

Isha Vs. Balbir Singh and Ors

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Court : Delhi

Decided On : Jan-15-2015

Judge : Hima Kohli

Appellant : Isha

Respondent : Balbir Singh and Ors

Advocate for Def. : Mr. Sudarshan Rajan

Advocate for Pet/Ap. : Mr. Prithu Garg

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 1579/2012 IN THE MATTER OF: ISHA Decided on :

15. 01.2015 Plaintiff Through: Mr. Prithu Garg and Mr.Virat K.Anand, Advocates versus BALBIR SINGH AND ORS Defendants Through: Mr. Sudarshan Rajan, Advocate for D-2 CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.(Oral) IA No.2793/2014(u/O VIII R10CPC) 1. The present application has been filed by the plaintiff praying inter alia for pronouncement of judgment against the defendants in view of the fact that they have not filed their written statements within the prescribed period.

2. The plaintiff(daughter-in-law of the defendant No.1 and sister-in- law of the defendant No.3) has filed the accompanying suit for passing a decree of

possession in her favour in respect of Flat No.103-B, Pocket IV, Mayur Vihar, Phase-I, Delhi. The plaintiff has also prayed for a decree of permanent injunction for restraining the defendants from transferring, selling, alienating, or parting with possession of the suit premises and for a decree of recovery of damages @ Rs.15,000/- per month, payable jointly and severally by the defendants from the date of instituting the present suit, till the date of possession.

3. The present suit was instituted on 25.5.2012. issued in the suit vide order dated 28.5.2012. Summons were On the said , an ad interim ex-parte order was passed in favour of the plaintiff, restraining the defendants from creating any third party interest in the suit premises.

4. On 21.11.2012, learned counsel had entered appearance on behalf of the defendant No.2 and stated that he had already filed the written statement, but the same had been returned by the Registry with certain objections. He had further stated that he would be re-filing the written statement within four weeks. As the summons in the suit were not issued for want of process fees, the Joint Registrar granted four weeks time to the defendant No.2 to file the written statement on the ground that the summons were accepted by the counsel in court. The period of four weeks reckoned from 21.11.2012 would have expired on 21.12.2012. Since none was present on behalf of the defendants No.1 & 3 on the said date, fresh summons were issued to the said defendants, returnable on 10.4.2013.

5. On 10.4.2013, defendant No.1 had appeared in person and learned counsel had appeared for the defendant No.2. Though the defendant No.3 was duly served with the summons in the suit on 27.2.2013, none had appeared on her behalf on the said date. Till the said date, written statements were not filed by the defendants No.1 & 3. As regards the defendant No.2, on 10.4.2013, it was observed that though a counter claim had been filed by him, his written statement was not on record. Counsel for the defendant No.2 had reiterated that he had filed the written statement on 22.11.2012. In view thereof, he was directed to contact the Registry to get the same placed on record and the case was adjourned to 8.10.2013, for admission/denial of documents.

6. On 8.10.2013, yet again, it was recorded that neither had the defendants No.1 & 3 filed their written statements, nor did they appear on the said date. As for the defendant No.2, the Registry had again reported that no written statement had been filed by the said defendant. On the said date, admission/denial of documents filed by the plaintiff were concluded before the Joint Registrar and the suit was placed before the court on 7.2.2014, on which date, it was adjourned to 31.3.2014. Thereafter, the plaintiff had filed the present application under Order VIII Rule 10 CPC. Notice was issued on this application on 12.2.2014, returnable for 7.3.2014.

7. Though summons were duly received by all the defendants, no steps were taken by them to file replies in opposition to the present application. The position remains the same even as on date. Finally, vide order dated 21.8.2014, the Joint Registrar had directed that this application be placed before the court for appropriate orders.

8. On 28.10.2014, it was again noted that the defendants had not filed their replies to this application and the same was adjourned to 19.11.2014 and then to 2.12.2014. On 2.12.2014, learned counsel for the defendant No.2 had stated that due to an oversight on his part, the written statement filed by him in the present case came to be erroneously filed in the file of CS(OS) No.1589/2012(a decided matter).

9. In view of the aforesaid submission, the file of CS(OS) No.1589/2012, entitled Isha Vs. Balbir Singh & Ors.

was summoned from the Registry for perusal.

10. A perusal of the aforesaid file reveals that there is no written statement on record. In view of the above position, this court is unable to accept the submission made by learned counsel for the defendant No.2 that the written statement had erroneously been filed by him in CS(OS) No.1589/2012. In any case, sufficient time was granted to the defendant No.2 to take adequate measures to ensure that the said written statement, if at all filed in the above suit, is taken back from the Registry and re-filed in this suit. In the alternate, if the written statement had actually been filed as claimed by the defendant No.2 and it was untraceable for

any reason, then a photocopy thereof should have been furnished to the other side as proof of filing and the defendant No.2 ought to have approached the court with an application for seeking permission to file another copy of the said written statement, for satisfying the court with regard to his bona fides.

11. For reasons best known to him, none of the aforesaid steps have been taken by the defendant No.2 till date. The counter claim filed by the defendant No.2 would not be a defence in the present application. The remaining defendants No.1 & 3 have also not elected to file their written statements. Further, none of the defendants have chosen to file a reply in opposition to the present application.

12. Accordingly, the present application is allowed. The relief prayed for at prayer (a) of the plaint for passing a decree of possession in favour of the plaintiff and against the defendants in respect of the suit premises is allowed. Further, the relief at prayer (b) for passing a decree of permanent injunction in favour of the plaintiff and against the defendants restraining them from transferring, selling, alienating or parting with possession of the suit premises till the possession thereof is handed over to her, is also allowed. CS(OS) 1579/2012 pronounced in favour of the plaintiff and against the defendants in respect of prayers (a) & (b). Decree sheet be drawn accordingly.

13. Coming to the relief at prayer(c), for passing a decree of recovery of damages in favour of the plaintiff, it is deemed appropriate to direct the plaintiff to file an affidavit by way of evidence in support of the said relief. Needful shall be done within four weeks, with a copy to the other side.

14. List before the Joint Registrar on 25.2.2015, for further proceedings.

15. The application is allowed and disposed of on the above lines. IA No.10371/2012(u/O XXXIX R1& 2 CPC_) In view of the orders passed above, the interim order dated 28.5.2012 is made absolute and the application is disposed of. JANUARY15 2015 mk CS(OS) 1579/2012 (HIMA KOHLI)