

Asha Batra and ors. Vs. Dharam Devi

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Court : Delhi

Decided On : Feb-11-2004

Reported in : 109(2004)DLT852; 2004(73)DRJ154

Judge : Vikramajit Sen, J.

Acts : Code of Civil Procedure (CPC) - Sections 115

Appeal No. : CRP No. 747/2001

Appellant : Asha Batra and ors.

Respondent : Dharam Devi

Advocate for Def. : N.N. Anand, Adv.

Advocate for Pet/Ap. : D.S. Patial, Adv

Disposition : Petition dismissed

Judgement :

Vikramajit Sen, J.

1. This Revision is against the Order dated 24.3.2001 passed by Civil Judge, Delhi in Suit No. 15/1999 in terms of which the Revisionists have been imp leaded as Defendants in the civil suit which is still pending adjudication. The Respondent herein is the Plaintiff in that suit and the father of the Revisionists was the only

Defendant. Paras 9 and 10 of the plaint read as follows :

'That the Plaintiff has several times asked the Defendant not to interfere in her possession, but the Defendant has failed to accede to the request of the Plaintiff and is always threatening to interfere with her possession.

That the cause of action arose in favor of the Plaintiff and against the Defendant on 12.5.1984 when the Defendant started interfering with the possession and enjoyment of the Plaintiff over the land in question.

It also arose on various occasions and it further arose on 13.5.1984 when the Defendant again tried illegally with the possession of the Plaintiff and a report was lodged with the local police. It is still continuing one on account of threats by the Defendant.'

2. Relying on the observations of the Hon'ble Supreme Court in *Kakumanu pedasubhayya and another, Vs . Kakumanu Akkamma and another*, : [1959]1SCR1249 (V 45 C 146) and *Girijanandini Devi and others Vs . Bijendra Narain Choudhary*, : [1967]1SCR93 (V 54 C 234), the Trial Court had imp leaded the legal heirs of the deceased Defendant. *Girijanandini Devi's case (supra)* does not apply for the reason that the relief in that suit was for partition which is obviously run with the property and would continue even in respect of legal heirs of the original parties. So far as *Kakumanu's case (supra)* is concerned that is for rendition of accounts and would thereforee continue and the same position is arrived at in *Girijanandini's case* since the prayer for partition would continue.

3. A perusal of these paragraphs, as well as a holistic reading of the plaint, discloses that the Plaintiff had perceived a threat from the Defendant. In the plaint the Plaintiff has alleged that it was the Defendant, namely, Shanti Sarup Batra who had threatened to dispossess the Plaintiff. No doubt in the plaint it has been mentioned that the Defendant and his agents are threatening to dispossess the Plaintiff but the names and particulars of the agents have not been disclosed. It is far too much to expect that the legal representatives should be taken to fall within the term 'agent'.

4. In my view the suit being simply for the grant of injunction, it would come to an end on the death of the Defendant. This view has also been taken in *Kosarichand Motichand Shah Vs . Fakirbhai Kariabhai Koli and others*, : AIR1995 Bom102 where it was held that the question of abatement did not arise in for the simple reason that the suit itself would come to an end.

5. This suit has been pending since 1984. The Revisionist claims that it has been delayed for twenty long years because of dilatory tactics of the Plaintiff. These allegations do not call for determination before me. One option which is available to this Court is to dismiss the Revision on the grounds that the same conclusion could have been arrived at in the judgment in the suit. It is certainly arguable that, being akin to an interlocutory Order, this Court need not exercise its jurisdiction especially after the amendment in Section 115 of the Code of Civil Procedure and the pronouncements of the Apex Court in *Shiv Shakti Coop. Housing Society, Nagpur vs . Swaraj Developers and Others*, : [2003]3SCR762 .

6. Despite these weighty considerations, in my view, the Revision calls to be accepted. The suit has clearly come to an end on the death of the Defendant. Any apprehensions that the Plaintiff may have on the grounds of forcible dispossession would become an illusion for the reason that it is the legal heirs of the Defendant who are objecting to their impleadment in the suit. The only inference that can be drawn for this objection is that they have not threatened the Plaintiff with dispossession. For this reason no useful purpose will be served in the suit continuing in the Lower Court. There is no dispute pending between the parties. The Suit shall be deemed to have been dismissed.

7. It also transpires that an Order favorable to the Respondents herein has been passed by the Financial Commissioner so far as the title of the property is concerned. I am informed that that decision has been challenged by way of Writ Petition and its operation has been stayed.

8. The dismissal of this Petition shall not be construed as a reflection or finding on the title of the respective parties to ownership of the land since that question had not arisen in the suit for injunction.

9. The Revision Petition is disposed of with these observations.

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