

Paramjit Singh Vs. Charanjit Singh and ors.

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Court : Delhi

Decided On : Apr-09-2008

Reported in : 151(2008)DLT527

Judge : Shiv Narayan Dhingra, J.

Acts : Code of Civil Procedure (CPC) - Order 2, Rule 2 - Order 6, Rule 17 - Order 7, Rule 11

Appeal No. : IA No. 12085/2008 and CS(OS) No. 1864/2006

Appellant : Paramjit Singh

Respondent : Charanjit Singh and ors.

Advocate for Def. : Nandini Sahni, Adv. and ; C. Mohan Rao, Adv. for DDA

Advocate for Pet/Ap. : Party-in-Perso

Disposition : Petition dismissed

Judgement :

Shiv Narayan Dhingra, J.

1. Plaintiff has filed this suit for partition of property No. 45, SSI Industrial Area Opposite Jahangir Puri, Delhi built on 1650 sq. yards, standing in the name of M/s Paramajit Singh and Company in the year 2006 alleging that the firm had three

partners viz. Plaintiff, Defendant No. 1 and Defendant No. 2 and that Plaintiff had contributed Rs. 52,500/- while Defendants No. 1 and 2 contributed Rs. 15,000/- each in the purchase of said plot. In the year 1984, Defendants stopped cooperating with the Plaintiff in working jointly in the firm and they started separate business without allowing Plaintiff to enter into the front portion. So, Plaintiff gave a legal notice dated 27th May 1985 to dissolve the partnership firm. The Plaintiff filed a suit for dissolution of the partnership before the District Court on 8th July, 1985 and later on it was withdrawn with liberty to file a fresh suit. Plaintiff filed a fresh suit being Suit No. 481/1986 before this Court for dissolution of partnership, rendition of accounts and injunction. This suit was later on transferred to District Court due to jurisdiction of District Court having been enhanced up to Rs. 20 lac and the suit was pending trial. Plaintiff claimed that due to mistake relief for partition could not be claimed by the Plaintiff in Suit No. 481/1986 as Plaintiff was not aware of the legal knowledge and had no money to take legal advice from the lawyers. Plaintiff later on filed an amendment application under Order 6 Rule 17 CPC seeking leave to amend the suit No. 481/1986 to include the relief of partition but the leave to amend was not granted on the ground that it would change the nature of the suit. Although, the Plaintiff had made a prayer in the earlier suit for passing of a decree in his favor in respect of immovable assets of the firm by dividing the plot No. 45, SSI Industrial Area, G.T. Karnal Road measuring 1650 sq. yards according to the shares mentioned in the lease deed. It is stated by the Plaintiff that on 28th February, 1996, this Court passed an order in Suit No. 481/1986 that the Plaintiff could work in 1/4th portion of the said plot and this portion was duly marked by putting a line in the site plan and was identified as portion 'A'. Plaintiff was also permitted to reconstruct a demolished room of 10' X 10' and to make further construction subject to sanctioning of plan by the competent authority. Plaintiff, therefore, took over the possession of this 1/4th portion of the plot on the basis of interim order through police help and constructed the demolished room and applied for re-sanction of the plan for this portion. DDA rejected the request of sanctioning a plan on the ground that the entire plot of 1650 sq. yards was a single unit and plan could be sanctioned in respect of entire plot as per building bye-laws allowing 50% of the covered area. Plaintiff made an application in suit No. 481/1986 requesting the Court that Defendants be directed

to file original sanctioned plan and details of constructed portion. Plaintiff submitted that though the partnership firm, in whose name the plot stood registered, was not dissolved and accounts were not settled, Plaintiff was entitled to 1/3rd share in the said firm as per the lease deed. Plaintiff was entitled to get the relief of partition of property since Plaintiff was in possession of 1/4th portion of the industrial plot as given to him under the orders of this Court in Suit No. 481/1986 through police intervention, which order was confirmed by Division Bench in FAO(OS) 48/1999. The Plaintiff, therefore, sought partition stating that cause of action arose in favor of the Plaintiff in 1985 and then again when the possession of plot was handed over to him under the orders of this Court and Plaintiff was permitted to put a barbed wire fencing in 1/4th portion in the year 1996. Plaintiff stated that he was not liable to pay Court fees since he was in possession of the property under orders of this Court. He has prayed to this Court to pass a decree of partition of the property alleging that the dissolution of the partnership firm has not taken place and rendition of accounts is yet to be done. He also prayed that he be allowed to construct shed in 50% portion of the property, possession of which was given to him under orders of this Court, since property was lying useless.

2. The Defendants have raised objection in the WS that suit was not maintainable in view of Order 7 rule 11 CPC on the ground that it was barred by limitation. The limitation for filing suit for partition was three years and Plaintiff filed suit after more than 20 years since according to Plaintiff, he issued notice of dissolution of firm on 27th May, 1985. The dissolution was acted upon by the Plaintiff. It is also stated that on the same basis, Plaintiff filed earlier suit being Suit No. 108/1985 which he later on withdrew and filed another suit in 1986. Even in suit filed by him in the year 1986, he did not claim relief of partition. The suit was also barred under Order 2 Rule 2 CPC. Defendants also made an application under Order 7 Rule 11 CPC taking the same pleas and further submitting that Suit No. 481/1986 and present suit both involved the same cause of action and the relief claimed by the Plaintiff in earlier suit in prayer 'e' was the same as in the present suit. The Plaintiff had not come to the Court with clean hands. He was not in possession of any part of the property and was not enjoying any portion of the property nor having any management or control over the partnership firm on the basis of interim injunction.

He got only temporary possession of the property till the rights of the parties were determined. On the basis of this, Plaintiff cannot claim that he was in possession of the property and was not liable to pay Court fees.

3. A perusal of Suit No. 481/1986 shows that Plaintiff had filed this suit for dissolution of the firm M/s Paramjit Singh and Co. and for determining the share of the Plaintiff on dissolution of the firm and for recovery of the amount, so determined. Plaintiff also prayed for passing of a decree in his favor in respect of the immovable assets of the firm viz. Plot No. 45, SSI Industrial Area, G.T. Karnal Road, Delhi measuring 1650 sq. yards and by dividing the plot according to shares mentioned in the lease deed. Plaintiff also sought a decree in his favor and against the Defendants regarding mesne profits @ Rs. 15,000/- per month because of use and occupation of the plot of the Plaintiff by the Defendants. It is obvious that the Plaintiff claimed the relief of partition of the immovable asset i.e. the 1650 sq. yards plot in accordance with the shares mentioned in the lease deed claiming that he was having 1/3rd share in the property. He was not in possession of the property at the time when he filed the suit No. 481/1986 and that is the reason he claimed mesne profits for use and occupation of his 1/3rd share by Defendants No. 1 and 2. During pendency of this suit, Plaintiff made various applications and on an application of the Plaintiff, this Court vide Order dated 14th March, 1995 gave directions to the Defendants No. 1 and 2 to hand over key of back portion of the premises to the Plaintiff so that he could carry out construction in that portion. The Court fixed 21st April, 1995 as the date for handing over the key. On 19th July, 1995 Defendants made submission in the Court that the Defendants were not in possession of the alleged key of the lock and they had no objection in case the Plaintiff wanted to work on a portion of the plot for which permission was accorded to him vide order dated 17th January, 1992. A perusal of order dated 17th January, 1992 shows that the Court had allowed Plaintiff to work on 1/4th portion of side of the plot, in which portion he had his shed. The Plaintiff was also given liberty to reconstruct a room of 10' X 10' which had fallen down because of non attendance and because of rain. This Court on statement of Defendants that they did not have the key of the lock allowed the Plaintiff to break open and occupy 1/4th portion of the plot of back side of the plot. The Plaintiff thus, came into possession of that 1/4th portion under the directions of this Court.

4. Plaintiff stated that he had to take this possession with the help of police in the year 1996. He filed this suit in the year 2006 making the interim order and his possession as basis of the suit. An interim order passed by this Court cannot give rise to a fresh cause of action for filing a suit in favor of the Plaintiff. The interim order was passed in the pending suit. The Plaintiff has already claimed relief that he was entitled to 1/3rd share in said property in the pending suit. The present suit again claims the relief of partition of the same property, which is subject matter of suit No. 481/1986. The plea of the Plaintiff that he forgot to make claim of partition is also baseless because as per Plaintiff's own showings, one of the reliefs claimed by the Plaintiff was that his share in immovable property be separated and handed over to him which effectively amounted to a suit for partition. A fresh suit for the same cause of action is not maintainable. Present suit has been filed by the Plaintiff without Court fees. In the earlier suit, Plaintiff claimed that he was not in possession of the property and paid Court fees, while in the present suit he claimed he was in possession of the property and did not pay Court fees. His possession of the portion in the property on the basis of interim order is merely an interim possession, till the rights of the parties are determined by the Court. On the basis of possession obtained on the basis of an interim order of this Court, during pendency of the suit, Plaintiff cannot avoid making of payment of Court fees on the suit. According to Plaintiff, the value of his share is Rs. 83 lac and his share was lying unused. He, therefore, was liable to pay Court fees on Rs. 83 lac. Since Plaintiff has not paid the Court fees, the suit is liable to be dismissed on this ground alone.

5. The suit is also not maintainable on the ground of limitation. If we consider that the cause of action arose in favor of the Plaintiff in the year 1996, when he got possession of the 1/4th portion of the plot, he filed this suit in 2006 i.e. after 10 years and the limitation for filing such suit is three years.

6. The present suit is therefore hereby dismissed being not maintainable as the cause of action and substance of the suit is wholly and substantially covered by the earlier suit No. 481/1986. The suit is also barred by limitation and is liable to be dismissed for want of appropriate Court fees. The present suit is a frivolous suit filed by the Plaintiff just to have pleasure of litigation. Though the Plaintiff has

claimed that he had not got legal advice, but the number of applications filed in the earlier suit and in this suit show that he was getting good amount of legal advice. The application I.A. No. 12085/2008 is allowed and the suit is hereby dismissed with cost of Rs. 10,000/-.

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