

Sushil Kumar Gupta Vs. Anil Kumar Gupta

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Court : Delhi

Decided On : Jul-28-1998

Reported in : 1998VAD(Delhi)708; 75(1998)DLT89; 1998(47)DRJ176

Judge : K.S. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17; [Code of Civil Procedure \(CPC\) \(Amendment\), 1908](#) - Order 1, Rule 10

Appeal No. : I.As. 3834/92, 13694/92 & 13695/92 in Suit No. 3466/91

Appellant : Sushil Kumar Gupta

Respondent : Anil Kumar Gupta

Advocate for Def. : Sh. Ishwar Sahi, Sr. Adv., ; Sh. A.S. Mathur and ; Sh. Shas

Advocate for Pet/Ap. : Sh. D.K. Aggarwal, Sr. Adv. and; Ms. Aparna Bhat, Adv

Judgement :

ORDER

K.S. Gupta, J.

1. This order will govern the disposal of I.As. 3834/92, 13694/92 & 13695/92.

2. Suit for permanent injunction was filed by the plaintiff, inter alia, alleging that Hanuman Pershad Gupta who was Karta of M/s. Deoki Nandan & Sons (HUF),

obtained lease of plot No. 29 Block No. 11 (now known as 1, Tughlak Lane, New Delhi), admeasuring about 1.492 acres, from the Govt. of India through the Chief Commissioner of Delhi and a lease-deed was executed on October 13, 1937 operative with effect from November 17, 1931. He got constructed a building on the land and moved there in Along with his family in or about 1948. Plaintiff, defendant No. 1, Krishan Kumar Gupta (deceased), husband of defendant No. 4 and father of defendants 5 & 6, Atul Kumar Gupta (deceased), husband of defendant No. 2(i) and father of defendants 2(ii), 2(iii) & 3, are the sons of said Hanuman Pershad Gupta who expired on December 18, 1972. It is alleged that in a petition being Suit No. 2164A/85 filed under Section 20 of the Arbitration Act by the plaintiff dispute between the parties were referred for adjudication to Justice Jaswant Singh, retired Judge of the Supreme Court, by an order dated November 18, 1985 by this Court. Arbitrator gave his award on June 8 ,1988 and the same was made the rule of the court with minor modifications by the order dated September 17, 1990 is Suit No. 1754A/88. It is further alleged that defendant No. 1 intends to create interest in favor of an outsider in the said property in violation of the terms of the lease dated October 13, 1937 and the award dated June 8, 1988 which has been made the rule of the court. It was prayed that defendant No. 1 be restrained from alienating, assigning, parting with possession and/or otherwise creating any third party interest of any part of the said property.

3. After the filing of the written statement by defendant No. 1, aforesaid I.A. 3834/92 under Order I Rule 10(2), Order VI Rule 17 and Section 151 CPC was filed by the plaintiff seeking impleadment of M/s. Apeejay Ltd. as defendant No. 7 and the amendment of the plaint. On objection being taken in the replies by the defendants that two separate applications ought to have been filed for the double relief claimed in the said application, aforementioned I.As. 13694/92 under Order VI Rule 17 & Section 151 CPC for amendment of the plaint and 13695/92 under Order I Rule 10(2) & Section 151 CPC seeking impleadment of M/s. Apeejay Ltd. and M/s. Titan Estates Private Ltd. as defendants 7 & 8 were filed by the plaintiff.

4. By filling I.A. 13694/92 the plaintiff seeks to replace existing paras 17, 18 & 19 of the plaint by new paragraphs 17 & 28 besides seeking minor amendments in paras 1, 13 & 14 of the plaint. Relief clause of the plaint is further sought to be

substituted. By seeking addition of paras 17 to 28 the plaintiff wants to raise the plea that he did not have the knowledge as to when defendant No. 1 sold his 1/4th undivided share in the property in question nor was it ever inspected by the Income-Tax Authorities in his presence and/or his family members. Further, that it was not within the knowledge of the plaintiff and his family members that possession of a portion of the property had been handed over by defendant No. 1 to the alleged buyer on October 17, 1991. Till the date of the filing of the suit in November 1991 portion occupied by defendant No. 1 in the property was lying vacant. It was only on or about April 6, 1992 that Smt. Satya Paul and Satya Paul claiming through M/s. Apeejay Ltd. occupied two rooms and the other portions of the property in question which was under the occupation of defendant No. 1. Aforesaid Smt. Satya Paul and Satya Paul Along with other persons roam about all over the property thereby invading the privacy of the plaintiff and his family members. A report was made by the plaintiff on March 26, 1992 against them when they tried to dislodge him from the portion of the property in his occupation. Further, by the letter dated December 14, 1991 M/s. Titan Estates Private Ltd. intimated the plaintiff in regard to the execution of an agreement to sell dated May 8, 1991 by defendant No. 1 and yet another agreement to sell dated November 8, 1991 executed by defendants 2(i), 2(ii), 2(iii) & 3. Defendants 4, 5 & 6 are also making efforts to sell their undivided share in the property. Sale of the undivided share of the property by any co-owner is in negation of the award and also against the terms of the lease-deed. Defendants are, therefore, liable to be enjoined from executing and registering any conveyance deed in respect of the property in question.

5. Prayer clause of the plaint is sought to be substituted as under:-

a. to restrain by a decree of permanent injunction defendant No. 1 from alienating, assigning, parting possession and/or otherwise creating any third party interest in any part of the property 1, Tughlak Lane, New Delhi. The defendant No. 1 be also restrained from executing and registering any conveyance in pursuance of alleged agreement to sell dated May 8, 1991 or taking any further steps in respect thereof;

b. to restrain by a decree of permanent injunction defendants 2(i), 2(ii), 2(iii) and 3 from alienating, assigning, parting possession and/or otherwise creating any third party interest in any part of the property 1, Tughlak Lane, New Delhi. The Defendants 2(i), 2(ii), 2(iii) and 3 be also restrained from executing and registering any conveyance in pursuance of alleged agreement to sell dated November 8, 1991 or taking any further steps in respect thereof;

c. to restrain by a decree of permanent injunction defendants 4, 5 and 6 from alienating, assigning, parting possession and/or otherwise creating any third party interest in any part of the property 1, Tughlak Lane, New Delhi and/or executing and registering any conveyance in respect thereof;

d. to restrain by a decree of permanent injunction defendants 1, 2(i), 2(ii), 2(iii), 3, 4, 5, and 6 from handing over the vacant possession of the portion of the dwelling house in their occupation to any third party;

e. to restrain by a decree of permanent injunction Apeejay Ltd., their officers, agents, servants, employees, representatives and/or any person(s) claiming through them in any capacity whatsoever from jointly possessing any portion of the dwelling house Along with the plaintiff and other co-owners and/or dealing with the property in any manner whatsoever;

e(i). to restrain by a decree of permanent injunction M/s. Titan Estates Pvt.Ltd. defendant No. 8 herein, their officers, agents, servants, employees, representatives and/or any other persons(s) claiming through them in any capacity whatsoever from jointly possessing any portion of the dwelling house Along with the plaintiff and other co-owners and/or dealing with the property in any manner whatsoever;

f. to award cost of the suit to the plaintiff;

g. to give such other and further relief as this Hon'ble Court may deem just and as the circumstances of the case may warrant in favor of the plaintiff.

6. Defendant No. 1 and defendant Nos. 2(i), 2(ii), 2(iii) & 3 have contested the said application by filing separate replies. In their joint reply defendants 2(i), 2(ii), 2(iii) &

3 have alleged that by way of present application the plaintiff is trying to introduce a new cause of action. Since M/s. Titan Estates Private Ltd. did not comply with the terms of the agreement to sell the same was terminated by them by the notice dated May 6, 1992. Subsequently, pursuant to a compromise in between the answering defendants and M/s. Titan Estates Private Ltd., the former delivered the possession of the portions of the property in their occupation to the latter on May 2, 1993. It is denied that the amendment sought is at all necessary.

7. In his reply defendant No. 1 has alleged that the suit was filed on November 4, 1991 i.e. after the date on which he had already sold and transferred his share in the property to M/s. Apeejay Ltd. on October 17, 1991. Suit was infructuous from its inception. It is stated that if the proposed amendments are allowed the same will change the entire nature of the suit.

8. In I.A. 13695/92 it is, inter alia, alleged that presence of M/s. Apeejay Ltd. and M/s. Titan Estates Private Ltd. is necessary for effectually and completely determining the matter in dispute between the parties.

9. Needless to say that both the sets of defendants have opposed the impleadment by filing separate replies.

10. I have heard the learned counsel for the parties and have also been taken through the record.

11. In the written statement and the reply filed to I.A. 13694/92 the case set up by defendant No. 1 is that portion of his share in the aforesaid property was transferred by him to M/s. Apeejay Ltd. under an agreement to sell dated May 8, 1991 and the possession thereof was also delivered to M/s. Apeejay Ltd. on October 17, 1991. Case also set up by defendants 2(i), 2(ii), 2(iii) & 3 in reply to said I.A. is that under an agreement to sell dated November 8, 1991 as modified by supplementary agreement dated May 2, 1993 portions of the aforesaid property of their share were transferred to M/s. Titan Estates Private Ltd. and possession thereof handed over on May 2, 1993. By filing the said I.A. plaintiff has sought to raise the plea by way of new para 17 that he did not have the knowledge of sale by defendant No. 1 to M/s. Apeejay Ltd.; nor the possession was delivered to the

alleged buyer on October 17, 1991 as alleged and further that uptill the date of the filing of the suit portions occupied by defendant No. 1 were lying vacant. According to the plaintiff, amendments to the plaint have been necessitated because of the subsequent event of transfer of portions of the said property by defendants 1, 2(i), 2(ii), 2(iii) & 3 and delivery of possession thereof by them to the said alleged buyers. Thus, the short question which falls for consideration is whether in view of the said changed circumstances the amendments sought can at all be allowed to the plaintiff.

12. In *Shikharchand Jain Vs . Digamber Jain Praband KarthySabha & Others*, : [1974]3SCR101 , it was, inter alia, held that it is open to the court to take notice of events which have happened after the inception of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (i) by reason of subsequent change of circumstances become inappropriate; or (ii) where it is necessary to take notice of the changed circumstances in order to shorten the litigation; or (iii) to do complete justice between the parties.

13. In *Nichhalbhai Vallabbai & Others Vs . Jaswantlal Zinabhai & Others*, : AIR 1966 SC997 , it was held that the object of Rule 17 Order VI is to avoid multiplicity of suit and the court should allow the plaint to be amended in proper cases otherwise if the amendments were refused the plaintiff would have to bring another suit.

14. In the decision in *Savithri Amma Seetamma Vs . Aratha Karthy & Others*, : AIR 1983 SC318 , the apex court held that the court should be extremely liberal in granting prayer of amendment of pleadings unless serious injustice or irreparable loss is caused to the other side.

15. Suit is at its initial stage. Considering the law laid down by the Supreme Court in the aforesaid decisions the amendments sought which have been necessitated because of subsequent events thus deserve to be allowed. Since presence of M/s. Apeejay Ltd. and M/s. Titan Estates Private Ltd., the alleged buyers, is necessary for effective and complete adjudication of the questions involved in the suit, both of them also deserve to be impleaded as defendants 7 & 8. It will, however, not be

out of place to state that the relief claimed in the prayer clause seeking to restrain the defendant No. 1 and defendants 2(i), 2(ii), 2(iii) & 3 from parting with possession of the portions in their occupation of the property in question has been rendered infructuous according to the own admissions of the plaintiff and, therefore, the amendments sought to that effect needs to be disallowed.

16. For the foregoing discussion, I.A. 13694/92 & I.A. 13695/92 are accepted. Plaintiff is allowed to amend the plaint in the light of the observations made in the preceding para and also to implead M/s. Apeejay Ltd. and M/s. Titan Estates Private Ltd. as defendants 7 & 8 on payment of Rs. 2,000/- as costs.

17. With the allowing of both the said I.As, I.A.3834/92 has been rendered infructuous and is dismissed as such.

18. Amended plaint be filed within four weeks from today.

19. List on August 10, 1998 for further directions before the appropriate Bench.

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