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Court : Delhi

Decided On : Aug-17-1990

Reported in : 42(1990)DLT370

Judge : P.K. Bahri, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10

Appeal No. : Interim Application No. 9474 of 1989

Appellant : Kaushalya Devi and ors.

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : P. Chakraborty,; A. Salwan and; Mohinder Kumar, Advs

Judgement :

P.K. Bahri, J.

(1) Prima facie it appears that this suit is in an abuse of the process of the court. Facts of the matter are Des Raj deceased, husband of plaintiff No. 1 and father of plaintiffs 2 & 3 and defendant No. 3, was having Tahbazari receipt in his name in respect of the place near Nutan Marathi School, Near Paharganj Thana. Delhi Development Authority under its policy of getting the non-conforming business premises shifted to conforming areas in accordance with the Master Plan and Zonal Development Plan had given plot No. 84, Block No. 1, Kirti Nagar, New

Delhi, to Des Raj in lieu of the place where he was carrying on the business on the basis of Tehbazari. The dispute has arisen between the parties with regard to the said plot. defendant No. 3 had moved the Delhi Development Authority for getting her share in the plot separated and the Delhi Development Authority had in 1987 separated her share in the plot and wanted to give possession to defendant No. 3. A spate of suits were filed by the plaintiffs in order to thwart the effort of the Delhi Development Authority to give separate portion of the plot to defendant No. 3 according to her 1/4th share. Plaintiffs filed a suit for permanent injunction against the Delhi Development Authority restraining the Delhi Development Authority from delivering 1/4th share in the plot to defendant No. 3 and they moved an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure which was dismissed. An appeal was filed. The appeal was also dismissed. Plaintiffs filed a revision in this Court which was withdrawn making a statement that the plaintiffs would file a suit for partition but instead of filing any suit for partition plaintiffs filed the present suit for declaration that the said plot could not be divided as division would be in violation of the terms of the lease-deed which is yet to be issued and that defendant No. 3 has no right whatsoever in the said plot. It is also pertinent to mention that in 1982 and 1984 the plaintiffs had filed two suits against defendant No. 3 and had filed the third suit against the Delhi Development Authority in 1987. After the plaintiffs failed to obtain any relief of injunction that the present suit has been filed. It is clearly pleaded in the written statement that the reliefs sought in the present suit are similar which have been sought in the previous three suits which are still pending and thus, the present suit is not maintainable.

(2) In the replication these pleas of defendant No. 3 have not been specially controverted. So, on the face of it is evident that the present suit is liable to be stayed under order X of the Code of Civil Procedure. Even otherwise the plaintiffs have no prima facie case in their favor to have the relief of temporary injunction against the defendants.

(3) Counsel for the plaintiffs has made reference to the term of the lease-deed, which is usually executed by the Delhi Development Authority, where a lessee is prohibited from dividing the plot, subject-matter of the lease, without the permission of the Lessor. I do not understand how such a term could debar the

Delhi Development Authority from dividing the plot if the Delhi Developing Authority finds that the plot is inherited by more than one heir and one of the heirs wants separate possession of his share of the plot. In the present case, the plaintiffs have come out with the new facts which were not pleaded in the previous suits that in fact, plaintiffs were running the limber merchant's business at the spot in respect of which Tehbazari receipt was in favor of Des Raj and defendant No. 3 was having no connection or possession of the said piece of land and thus, plaintiffs alone were entitled to have the alternate plot. In the written statement it was clearly pleaded that these facts were never pleaded by the plaintiffs in the previous suits and even otherwise it was defendant No. 3 who was currying on her small business of selling tea etc. In the Tehbazari land although the same stood in the name of Des Raj, her father and thus-, she has a title in alternate plot allotted in the name of Des Raj by the Delhi Development Authority. There is nothing brought on the record to show that if a particular plot stands in the name of a particular person then alternate plot could not be allotted to the said person. Admittedly, the plot in question had been allotted to Des Raj and on his death the rights in the plot are, prima fade, inherited by the plaintiffs' and defendant No. 3 as heirs in equal shares. So, it is not understood how the plaintiffs could claim exclusive title to the plot in question The Delhi Development Authority has controverted the pleas of the plaintiffs that the plot was, liable to be allotted only to the plaintiff.

(4) Examining the ease from every angle. I am of the prima fade view that the plaintiffs have no case at all and thus, are not entitled to have any relief of interim injunction. The application is dismissed. The order dated December 22, 1989, directing the parties to maintain status quo is, hereby, vacated.