

Shravan Kapur and Others Vs. Anup Kapur and Others

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Court : Delhi

Decided On : Sep-27-2000

Reported in : 2000VIIAD(Delhi)1117; 88(2000)DLT108; 2000(56)DRJ823

Judge : Devinder Gupta and; Mukul Mudgal, JJ.

Appeal No. : FAO (OS) No. 206/98

Appellant : Shravan Kapur and Others

Respondent : Anup Kapur and Others

Advocate for Def. : Mr. Ishwar Sahai, Senior Adv., and ; Mr. K.K. Mehra, Adv.

Advocate for Pet/Ap. : Mr. Ravi Gupta, Adv

Judgement :

ORDER

Devinder Gupta, J.

1. This appeal is against an order passed by learned Single Judge on 5.8.1998 directing partition of the suit property by metes and bounds in accordance with the shares declared in the preliminary decree dated 12.1.1996.

2. Facts in brief are that Dewan Chand Kapur filed a suit for partition of property No.49/7, Rajpur Road, Delhi against his three sons, namely, Shri Anup Kapur, Shri

Aman Kapur and Shri Naveen Kapur claiming that property is the Joint Hindu Family having been inherited by him and his three sons from his late father Shri Lajjya Ram Kapur. The property is in joint possession of the parties in which parties have 1/5th undivided share. After summons had been duly served on the defendants, an application under Order 23 Rule 3 C.P.C. was filed. It was allowed and a preliminary decree was passed on 12.1.1996 declaring that of the parties have 1/5th share each in the suit property. Simultaneously, a Local Commissioner was appointed to suggest mode of partition. The Local Commissioner submitted his report dated 15.3.1996 expressing his inability to execute the commission on account of the alleged non cooperative attitude of Smt. Neelu Kapur wife of Shri Anup Kapur. Accordingly, IA.11489/97 was filed by the plaintiff Shri Dewan Chand Kapur for direction that the property be ordered to be partitioned by metes and bounds as per the shares declared in the preliminary decree. The said application was taken up on 5.8.1998, after notice had been issued to Smt. Neelu Kapur also. On the said application, learned Single Judge passed the impugned order directing partition of the property by metes and bounds in accordance with the shares declared in the preliminary decree. This appeal has been preferred against the said order by Smt. Neelu Kapur with her son and daughter.

3. The grievance of the appellants, who admittedly are not parties to the suit for partition is that three applications: (i) IA.7431/96 filed by the appellants seeking impleadment in the suit; (ii) IA.7432/96 seeking stay of the operation of the partition decree on the ground that it had been obtained collusively and (iii) IA.7433/96 for setting aside the collusive preliminary decree were pending. Without deciding the three applications, learned Single Judge proceeded to direct partition of the property, which had the effect of jeopardizing valuable rights of the appellants. In case the property is allowed to be partitioned, it is likely to cause prejudice to the appellants and will thereby have the effect of making the suit (S.No.1826/95) filed by the appellants as infructuous.

4. We have heard learned counsel for the parties and been taken through the entire record.

5. No doubt that the impugned order was passed by learned Single Judge without deciding the said three applications but that will not make any difference insofar as the merits are concerned. There is also no likelihood of any prejudice being caused on the alleged rights of the appellants in any manner affecting the suit filed by them. The appellants have filed a separate suit (Suit No.1826/95), which is stated to be pending and in which there is an interim order of temporary injunction operating directing the parties therein to maintain status quo with respect to the property in question. Even if any order on merits is passed in a partition suit filed by Shri Dewan Chand Gupta in which the appellants are not parties and partition by metes and bounds takes place such a partition carried out in accordance with law cannot adversely affect rights, if any, of the appellants in their pending suit No.1826/95.

6. Appellant No.1 is the wife and appellants 2 and 3 are the two children of Shri Anup Kapur. They were not impleaded as parties in the suit for partition filed by Shri Dewan Chand Kapur. They can only claim enforcement of their rights, if any, qua the share of that part of the property which ultimately would fall into the share of Shri Anup Kumar but for that reason partition of the property cannot be ordered to be withheld. It has rightly been conceded by learned counsel appearing for the respondents that they have no objection in case it is directed that the Local Commissioner who will carry out actual partition by metes and bounds, as per the shares declared in the preliminary decree would also ascertain the view point of the appellants so as to safeguard their interest, more particularly in view of the alleged strained relations.

7. While keeping the interests of the appellants aforementioned in view and having considered the submissions, we are of the view that there is hardly any force in the appeal. The appellants cannot resist and oppose the actual partition of the property, which is to be carried out as per the shares declared in the preliminary decree. On behalf of the appellants also it has been conceded that they can exercise their rights only qua that part of the property, which ultimately will fall to the share of Shri Anup Kapur.

8. Consequently, the appeal is dismissed but with the directions that the Local Commissioner, who pursuant to the impugned order will carry out partition of the property by metes and bounds will also take into consideration the view point of the appellants, if any, for which purpose they will be duly associated at the time of passing a final decree.

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