

Asha Dhingra Vs. Shanti Devi

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Court : Delhi

Decided On : Mar-17-1998

Reported in : 1998IIAD(Delhi)893; 72(1998)DLT461; 1998(45)DRJ210

Judge : Usha Mehra, J.

Appeal No. : F.A.O.No.177 of 1997

Appellant : Asha Dhingra

Respondent : Shanti Devi

Advocate for Def. : Mr. S.K.Pruthi, Adv.

Advocate for Pet/Ap. : Ms. Hima Kohli, & ors., Adv

Judgement :

Usha Mehra, J.

1.Petitioner No.1 is the wife and petitioner No.2 & 3 are the daughters of respondent No.2. Respondent No.1 is mother and respondent No.3 brother of respondent No.2. Petitioner No.1's case in the suit was that the father of the respondents No.2 and 3 acquired a residential house bearing No.Z-5, Model Town-II, Delhi-110009, with the HUF funds. That in 1994 respondents forced her to bring money from her parents for raising construction on the second floor of the said house. That the petitioner No.1 brought gold ornaments weighing 15 Tolas of

the value approx. of Rs.75,000/- from her parents. The said gold ornaments were sold and with proceeds of the same the respondents raised construction on the second floor. Subsequently under pressure from respondents her parents gave a further sum of Rs.20,000/- for completing the construction. Thus petitioner paid a sum of Rs.95,000/- with which construction of second floor was raised and completed on the house in question. With her money construction on second floor was raised coupled with the fact that house in question was bought with HUF funds. Hence petitioner No.1 has a vested right because with her money second floor was constructed and petitioners No.2 and 3 have a right in the house in question because it was purchased with HUF funds. It is in this background that petitioners filed suit for perpetual and mandatory injunction. Along with the suit they sought interim relief seeking right of residence and restraining orders against respondents from selling, disposing or transferring the house in question.

2. That respondents No.2 and 3 took the defense that they had already relinquished their right in the house in favor of the respondent No.1 i.e. their mother. That respondent No.1 being exclusive owner of the property hence neither petitioners can have any right of residence nor injunction could be granted in their favour. Respondent No.1 did not contest the interim stay application.

3. That by the impugned order the learned Additional District Judge declined to grant injunction, inter alia, on the ground that petitioners could not claim right of residence in the house in question because she had been fearing threat from respondents. Secondly petitioners have no right in the house which exclusively belongs to respondent No.1. Moreover, the proper course for the petitioner was to file a petition under the Hindu Adoption and Maintenance Act.

4. From the above facts it becomes clear that petitioners based their relief on two factors namely; (1) so far as petitioner No.1 is concerned it was on the basis of having spent approximately Rs.One lakh in the construction and completion of second floor of the house in question and (2) so far as petitioners 2 & 3 are concerned they based the relief on inheritance. They alleged that their grand father purchased the house from HUF funds. They, therefore, had a right of residence in this house which was purchased from HUF funds. Being successor in

interest they had a right of residence. So far as petitioner No.1 is concerned she sought restraining order against the respondents from transferring, alienating or selling this property because the second floor of the house according to her was constructed with her funds. She thus had a vested right on the second floor. A perusal of the impugned order shows that the Trial Court instead of dealing with these aspects disposed of the application on extraneous consideration i.e. on account of petitioner No.1's lodging complaints against respondent No.2. Petitioner No.1's lodging complaint under Section 406/498-A and the allegation made by her in those petitions had nothing to do with the issue involved in the suit. Moreover, whether the restraining order could be passed on the basis of facts pleaded by her had to be looked into by the Trial Court at the time of disposing the interim injunction application. This the Trial Court did not do at all. In fact the Trial Court completely ignored the averments of petitioner No.1 in the suit and the application regarding her claim on second floor because of incurring expenditure in its construction. By the impugned order while disposing the interim application the Trial Court has in fact disposed of the suit when he advised the petitioners to approach for appropriate remedy under the Hindu Adoption and Maintenance Act, least forgetting that the claim was not only of petitioners' right of residence but also that the respondents be restrained from selling, transferring and alienating the property in question. Because if that was done the purported vested right of the petitioner would be effected. Thus she had shown a prima facie case on account of having spent huge amount on its construction. Moreover, it had yet to be proved as to under what circumstances the respondents 2 & 3 relinquished their rights in favor of respondent No.1. Whether the relinquishment was to deprive the petitioners or not? Was it motivated or not? These were the questions of fact which have yet not been gone into. Mere fact that petitioner expressed her apprehension in criminal cases or in matrimonial case does not mean that she lost her right of residence if otherwise legally due. Nor this could be a ground to decline the restraining order, if prima facie they were entitled to. If ultimately petitioners prove that the second floor of the house in question was constructed with the money brought by the petitioner No.1 then prima facie it has been made out by the petitioners. This could be proved after recording of the evidence. Suffice it to say that at this stage when there were specific allegations that with her money

second floor was raised the injunction should not have been rejected only on the ground that since the property stands in the name of respondent No.2, therefore, she had no right over the property. Even at the risk of repetition, if ultimately she succeed in proving her case and in the meantime respondents create third party interest the petitioners will suffer irreparable loss. The balance of convenience being in their favor it would be just and appropriate in the circumstances of this case that respondents should be restrained from transferring, selling, alienating or in any manner disposing of property No.Z-5, Model Town-II, Delhi-110009 or any part thereof or creating any third party interest till the disposal of the suit. Order accordingly. Impugned order is set aside. Parties are left to bear their own cost. Parties are directed to appear before the Trial Court on 2nd April, 1998.

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