

Rattan Lal Sahdev Vs. Krishan Kumar and ors.

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Court : Delhi

Decided On : Oct-14-1992

Reported in : 49(1993)DLT41

Judge : D.K. Jain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

Appeal No. : Interim Application Nos. 536 and 1533 of 1989 and 1788 of 1990

Appellant : Rattan Lal Sahdev

Respondent : Krishan Kumar and ors.

Advocate for Pet/Ap. : S.P. Aggarwal,; K.B. Rohtagi and; H.C. Sukhija, Advs

Judgement :

D.K. Jain, J.

(1) The plaintiff has filed the present suit for partition and separation of his 1/4th share in the immovable property bearing No. 3, Netaji Subhash Marg, Darya Ganj, New Delhi after the respective shares of the plaintiff and defendants Nos. 1 to 4 have been defined and determined.

(2) Along with the suit, the plaintiff filed an application, being 1. A.No. 1538/89, under order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure

for grant of ad-interim injunction in his favor. On the said application, an ex-parte ad-interim injunction order was passed on 23/02/1989, whereby the defendants were restrained from making any alteration, selling, mortgaging, disposing or parting with possession and letting out any part of the property in question. On being served with the notice in the application, defendants Nos. 2 and 3 moved an application being I.A. No. 1788/90, under order 39 Rule 4 read with Section 151 Civil Procedure Code for vacation of the said ex-parte injunction order. This order will dispose of both the aforesaid applications.

(3) The plaintiff claims that by virtue of two registered sale deeds dated 27/01/1967 and 4/08/1970 in respect of 1/4th share each in the subject property, executed jointly in his and defendant No. 1's favor, he became co-owner of 1/4th undivided share in the said property along with defendants Nos. 1 to 4, who, according to the plaintiff, have 25%, 25%, 14% and 11% undivided share respectively. Para 9 of the plaint sets out the details of the portions of the property in occupation of the plaintiff and each of the defendants. The plaintiff alleges that despite demand, the defendants have not bothered to partition the property in accordance with the share ratio and he has now come to know that they are negotiating for sale of their undivided shares. Plaintiff's case is that if the defendants succeed in disposing of their undivided shares in the property to a third party without effecting partition, he will be put to unnecessary problems and long litigation. Hence the application.

(4) Defendants 2 to 4 in resisting the suit do not specifically deny that the plaintiff is co-owner to the extent of 1/4th share or that each of them is entitled to share more than what is allocated to them in para 8 of the plaint. In their corresponding para of the written statements, they crave leave to refer to documents of title including sale deeds in favor of each for determining the exact share of each of the parties. They also aver that specific portions of the property were handed over to each of them at the time of sale and as such claim absolute ownership of the portions in occupation of each.

(5) No reply to plaintiff's I.A. 1533/89 has been filed by the defendants. On the contrary defendants Nos. 2 & 3, in their I.A. No. 1788/90, under Order 39 Rule 4

Civil Procedure Code for vacation of ex-parte injunction order reiterate their averments regarding delivery of exclusive possession of specific portions of the property at the time of sale to each of them and further claim that they are old persons, aged more than 70 years, are desirous of letting out their respective portion lying vacant since long for maintaining themselves and their families and as such pray that the ex-parte stay granted on 23/02/1989 be vacated or modified to the extent that they are entitled to let out or dispose of their respective portions.

(6) I have heard Id. Counsel for the parties. In case of joint properties, the settled position in law noticed in *Tek Singh Ishar Singh v. Jaswant Singh Waryam Singh and others* AIR1966 Jam & Kas 39 *Mohan Lal v. Town Area Committee* and AIR1972 Jammu and Kashmir *Rahim Shaikh v. Samad Sheikh* and others, relied on for the defendants, is that a co-sharer has the right to continue to possess a specific portion of joint property if he has been in established possession thereof and has a right to validly alienate it, which right, however, is subject to the rights of other co-sharers who have their respective shares assured to them on partition. Normally, therefore, a co-owner is not entitled to an injunction restraining another co-owner from exercising his right in the common property absolutely simply on the ground of his co-ownership. But this is not an absolute rule. An injunction can be granted in case of cluster or if the equities of the case so demand. While considering the question of injunction in respect of common property subject to partition, each case has to be decided upon its own peculiar facts and it is for the Court to exercise its judicial discretion upon proof of circumstances showing on which side balance of convenience lies.

(7) I have glanced through the copies of the sale deeds filed by the contesting defendants in favor of each. The sale in each case is of his undivided share by the vendors although specific portion of the properties were delivered to the vendors. Such delivery of possession does not make them absolute owners of the portion of the property delivered to each of them and the transactions in their favor are subject to the rights of the other co-sharer, namely, the plaintiff, to claim his full share in the property, in a partition suit.

(8) It appears that considering the likelihood of complications in the partition suit, that may be created by subsequent transfers, necessitating avoidable amendments of the suit or resultant hardship to unwary subsequent transferees the ex-parte stay order was issued, by G.C. Jain, J. Transfers subsequent to a suit for partition of a joint property do create problems and unduly delay the disposal of the suit and this keep a rightful owner out of his due share in the common property, which is in furious to a plaintiff and adversely affects his interest.

(9) The present suit is a suit for partition. Equities of the case demand that status quo be maintained during the pendency of the suit. This is necessary to avoid further complications in the progress and disposal of the suit. For almost a year, the parties have been taking adjournments for compromise but in vain. This has resulted in the delay in the suit. The bar against restraint order in the authorities cited by Id. Counsel for defendants 2 & 3 are not relevant in the present case. This related to claim for injunction against ace-owner seeking to transfer or being dispossessed at a time when no claim for partition of the joint property by a co-owner had been set up or was imminent. The authorities as such are clearly distinguishable from the fact of the present case. The contesting defendants seek vacation/modification of the ex-part stay on the blank plea that they have grown old and need to let out or transfer the property for maintenance, which carries little conviction.

(10) I am, thereforee, satisfied that it is just and proper to maintain status quo during the pendency of the suit. The restraint order granted on 23/02/1989 is accordingly made absolute till the disposal of the suit.

(11) All what is stated hear in above is a prima facie view of the matter for the purpose of disposal of the present applications and shall not be construed as expression of opinion on the merits of the case.

(12) I.A. 1533/89 is allowed and I.A 1788/90 stands dismissed with