Mr. Neeraj Sharma Vs. Mr. Rakesh Kumar Sharma

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SooperKanoon Citation : sooperkanoon.com/692661

Court : Delhi

Decided On : Mar-22-2005

Reported in : AIR2005Delhi345; 2005(82)DRJ189

Judge : Pradeep Nandrajog, J.

Acts : Code of Civil Procedure (CPC) - Order 6, Rule 17

Appeal No. : IA 779 and 2671/04 in CS(OS) 1650/2001

Appellant : Mr. Neeraj Sharma

Respondent : Mr. Rakesh Kumar Sharma

Advocate for Def. : D.R. Bhatia, Adv. for D-2 and ; Debojit Bonkakati, Adv. for D-4

Advocate for Pet/Ap. : Sanjiv Khanna, Adv

Disposition : Application dismissed

Judgement :

Pradeep Nandrajog, J.

1. Case pleaded by the plaintiff who is the widow of late Gopal Krishan Vohra is that property No.B-1/32, Malviya Nagar, New Delhi was leased in perpetuity to Mrs. Ved Gorwara by the L and DO. Changing hands, property ultimately came to be owned by Smt. Bimla Devi, w/o Shri Vasdev, mother-in-law of the plaintiff, by

and under a registered sale deed dated 9.4.1979. On the death of Smt. Bimla Devi on 24.10.1995, as per Will dated 2.8.1995, property was inherited by her son, Gopal Krishan Vohra (plaintiff's husband) and on his death on 22.6.1999, by the plaintiff, as per Will dated 15.3.1999.

2. Further case of the plaintiff is that till the year 1985-86, Shri M.L. Bahri, brother of Smt. Bimla Devi resided in the building constructed on the plot and thereafter the building remained vacant as plaintiff and her husband were residing in Khanna, Punjab. The building remained locked.

3. It is further stated that defendant No.1 had approached late husband of the plaintiff to get the property mutated in record of Land DO in name of late husband of the plaintiff who signed some papers for mutation and gave them to defendant No.1 but at no stage did he execute any general power of attorney appointing defendant No.1 as his general attorney to deal with the property. On 5.7.2001, plaintiff came to Delhi and found that existing building had been demolished and a new building was under construction. Enquiry revealed that defendants 3 and 4 had got the property mutated in their names in record of MCD and had obtained a sanction to construct the building. Said defendants had acted under a sale deed dated 8.2.2001 executed by defendant No.2 which sale deed was executed by said defendant as attorney of late husband of the plaintiff, which power was claimed through defendant No.1, who in turn acted under a power of attorney purported to have been executed on 25.2.1999 in favor of defendant No. 1ay late husband of the plaintiff. It is claimed by the plaintiff that power of attorney dated 25.2.1999 is a forged document as her husband did not execute any such document and that said power of attorney purports to be registered with the Sub-Registrar Khanna, Punjab. It is claimed that no such document stands registered with the Sub-Registrar, Khanna. Thus, as per the plaintiff she is the owner of the property and defendants 3 and 4 are rank trespassers.

4. Defendant No.1 has chosen to remain absent. Defendants 2 to 4 have filed a joint written statement on 28.2.2002. In the preliminary objections it is stated by said defendants:

'1. The present suit filed by the plaintiff is not maintainable either on facts or in equity and the said suit is a frivolous suit and has been filed to extract more money from the Defendant no.2.

II. That the defendant no.2 had purchased the land from defendant no.1 for Rs.22 lakhs as full consideration for the said property for which dispute is sought to be raised by the plaintiff.

III. The husband of the plaintiff had executed registered power of Attorney in favor of the defendant No.1 on 25.2.1999 at Khanna, Distt Fatehgarh Sahib, Ludhiana, which was registered in the Sub Registrar's office at Khanna on 25.2.99. On the specific date the office of Sub Registrar at Khanna was open and as such the said document is registered in accordance with law. The plea raised by the plaintiff that the said power of attorney executed by the husband of the plaintiff is forged and is without any substance. Merely by stating that the office of Sub Registrar was closed on 25.02.99 would not suffice, as there was no holiday in the Sub Registrar Office on 25.02.1999.

IV. The husband of the plaintiff has executed several power of attorney with respect to the said property in favor of different persons for the same property and hereby the husband of the plaintiff had taken money from those persons by selling the suit property repeatedly to several persons. There are even criminal complaints instituted against the husband of the plaintiff by one of the purchaser in whose favor the husband of the plaintiff had executed the power of attorneys of the suit property.

VI. It is the case of the defendant no.2 that he had paid Rs.22 lakhs to defendant No.1 as full consideration of the suit property. The defendant no.2 has the transcript record of the telephonic conversation about the receipt of the money. The defendant No.2 had paid the entire payment and the same would be produced by way of evidence.

VI. The defendant no.2 had paid the amount of Rs.22 lakhs through T.T and bank cheque for the said transaction. The defendant no.2 is being threatened by the plaintiff for extracting more money and that Defendant no.1 and the plaintiff are in collusion with each other in the present suit. The defendant no.1 is a very influential person in Punjab and the plaintiff had colluded with defendant no.1 to extract money from defendant no.2 by physical threat and other illegal means including kidnapping of defendant no.2.

VIII. It is submitted, that plaintiff had filed the present on basis of will dated 15.03.99 executed by her husband late Shri Gopal Krishna Vohra. The signature which was put on the will executed by the executant differs from the signature put on deed for free holding the property in the govt. office at Nirman Bhawan, New Delhi which itself implies that the will has been manufactured by the plaintiff for her personal gain despite knowing the fact property in question had already been sold by defendant no. as a power of attorney holder of her husband to defendant no.2.'

5. In para 2 and 5 of the reply on merits to para 9 and 12 of the plaint, it is stated by defendants 2 to 4 as under:

'2. The content of paragraph 9 of the plaint is denied. The plaintiff was fully aware of the transaction and the disposal of the property by her husband and as such the plaintiff could not claim ignorance of the entire transactions entered into by her husband. It is categorically denied that the locks, key and possession of the premises were with the plaintiff. The defendant No.2 came in possession of the suit property on 23.2.99 after the execution of the registered power of attorneys by Defendant No.1 in favor of the defendant No.2 and after the receipt of the full payment by defendant No.1 from the defendant no.2. The physical possession to the defendant no.2 was given by the defendant no.1 and the plaintiff had full knowledge of the same.

X X X X X X

5. The contents of paragraph 12 of the plaint are incorrect and hence denied. The defendant no.3 and 4 are the owners of the property by virtue of registered sale deeds dated 8.02.2001 executed in favor by defendant no.2. The defendant no.2 is the lawful registered power of attorney holder of the husband of the plaintiff which was executed through defendant no.1 who had the registered power of attorneys dated 25.02.1999 in his favor. The defendant no.1 had execute the

General Power of Attorney and appointed defendant no.2 as attorney of the husband of the plaintiff.'

6. In para 3 of the written statement, inter alia, it is stated:

'xx xx xx xx xx

'The defendant no.2 had further executed the General Power of Attorneys in favor of the defendant Nos. 3 and 4 who had been granted possession of the suit property and are constructing flats on the suit property.'xx xx xx xx xx'

7. On 17.9.2001 following interim order was passed in the presence of counsel for defendants 3 and 4:

'List for disposal of IAs on 20th November, 2001. Till then, defendants 3 and 4 are directed to maintain status quo in regard to possession of the suit property and creation of any third party interest therein.'

8. Written statement has been filed, as noted in para 4 above, on 28.2.2002. It was filed after 5 months of order dated 17.9.2001 which directed defendants 3 and 4 to maintain status quo. In the written statement there is not even a whisper that property has been alienated by said defendants.

9. In FAO(OS) 496/01 filed by the plaintiff against order dated 17.9.2001 passed in the present suit, Division Bench of this Court vide order dated 9.11.2001, appointed a Local Commissioner to inspect the suit property and file a report regarding status and extent of construction; at whose behest construction was being carried on and who is in possession of the property and whether any third party interest has been created.

10. Report submitted by the Local Commissioner, who visited the suit property pursuant to order aforesaid passed by the Division Bench, records that the Local Commissioner visited the suit property on 22.11.2001. The building consisting of a basement, ground, first, second and third floors was under construction. Except for pillars in the basement, no other work had been completed in the basement. Brick work in the building was completed. Plastering work on the walls was completed

only in the ground floor. Flooring work was in progress on the ground floor. First floor and above had neither flooring nor plastering on the floors or the walls. Neither doors nor windows had been affixed in the building. Report records that one Mr. Dinesh Kumar Kundra, S/o late R.L. Kundra had reached the building along with few other persons to enquire as to what was being done by the Local Commissioner. Report records that Shri Dinesh Kumar Kundra stated that he was owner of the building.

11. It may be noted that Shri Dinesh Kumar Kundra is defendant No.4 in the present suit. It may further be noted that no objections have been filed to the report of the Local Commissioner. It may also be noted that report of the Local Commissioner is supported with photographs.

12. Plaintiff filed another application in the present suit praying for appointment of another Local Commissioner to visit the suit property as the plaintiff was denied excess to the building and the plaintiff had noted some persons residing in the suit property. Application of the plaintiff being IA.No.4008/03 was allowed on 7.4.2003. Ms. Renuka Singh, practicing Advocate in this Court was appointed as the Local Commissioner to visit the property and report the person who was in possession thereof. Report has been filed by the learned Local Commissioner to which no objections have been filed by any party. Report states that at the gate of the premises, Local Commissioner saw 6 letter boxes with the following names :

(i) Mahajans - Ground Floor

(ii) Chakradhar - First Floor

(iii) Dr. D.K. Saha - Second Floor

(iv) P.K. Singh - Third Floor

(v) R. Dass Gupta - Third Floor

(vi) Blank - Basement

13. Report further records that one Shri S.L. Mahajan, who was on the ground floor disclosed that he had purchased the ground floor in the name of his son

Sanjay Mahajan. At that time, defendant no.4 came to the spot and advised Mr. S.L. Mahajan to refrain from signing the report. On the first floor, a lady Mrs. Anita Dhandia, w/o Shri Chakradhar was present. She disclosed that she was the owner of the premises. She signed the report. On the second floor, one Mrs. Arti Saha disclosed that she and her husband were the joint owners. Her husband joined a little later and signed the report. Report further records that third floor was divided into two flats. Door of one flat was opened by one Mrs. Pramod Kumar Singh, who informed that her sister Jyoti Singh owned the flat. The other flat on the third floor was opened by one Mr. Partho Gupta who stated that his cousin Mr.Raja Dass Gupta was the owner thereof. Report further records that Mr. Sanjay Mahajan met the Local Commissioner when she was about to leave the premises as he learnt about some investigation going on and had, thereforee come to the suit premises. He disclosed that the basement was owned by defendant No.4.

14. Why did he part with possession of the suit property in spite of the orders passed on 17.9.2004 directing defendants 3 and 4 to maintain status-quo in regard to possession of the suit property and creation of third party interest therein, has been explained by defendant no.4 by and under an affidavit filed on 18.12.2003. In the said affidavit, defendant no.4 has stated that he has shared the sale proceeds with defendants 2 and 3. He stated that defendant No.1 assured him that he had interred into a compromise with the plaintiff. He believed the assurance of defendant No.1. In para 9 of the affidavit, defendant No.4 has stated that :

'9. However, is respondent would submit his unconditional apology to this Hon'ble Court. This respondent has utmost respect for this Hon'ble Court and he would not dare violate any order of this Hon'ble Court6. He had to sell the flats on the promise of defendant No.1 that there would be a compromise within 2 or 3 days.'

15. Though written statement has been captioned as a written statement on behalf of defendants 2, 3 and 4, but the same has been signed and verified by defendant no.2. Counsel are appearing separately for defendant No.2 and separately for defendant No.4. It was noticed that it was stated in the written statement that defendant No.2 came in possession of suit property on 23.2.1999 after execution of a registered power of attorney by defendant no.1 in his favor empowering

defendant No.1 to deal with the suit property under a power of attorney registered on 25.2.1999 coupled with the assertion of the plaintiff that no power of attorney was ever executed by her husband on 25.2.1999 as claimed by defendants, I had summoned the record of the Sub-Registrar, Khanna, Punjab for the reason, power of attorney dated 25.2.1999 relied upon by the defendants purports to have been registered at Seriall No.6571 in Book No.4, in the office of Sub-Registrar, Khanna, Punjab.

16. On 16.3.2004, statement of Mr. Satnam Singh, Clerk from the office of Sub-Registrar, Khanna was recorded. He had produced the record which was summoned. The register for the period 19.1.1999 to 7.4.1999 was produced. Shri Satnam Singh stated that power of attorney are registered in the Book No.4. Book No.4 produced by him contained the power of attorneys registered between 19.1.1999 to 7.4.1999. No document was registered on 25.2.1999. He stated that in Khanna, not more that 4500 documents were registered in any year and, thereforee, question of any document having Seriall No.6571 does not arise. Be that as it may, what is relevant for the present suit is the fact that the general power of attorney relied upon by the defendants as been executed by the husband of the plaintiff and registered in the office of the Sub-Registrar, Khanna (Punjab) does not find it being registered. Prima facie, the document is a forged and fabricated document.

17. In IA.No.779/04, plaintiff prayed for decree on admission or alternatively for appointment of a receiver.

18. Facts of the case noted above bring out the following salient features :

(i) Power of Attorney dated 25.2.1999, being fountain head of title claimed by defendants is prima facie a forged and fabricated document. Defendants rely on power of attorney allegedly executed by defendant No.1 in favor of defendant no.2 on 23.2.1999, a date two days prior to 25.2.1999.

(ii) Defendants have violated, with impunity, order dated 17.9.2001.

(iii) Written statement filed by defendants 2 to 4 has been prepared on 25.2.2002 and filed on 28.2.2002. In the written statement, defendants have not stated that they have parted with possession of the property.

(iv) Report of the Local Commissioner, who visited the property on 22.11.2001, records an incomplete building and possession being with defendant No.4.

(v) Defendant No.4 admits violation of order dated 18.9.2001.

19. Prima facie, none of the defendants or person claiming under the defendants would have any right to occupy the suit property. Transfer of possession or ownership is in violation of order dated 17.9.2001. The origin of title claimed by the defendants through the husband of the plaintiff is under a forged document. It is the duty of the court to see that the rights of the parties are not jeopardized and that the ends of justice are not defeated.

20. In its wisdom, legislature has conferred very wide jurisdiction on a court to appoint receiver of a property. The guiding words of the Statute are 'just and convenient'

21. Facts of the instant case are not akin to the facts noted by this Court in the decision reported as 1996 2 AD (Del) 450, Subroto Ghose v. Ashok Kumar Gupta. Manipulated title was being put forward by defendants in the said suit. Fictitious documents were created. Noting that facts prima facie reveal a case of grabbing another's property through illegal means pursuant to a criminal conspiracy, this Court appointed a receiver.

22. IA.No.779/04 is accordingly disposed of appointing Shri Kumud Kumar Khetan, Advocate, 251, Lawyers Chqmbers, Delhi High Court, New Delhi (Ph:23389365, 9810389109 9810389109) as receiver of property bearing municipal No.B-1/32, Malviya Nagar, New Delhi with a direction to take physical possession of the basement and symbolic possession of the remaining floors. Fee of the receiver is fixed at Rs.20,000/- to be paid by the plaintiff.

23. Defendant No.2 has filed IA.No.2671/04 invoking Order 6 Rule 17 CPC. Reason stated as to why defendant No.2 seeks to amend the plaint is as under :

'4. That the applicant/defendant No.2 had earlier filed a joint written statement along with the other defendants through Shri Manoj Sharma, Advocate. The applicant has now engaged a new counsel i.e. Shri K.C.Bajaj. After going through the joint written statement, the counsel has opined that the joint written statement filed by the applicant/defendant No.2 suffers from technical lacunas and hence it would be desirable to amend the same. The same may kindly be allowed, as it will reduce multiplicity of suits and is in the interest of justice as also in the interest of the applicant/defendant No.2. Further, the law of pleadings also requires to file separate written statement and that the reply to the plaint should be parawise.'

24. It is further stated that suit property is now in possession of third parties and, thereforee, amendment would required.

25. In the application, defendant No.2 has sought to add para 8 in the preliminary objections as under :

'(8) That the present suit filed by the plaintiff is bad on account of non-joinder of necessary parties as alleged in para 9 of IA.No.8544/03. On this short ground alone, the suit is liable to be dismissed.'

26. Thereafter, without referring to which paragraph of the existing written statement defendant No.2 seeks to amend, a complete paradise reply has been set forth by defendant No.2.

27. Transferees who obtain possession during the pendency of suit are neither necessary nor proper parties as the alienation is hit by the doctrine of lis pendense. : AIR 2004 SC173 , Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Anr. See also : (1996)5SCC539 , Sarvinder Singh v. Dalip Singh.

28. Application for amendment is frivolous. The application is dismissed with costs in the sum of Rs.25,000/- against defendant No.2. Costs payable to the plaintiff.