garden (now called Hari Nagar), New Delhi and Flat No.7556 (First Floor), Sector-B, Pocket-10, SFS DDA Flats, Vasant Kunj, Delhi.

2. This suit is filed for partition, injunction and declaration regarding the said two properties situated at Hari Nagar and Vasant Kunj. It has been pleaded in the plaint that the plaintiff is the widow of Late Sh.M.S.Bedi (S/o of Late Sh.C.S.Bedi) and is staying in Vasant Kunj property. The plaintiff and the defendants are said to be the successors and part of a Joint Hindu Family of Late Sh.C.S.Bedi. It is

stated that the family had purchased two CS(OS) 375/2017 Page 1 flats Nos.Flat EB200 SFS Flats, Maya Enclave, G-8 Area, Rajouri Garden (now called Hari Nagar), New Delhi and Flat No.7556 (First Floor), Sector- B, Pocket-10, SFS DDA Flats, Vasant Kunj, Delhi out of Joint Family Funds.

3. It is also stated that in view of the family arrangement between the family members in 1994, the plaintiff, her husband Late Sh.M.S.Bedi and defendant Nos.4 and 5, i.e. their son and daughter, respectively had moved to Vasant Kunj property, and the plaintiff has been in continuous and uninterrupted possession of Vasant Kunj property. Subsequently, the husband of the plaintiff died in 1997. It is pleaded that in view of the oral family settlement/agreement in 1994, for more than 20 years the plaintiff has been in peaceful possession of the Vasant Kunj property. Now defendant No.1 has since the death of Late Sh.C.S.Bedi has started claiming ownership over both Hari Nagar as well as Vasant Kunj properties which is in violation of the oral family settlement/agreement. Hence the present suit.

4. The learned counsel appearing for defendant Nos.1 to 3 submits that as far as the property at Vasant Kunj is concerned, it is their own personal property and is bought from their own funds. He submits that he has taken a loan from a bank. There is a conveyance deed in favour of defendant No.1 from DDA. It is also pleaded that so far as the property at Hari Nagar is concerned, it is in the name of Late Sh.C.S.Bedi and defendant No.2, namely, Smt.Harsharan Kaur Bedi. It is urged that at best the plaintiff has 1/8th share in the property at Hari Nagar. Hence, it is pleaded that the suit is misconceived and misplaced and would not lie.

5. 6. I have heard the learned counsel for the parties. The learned counsel appearing for the plaintiff relied upon the two CS(OS) 375/2017 Page 2 facts to plead the rights of the plaintiff in the property. Firstly, reliance is placed on the document termed as Will of Late Sh.C.S.Bedi dated 10.12.1992 wherein Mr.C.S.Bedi had mentioned that defendant No.1 had acquired a residential flat at Vasant Kunj which was bought out of the funds collected by the joint family. It is further stated that the plaintiff has been residing in the suit property at Vasant Kunj for more than 20 years. These two facts show existence of oral family settlement and the property was bought from the funds of the joint family.

7. The learned counsel for the defendants has denied the title of the plaintiff to the property at Vasant Kunj. He has pointed out that in the property at Vasant Kunj the plaintiff is only a licensee. Merely because they were allowed to stay out of love and affection cannot confer any title to the suit property at Vasant Kunj on the plaintiff. He however, submits that defendants shall not forcibly dispossess the plaintiff without due process of law from the property in question.

8. The perusal of the fact shows that as far as the Hari Nagar property is concerned, defendant No.1 concedes that the plaintiff do have some rights, title or interest in the suit property. I, accordingly, direct the parties to maintain status quo regarding title and possession of the said Hari Nagar property.

9. As far as the Vasant Kunj property is concerned, conveyance deed is in favour of defendant No.1 executed by DDA. Further defendant No.1 submits that he has taken a bank loan for purchase of this property which loan he has been repaying. He further states that he will not dispossess the plaintiff from the suit property except due process of law.

10. No doubt, there is a statement on record of Late Sh.C.S.Bedi who had CS(OS) 375/2017 Page 3 in a document termed as Will mentioned that the said Vasant Kunj property was bought from the funds of the joint family. Prima facie this will not lead to a conclusion of existence of a HUF/joint family. However, these are the aspects which will have to be gone into at the time of adjudication of the suit after the parties have led evidence. At this stage, given the fact that the conveyance deed is in favour of defendant No.1, I am not inclined to pass any interim order in favour of the plaintiff regarding said property. Defendant No.1 will remain bound by his statement i.e. that he will not dispossess the plaintiff except by due process of law.

11. I may however note that doctrine of lis pendens will in any case continue to apply.

12. Section 52 of the Transfer of Property Act, 1882 reads as follows: 52. Transfer of property pending suit relating thereto.-During the [pendency]. in any Court having authority 2[3[within the limits of India excluding the State of Jammu and

Kashmir]. or established beyond such limits]. by 4[the Central Government]. 5[* * *]. of 6[any]. suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of impose. 7[Explanation.-For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time the Court and on such terms as it may CS(OS) 375/2017 Page 4 being in force.].

13. The Supreme Court in Jayaram Mudaliar v. Ayyaswami & Ors., (1972) 2 SCC200 while explaining the doctrine of lis pendens, had held that the purpose of section 52 of the Transfer of Property Act is not to defeat any just and equitable claim but only to subject them to the authority of the court which is dealing with the property. The court held as follows: 44. In the Corpus Juris Secundum (Vol. L.IV, P.570), we find the following definition: Lis Pendens literally means a pending suit; and the doctrine of lis pendens has been defined as the jurisdiction, power or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein. 45. Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject- matter of litigation so that parties litigating before it may not remove any part of the subject- matter outside the power of the court to deal with it and thus make the proceedings frunctuous. 14. This application accordingly is disposed of. JAYANT NATH, J.

AUGUST10 2018/v corrected and released on 20.08.2018 CS(OS) 375/2017 Page 5

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