

Sh. Vikrant Singh and Ors Vs. Sh. Wazir Singh

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Court : Delhi

Decided On : Dec-19-2014

Judge : Valmiki J. Mehta

Appellant : Sh. Vikrant Singh and Ors

Respondent : Sh. Wazir Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) No.542/2014 & C.M.Nos.9470-9471/2014 19th December, 2014 % SH. VIKRANT SINGH & ORS Through: Petitioners Mr. Vijender Kharb, Adv. & Mr. B.S. Kharb, Adv. versus SH. WAZIR SINGH Through: Respondent Dr. Suman Chaudhary, Adv. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India is filed by the defendant nos.1 to 4 in the suit impugning the order of the trial court dated 22.03.2014 by which the trial court has dismissed the application filed by the petitioners/defendant nos.1 to 4 under Order VI Rule 17 read with Order VII Rule 14 r/w Section 151 of the Code of Civil Procedure, 1908 (CPC) for amending the written statement and also for taking additional documents on record as regards the new pleas.

2. Firstly I must note that since one petition cannot be filed against two different orders, at this stage, this petition as per the request made on behalf of the petitioners is treated only as a challenge to the order dated 22.03.2014 of the trial court dismissing the application of the petitioners filed under Order VI Rule 17 read with Order VII rule 14 r/w Section 151 CPC.

3. The subject suit is suit for partition. The respondent/plaintiff seeks partition of the suit property/ land in plot No.18, Roshan Pura Ext., Najafgarh, Delhi on the ground that respondent/plaintiff is a co-owner with the petitioners/defendants No.1 to 4. In the existing written statement the case of the petitioners/defendants no.1 to 4 was that the suit property was no doubt jointly purchased by respondent/plaintiff and the predecessor-ininterest of the petitioners/defendants no.1 to 4, namely Sh. Anar Singh (husband of defendant No.4 and father of defendant nos. 1 to

3) and that the respondent/plaintiff and late Sh. Anar Singh were real brothers, but, since the suit property is already partitioned, therefore, the suit was liable to be dismissed.

4. By the subject application, the petitioners/defendants no.1 to 4 want to now plead the case that half of the suit property was already purchased by late Sh. Anar Singh from the respondent/plaintiff by the documents being the Agreement to Sell, Affidavit, Receipt, General Power of Attorney dated 27.01.1983, CM(M) 542/2014 and therefore, late Sh. Anar Singh and petitioners/defendants no.1 to 4 are already owners of the half share in the property which was owned by the respondent/plaintiff.

5. Trial Court has dismissed the application by drawing the following conclusions:(i) There is lack of credibility as regard the documents dated 27.01.1983 which are only notarised and not registered, and, the documents sought to be filed along with the amendment application are being filed only after the evidence of the respondent/plaintiff was closed and the stage of the suit was for the evidence of the petitioners/defendants no.1 to 4 to commence i.e the petitioners/defendants no.1 to 4 knew the entire case/evidence of the respondent/plaintiff. (ii) If the amendment as prayed for is allowed then the same will amount to taking up a totally new stand which is diametrically opposite to the

existing stand of the petitioners in the written statement, because, in the existing written statement joint ownership of the entire suit plot was admitted to be of Sh. Anar Singh with the respondent/plaintiff, whereas by the amendment now filed it is pleaded that the half of the plot belonging to the respondent/plaintiff was purchased and hence owned by late Sh. Anar Singh by virtue of the documents dated 27.01.1983.

6. I agree with the aforesaid conclusions of the trial court, and in my opinion the following additional conclusions can be given for dismissing the application under Order VI Rule 17 read with Order VII Rule 14 r/w Section 151 CPC:(i) Documents are allowed to be filed at a late stage post the framing of issues and after the opposite party has led evidence, only if documents sought to be filed are unimpeachable documents. The object of law in not allowing filing of new documents after leading of evidence by other side is that the new documents sought to be filed are those which can be manufactured to suit the case of a party after the opposite party has led evidence. (ii) In the present case in my opinion there is complete lack of authenticity to the alleged documentation dated 27.01.1983 not only because they are only notarised and not registered, but also because it is an admitted fact that consideration under the said documentation is stated to be in cash i.e consideration is not paid by cheque, and only in which latter case it was possible to ensure co-relation of the documents to the date of execution dated 27.01.1983 inasmuch as payment by means of a cheque will show that the transaction was entered into on the date of the documents supported by the payment. (iii) In fact the documents dated 27.01.1983 are not genuine documents and are definitely forged and fabricated in order to sustain the case of the petitioners/defendant nos.1 to 4 now sought to be pleaded through the subject amendment application inasmuch as the documents of 27.01.1983 did not see the light of the day till the subject partition suit was filed in 2008 viz for a period of 25 years from 1983 to 2008. The alleged documents dated 27.01.1983 never saw the light of the day is also clear from the fact that on the basis of these documents no claim was even laid either by late Sh. Anar Singh or by the petitioners/defendants no.1 to 4 for seeking mutation of the suit property in their name before the municipal authorities.

7. It is hence clear that the petitioners/defendants no.1 to 4 are being totally dishonest because after completion of the evidence of the respondent/plaintiff, they have forged and fabricated the documents dated 27.01.1983 to defeat the suit of the respondent/plaintiff.

8. In view of the above, I do not find any merit in the petition, and same is in view of the discussion above dismissed with costs of Rs.20,000/-. Costs shall be paid by the petitioners/defendants No.1 to 4 to the respondent/plaintiff before the trial court. VALMIKI J.

MEHTA, J DECEMBER19 2014 hk

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