

inderpreet Singh Monga and anr. Vs. S. Balbir Singh and ors.

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Court : Delhi

Decided On : Feb-03-1989

Reported in : ILR1989Delhi667

Judge : C.L. Chaudhary, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 40

Appeal No. : Interim Application Nos. 2366 and 6643 of 1988

Appellant : nderpreet Singh Monga and anr.

Respondent : S. Balbir Singh and ors.

Advocate for Pet/Ap. : Ravi Kher and; K.L. Sethi, Advs

Judgement :

C.L. Chaudhary, J.

(1) By this suit the plaintiff is claiming a decree for permanent injunction restraining the defendants from in any manner interfering in the business, of the plaintiffs in the name of M/S Brightways Garment Emporium being conducted at shop No. 6178, Ajmal Khan Road, Karol Bagh, New Delhi, and for declaration that non-judicial stamp paper worth Rs. 2 denomination signed blank by plaintiff No. I on 6-9-1988 with or without inscriptions be declared null and void.

(2) Plaintiffs and defendants 1, 2 and 3 are sons of late Iqbal Singh Monga. Defendant No. 4 is the daughter of Iqbal Singh. Iqbal Singh married twice and both the wives predeceased him. From his first wife he had three sons and one daughter and these are defendants 1 to 4 and from the second wife he has two sons who are the plaintiff in this suit. Iqbal Singh died on 5-9-1988. Prior to his death, he was staying at A-254, Vikas Puri, New Delhi along with the plaintiff. The defendants were residing at other places. Plaintiff No. 1 is aged 18 years and plaintiff No. 2 is .aged 14 year--, Iqbal Singh had business premises at 6178, Ajmal Khan Road, Karol Bagh, New Delhi, and he was running his business under the name of Brightways Garment Emporium. On 1st August, 88 he entered into a partnership with his elder son Inderpreet Singh (Plaintiff No. 1) and Bhupinder Singh (Plain iff No. 2) to the benefits of partnership. The partnership deed was sot registered. Para 6 of the partnership deed recited that in The event of death of Iqbal Singh (prior to attaining the age of majority by plamtiff No. 2) his share shall automatically deem to have been transferred to the other partners as under :-- Inderpreet Singh (Plaintiff No. 1) ...20 per cent. Bhupinder Singh (Plaintiff No. 2).. 30 per cent. On .he death of Iqbal Singh, after the attaining the age of majority by Bhupinder Singh, the ratio of profit and loss of the remaining 2 partners will be fifty per cent each. It was further provided in the partnership deed that the bank account shall be maintained in a nationalised bank and it could be operated by Iqbal Singh singly and plaintiff No. 1 jointly with Iqbal Singh. Plaintiff No. 2 could operate the account alter obtaining majority with Iqbal Singh. It was further provided that in the event of death of Iqbal Singh, the remaining partners i.e. plaintiffs No. 1 and 2 shall continue the partnership and shall be entitles to use the trade name of the partnership, trade mark of the business and goodwill of the firm. It is further provided that 'subject to whatever has been stated above, as a matter of abundant precaution, it is hereby reiterated that each partner shall be entitled to the goodwill of the firm and tenancy rights of the business premises which is at present in the name of Shri Iqbal Singh Monga (proportionate to his profit sharing ratio in the partnership). In the event of death of Shri Iqbal Singh Monga, the tenancy right would deem to have been transferred to M/S Brightways Garment Emporium and through it to its remaining partners i.e. M/s. Inderpreet Singh and Bhupinder Singh Monga who shall pay the rent, obtain receipt and appear before

any authority for anything concerning the business premises.'

(3) It is further stated in the plaint that Iqbal Singh left a will dated 8-7-1983, duly registered with the Sub-Registrar, which provided as under :-- 'I have three sons named Balbir Singh Monga, Amarjit Singh Monga and Rajwant Singh Monga and one daughter Smt. Satinder Kaur from my earlier marriage with Smt. Jagjit Kaur (now deceased). My said sons Shri Balbir Singh Monga and Amarjit Singh Monga have been happily married and are residing separately as also my daughter Smt. Satinder Kaur who is happily married. I have already provided my these three children sufficiently on various occasions as also at the time of their marriage and as such I declare that my said three children shall not inherit anything from my property after my death except the bequest made herein. I am having two shops, one bearing No. 27 Palika Bazar, Connaught Place, New Delhi, wherein I am one of the partner, and another shop in property No. 6/78 Wea, Karol Bagh, New Delhi in the name and style of Brightways Garment Emporium (Air conditioned) as sole proprietor. One residential plot No. 249 Block A measuring 324 sq. meters at Vikas Puri, New Delhi, Plot No. 204 Sector 8 measuring 350 sq. yards at Faridabad and plot No. 862 measuring 500 sq. yards in Shalimar Garden Extn. Dist. Ghaziabad on Delhi-U.P. Border. Besides I have a tenant with my brother Shri Tarlok Singli in property No. 59/36, New Rohtak Road, New Delhi and A-7, Prahlad Market, Karol Bagh, New Delhi. I hereby bequeath and devise all my rights, title and interest including the assets and liabilities, capital and goodwill as also my tenancy rights in the shop Brightways Garment Emporium (Air conditioned) situated in property No. 6/78 Wea Karol Bagh, New Delhi as also residential Plot No. A-249, Vikas Puri, New Delhi along with the building and superstructure which I may erect thereon during my life time, absolutely to my wife Smt. Swaran Monga to the exclusion of all my legal heirs and she shall be the sole owner thereof after my demise. I also devise and bequeath to my wife Smt. Swaran Monga absolutely all my moveable properties including bank account and fixed deposits and the telephone installed in my name at 27 Palika Bazar, Connaught Place, New Delhi, whatever and wheresoever and which I may be possessed of either in my name or Jointly with my wife Smt. Swaran Monga at my demise to the exclusion of all my other heirs. I further declare that my wife Smt. Swaran Monga shall also exclusively inherit the residue of my estate, if any, which

is not covered herein and the same shall vest absolutely in her on my demise. I further declare that in case my said wife may predecease me or after her death, as the case may be, the above properties bequeathed to my wife Smt. Swaran Monga shall absolutely vest with my sons Master Inderpreet Singh Monga and Master Bhupinder Singh Monga, who are minors at present in equal shares.'

(4) On the basis of registered partnership deed and registered will dated 8th July, 1983. the plaintiffs are claiming assets of the partnership business being run under the name of BRIGHT- Ways Garments Emporium and tenancy right of premises 6/78 Ajmal Khan Road, to the exclusion to the defendants. it is averred that since the demise of Iqbal Singh, the plaintiffs are being threatened by the defendant for illegal dispossession from premises 6/78 Ajmal Khan Road. The defendants are not permitting the plaintiff to conduct their business at the aforesaid premises. The plaintiffs are in absolute possession of the premises and they apprehend that they would be forcibly dispossessed by the defendant. Defendant No. 2 got signed blank non-judicial stamp paper of Rs. 2 denomination from plaintiff No. 1 under threat to his life. The plaintiff was not allowed to go out of the house and it was on 9/5/88 when Sat Pal Singh maternal uncle came to visit them at residence of defendant No. 2 they revealed the incident to him. A report was lodged with the Police Station Punjabi Bagh, on 9th September, 1989 against defendant No. 1, that defendant No. 2 and his wife came to the premises 6/78. Ajmal Khan Road, Karol Bagh, New Delhi and had mercilessly beaten plaintiff No. 2 who was at the shop. They had taken Rs. 3000 cash from the shop and Bradma machine. A report was lodged with the police. The defendant are bent upon creating difficulties for the plaintiffs. The defendant's have no right, title or cause to interfere in the business of the plaintiffs. In these premises it is claimed that the defendants should be restrained from interfering in the business of the plaintiffs in premises No. 6/78 Ajmal Khan Road, Karol Bagh, New Delhi. It is further alleged that plaintiff No. 1 under threat to his life signed the non-judicial stamp paper of Rs 2 denomination in blank. The plaintiffs apprehend that the defendants will use his document against them for deprive them of their legal and bonafide rights by making subsequent inscriptions thereon. It is claimed that the defendant he directed to discover the document and the same be declared null and void.

(5) The suit is being resisted on behalf of the defendant.. In the written statement various legal pleas have been taken such as there is no obligation in favor of the plaintiffs. The defendants- have not invaded or threatened any right of the plaintiffs and they are not entitled to any relief for injunction. The plaintiffs are guilty of willful suppression of facts and have made fraudulent misrepresentation. The shop is in joint possession of plaintiffs and defendants 1 to 3. The plaintiffs are not entitled to have exclusive possession of the shop thereby depriving the defendants of their legal and legitimate right, Iqbal Singh was residing with his son defendant No. 2. at 12, Palmohan Apartments, Club Road, Punjabi Bagh, New Delhi, all the expenses on the treatment of Iqbal Singh from 16-8-88 to 5-9-88 amounting to Rs. 18695 were incurred and paid by defendant No. 2. Defendant No. 2 incurred all the expenses on the funeral of Iqbal Singh. Iqbal Singh used to stay at Vikas Puri for some time and at other times he used to stay with defendant No. 2. Iqbal Singh entered into a partnership with his late uncle Sardar Singh Monga and his elder son Balbir Singh Monga on 1-12-78 and consequently his son Shri Balbir Singh was sent from his shop at 6/78 Ajmal Khan Road to manage the entire business of the shop at 27 Palika Bazar in the name and style of Mongas for the benefit of the family and that business was carried on till July, 1985. Sardar Iqbai Singh dissolved that partnership and the shop of Palika Bazar was returned to the son of S. Sardar Singh. the original allottee, and Shri Balbir Singh the eldest son of the deceased was brought back to work and participate in his business at 6178 Ajmal Khan Road, in the name and style of Messrs Brightways Garments emporium for the benefit of the family. Sardar Jabal Singh also started a factory at C-2/4, Rajauri Garden. New Delhi, and entrusted its management to Shri Amarjit Singh, defendant No. 2 but in fact Sardar Iqbal Singh was the owner of all the said business. Defendants 1 to 4 were looked after by Tabal Singh like the plaintiffs and treated them equally. He left behind the following properties : A-249, Vikaspuri, semi built on a plot of land measuring about 324 sq. Mtrs. (ii) Plot No. 862, Shalimar Garden Extension I Ghaziabad (U.P.). (iii) tenancy rights of part premises No. 59136 New Rohtak Road, New Delhi. (iv) Tenancy right of A-7 Prahlad Market. Karol Bagh. New Delhi-110005. He also left behind a maruti. Car.. He had also certain liabilities payment to the bank to the tune of several thousands and Rs. 68149 for the car which he had got financed and sales and

income tax liability. On 1-4-1985 Iqbal Singh entered into a partnership with defendants 1 to 3 so that the profit could be divided and tax be saved but, in fact, Iqbal Singh remained more or less a sole proprietor of the concern. Partnership was dissolved on 30-4-85. Till his death, he considered the business carried on under the name and styles of Brightways Garments Emporium as sole proprietary business. The alleged partnership deed dated 1-8-88 was the result of coercion and undue influence of the brothers of Mrs. Swaran Kaur the second wife of Iqbal Singh. The said partnership deed was never acted upon and was never meant to be acted upon. The partnership deed was not registered with income tax or with sales tax Department. He was operating the bank account of Brightways Garment Emporium as the sole proprietor. Defendants 1, 2, 3 had been assisting their father in his business and even when he was admitted in hospital on 13-8-88, the shop was opened by defendants 1 and 2 and they had been regularly conducting business till 4-9-88. The shop remained closed on 5-9-88 on account of weekly closed day in Karol Bagh being Monday. On 6-9-88 the shop remained closed after defendants 1 and 2 opened it for some time in the presence of relations after performing Chautha ceremony. The shop was opened on 7-9-88 by defendants No. 1 and 2 and they worked there on 7th, 8th and 9th September, 88. The Kirya ceremony was to be performed on 11-9-88. Defendant No. 2 received a message on 10-9-88 at 7 p.m. that plaintiff No. 1 along with his maternal uncle with the help of bad associates had broken open the locks of the shop. The master was reported to the police on the same day. The President of the market was informed on 13-9-88. Through the intervention of the President of the Market and neighbouring shopkeepers the keys of the shop and Bradma accounting machine were given to the President of the parties. The parties suggested that the matter may be referred to the arbitration of the President of the Market and plaintiff No. 1 purchased a non-judicial stamp paper of Rs. 2 and the same was signed by plaintiff No. 1, defendants 1, 2 and 3. Plaintiff No. 2 also signed the paper. That stamp paper is still lying with the President of the market. Thereafter, negotiations started for settling the matter and the parties had to meet on 27-9-88 for that purpose. During discussion, it was suggested that half share should be left at the disposal of defendants 1, 2 and 3 and the other half share should be left at the disposal of the plaintiff and both the groups i.e. the plaintiffs and defendants 1 to 3

may separately work at the said shop. The other assets and liabilities of the shop should be divided in equal shares. The plaintiffs never disclosed that they had already filed a suit in this court. On 28-9-88, the defendants were served with the summons of this court. The plaintiffs and their maternal uncle were bent upon breaking open the lock and so the matter was reported to the police. Plaintiff No. 2 got an account opened in the bank and deposited Rs. 4600.00 The amount was stolen from the shop. If they are allowed to continue with the exclusive possession, they will misuse the funds for their personal needs.

(6) It is further alleged that on 1-9-88 Iqbal Singh got a fresh will typed in the hospital which was duly attested by his son-in-law and Samdhi. The will provides as under :- 'So long as I am alive, I shall be the owner of all my properties and shall be entitled to dispose them of in any manner whatsoever that I wish. However, I bequeath that after my death my assets should devolve as under :-

1. Out of my estate, all my liabilities should first be settled or provision for the same should be made and, thereafter, the estate is to devolve on my legal heirs, as mentioned herein below :- (i) My shop No. 6178 Ajmal Khan Road, Karol Bagh, New Delhi under the name and style of 'Brightways Garments Emporium' shall devolve on my five sons namely-Balbir Singh, Amarjeet Singh, Rajwant Singh, Inderpreet Singh and Bhupinder Singh. I make it clear that my daughter Smt. Satinder Kaur shall have no right, title or interest in the tenancy or business of my shop. The same shall devolve on my aforesaid sons only.

(II) That my other immovable properties at Vikas Pun and at Shalimar Bagh shall devolve on my aforesaid sons as well as on my daughter Smt. Satinder Kaur and each one of them would have equal share in the aforesaid proportions.

(III) That my other moveable properties would also devolve jointly on all my six children. That my 675 wife, Smt. Swaran Kaur has expired recently and my Sods Shri Inderpreet Singh and Bhupinder Singh are very young and are unable to look after themselves. It is my pious wish and desire that my other three sons namely Balbir Singh, Amarjeet Singh and Rajwant Singh should give full protection to my other sons namely Inderpreet Singh and Bhupinder Singh and given them all love and affection which is due to younger brothers. I appoint Shri Amarjeet Singh my

son as the executor of this will.'

(7) It has been denied that the plaintiffs are entitled to exclusive possession and exclusive tenancy right of Brightways Garments Emporium. The plaintiffs and the defendants are entitled to joint possession of the shop and the plaintiffs are not entitled for exclusive possession of the shop. Apprehension of the plaintiff is absolutely baseless. It is denied that they got signed any blank non-judicial stamp of Rs. 21- denomination under any alleged threat. The whole trouble is created by Sat Pal Singh maternal uncle of the plaintiffs who has evil design to usurp the business by misguiding the plaintiffs. No beating was given to plaintiffs as alleged. Defendants 1 to 3 are claiming their right to run the business at the shop under the provision of will dated 1-9-88 executed by Iqbal Singh. In these premises it is contended that the plaintiffs are not entitled to any of the reliefs asked for. The plaintiffs and defendants are equally entitled to participate and do business in the said shop.

(8) In the replication the stand taken in the plaint is reiterated and the pleas taken in the written statement have been controverted. Along with the suit the plaintiff has filed the application which is under disposal. It is stated in the application that in case the defendants are not restrained from interfering in the business, it will cause irreparable loss to the plaintiffs. Sale at the shop has gone down. It is stated that the defendant be restrained from interfering in the business of the plaintiff. In the reply, it is stated that the plaintiffs are not in exclusive possession of the shop. The defendants have been working since 6th, 7th and 8th September, 1988. They have a right to carry on the business and work at the shop. The plaintiffs are not entitled to temporary injunction asked for.

(9) I have heard the counsel for the parties. The plaintiffs have based their claims on the basis of the will dated 8-7-1983 and the registered partnership deed dated 1-8-1988. According to them, they have exclusive right to carry on the business under the name of Brightways Garments Emporium at Shop No. 6178 Ajmal Khan Road, Karol Bagh, Delhi. They further contend that they are in actual physical possession of the shop and that they have been exclusively conducting the business. On the contrary, this contention is repudiated by the defendants. The

defendants have also propounded a will dated 1-9-88 by which it was provided that all the sons of Iqbal Singh shall be owners in equal shares, In order to ascertain as to who is in actual physical possession of the shop, a commission was issued by this Court. The Commissioner visited the shop in question and submitted his report. The Commissioner has stated in his report that there were four locks on the shop i.e. three external locks and one central lock in the shutter. The plaintiffs supplied him the keys of the central lock of the shutter and keys for two external locks, while the defendants supplied him key for one external lock. The Commissioner also prepared a list of cash memos lying at the shop.

(10) I have considered the relevant contentions of the parties. The partnership deed dated 1-8-88 and the will dated 8-7-83, referred to above, are both registered documents. The case of the defendant in respect of the partnership deed and the will is that the alleged partnership deed dated 1-8-88 was never meant to be acted upon and was in fact never acted upon. It was the result of coercion, undue influence and uncalled for pressure and deceit practiced on Iqbal Singh by Sat Pal Singh Bindra. Regarding the will it is stated that the alleged will dated 8-7-83 had always perturbed late S. Iqbal Singh because the same was made under coercion and undue pressure of his second wife Smt. Swaran Kaur who even threatened to put kerosene oil. on herself and would burn herself in case the will was not made. The will was not made by him as free agent and was made under pressure and he was thinking of cancelling the same and make out a fresh will in order to do justice to all his sons and daughters equally and that is why he executed another will dated 1-9-88. The will dated 1-9-88 propounded by the defendant is unregistered document. The plaintiffs are seriously contesting the legality and validity of the will. According to the plaintiffs on 1-9-1988 Tqbul Singh was seriously ill and was fighting the grim battle between life and death and finally died on 5-9-1988. The alleged will said to have been executed by Iqbal Siagh after having been admitted to the hospital and being seriously ill for 17 days. The will is alleged to have been attested by the son-in-law and the father-in-law of defendant No. 3. It was contended that none of the doctors has attested the will despite the fact that the facility of attestation by a doctor was available to Iqbal Singh, as he was in the hospital. The defendants have filed a certificate given by Dr. Arun Dewan of Batra Hospital dated 26-9-1988 certifying that Iqbal Singh was under his care and he

was told that Iqbal Singh made a will during the hospital stay on 1-9-1988. On the said date Iqbal Singh was under full mental faculties to make a will. I understand from the counsel for the defendants that proceedings for grant of probate of the will dated 1-9-1988, alleged to have been executed by Iqbal Singh are pending before the High Court Delhi. In view of this, it is not appropriate to commend upon the genuineness or validity of the will, otherwise it would prejudice the case of the parties pending in High Court Delhi. However, till such time the will dated 1-9-1988 is probated, the defendant cannot lay their claim on the basis of this will.

(11) However, if the business of Brightways Garments Emporium is not allowed to be carried on it will result in irreparable loss to the parties. In my opinion, the business cannot be carried on jointly by the plaintiffs and defendants 1 to 3. From the material placed on record, I am prima facie of the view that the plaintiffs have a better claim than that of the defendant to carry on the business of Brightway Garments Emporium in the shop in question. At the same time, interest of the defendant has also to be protected, as in case they succeed in proving the will dated 1-9-1988, they will also be owners of the business. In these circumstances, it would be just and proper that the plaintiff No. 1 should be appointed as Receiver and he should be allowed to carry on the business of Brightways Garments Emporium in the shop in question. However, the business would be conducted by plaintiff No. 1 as a Receiver till further orders subject to the following conditions :--

(1) An inventory of the goods lying at shop No. 6/78 Ajmal Khan Road, Karol Bagh, New Delhi shall be prepared by a Local Commissioner in the presence of the parties;

(2) The Receiver shall prepare and maintain proper accounts of the business to be run by him and he will submit copy of the accounts quarterly in this court.

(3) The Receiver shall be authorised to operate the bank account.

(4) The Receiver shall not incur any liability of more than Rs. 10,000.00 without prior permission of the court.

(5)The Receiver shall pay rent of the shop regularly and will not sub-let, assign or part with the possession of the shop.

(6)Income tax and Sales Tax dues should be paid by the Receiver.

(7)The Receiver shall liquidate the liability of the business Brightways Garments Emporium. The Receiver shall get the accounts audited by Chartered Accountant on the closing of the ysai and shall file the profit and loss accounts in this court.

(9)The Receiver shall be entitled to get the Bradama machine from the President of the Market.

10)No sale should be effected by the Receiver without issuing a Bill/cashmemo.

11)The Receiver shall be paid a remuneration of Rs. 2,000.00 per month.

12)Defendants shall not interfere in any manner in the business of M/s. Brightways Garments Emporium to be carried on at 6/78 Ajmal Khan Road. Karol Bagh, New Delhi. In these terms the I.A. is disposed of.

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