

Dev Ram Vs. Moti Lal

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Court : Delhi

Decided On : Jan-05-1993

Reported in : 49(1993)DLT510; 1993(25)DRJ174

Judge : P.N. Nag, J.

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

Appeal No. : Civil Revision Appeal No. 418 of 1990

Appellant : Dev Ram

Respondent : Moti Lal

Advocate for Pet/Ap. : I.S. Mathur,; Rajesh Goel,; Tasleem Ahmedi,;

Judgement :

P.N. Nag, J.

(1) The case set out in the plaint by the petitioner is that his father late Shri Manji Moolji was the owner of property bearing Municipal No.4294-96, Queens Road, Delhi-110006, who died in the year 1978 leaving behind the petitioner, his younger brother Shri Laiji Bhai and four daughters. Before his death, Shri Manji Mooiji had made a Will dated 22.1.1973 whereby the aforesaid was bequeathed solely in favor of the petitioner to the exclusion of all other legal heirs of Shri Manji Mooiji and as such the petitioner became the owner of the property on the basis of the

Will. The respondent-defendant was given two rooms and a kitchen as a licensee by the deceased Shri Manji Mooiji and, therefore, after his death, the respondent-defendant became a licensee under the petitioner-plaintiff. The license has since been revoked by the petitioner-plaintiff and, therefore, the petitioner is entitled to the possession of the premises and as such he has filed a suit for possession and permanent injunction restraining the respondent-defendant from sub-letting, assigning or otherwise parting with the possession of the whole or any part of the premises without obtaining the consent in writing of the petitioner-plaintiff.

(2) One of the pleas taken by the respondent-defendant in the written statement is that the will dated 22.1.1973 is forged and fabricated document and in fact such a Will was never executed during the life-time of Shri Manji Moolji, the deceased father of the petitioner-plaintiff and Shri Manji Moolji was not competent to make such an alleged Will. Another plea taken in the written statement is that, the defendant has also become the owner by way of adverse possession.

(3) Issues have been framed in the suit but no evidence has so far been adduced by the parties.

(4) The respondent-defendant filed an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure stating therein that it has been revealed to him, on enquiries made, that Shri Manji Mooiji was not the owner of the property but the said property is owned by Union of India (Northern Railway). therefore, Shri Manji Moolji was not competent to execute the Will in question and this fact has come to his knowledge about few months back, when he met Shri Gunwant Rai, son of Shri Ravi Lal Manji at Raipur (M.P.). As such, he wanted to incorporate this fact in the written statement by way of amendment in the written statement.

(5) The amendment sought for in the written statement was allowed by the trial court on the ground that the amendment sought for was necessary to determine the point in controversy between the parties and such a plea will not displace the plaintiff from an admission made by the defendant in the written statement.

(6) Mr. Sahai, learned counsel for the petitioner, has vehemently tried to assail the order of the trial court. At the very outset, he has submitted that the respondent-defendant has not taken the plea in the written statement originally that Shri Manji Moolji was not the owner of the property and it was in fact the Union of India, which was the owner of the property. As a matter of fact, he has admitted in the written statement, to begin with, that the father of the petitioner was the owner of the property and the respondent-defendant was put in possession of the premises by him. thereforee, respondent-defendant cannot now be permitted to set up entirely a new case and displace the petitioner-plaintiff from an admission made by the defendant in the written statement that Shri Manji Moolji in fact was the owner of the property in dispute. thereforee, according to Mr. Sahai, such an amendment in the written statement should not be allowed.

(7) In support of his submission, he has relied upon Jagan Nath (Deceased) through L.Rs. v. Chander Bhan and Others : AIR 1988 SC1362 . In that case it has been held that where the proposed amendment introduced entirely a new case : seeking to displace the other side completely from the admission made by them, such an amendment could not be allowed.

(8) Mr. Sahai has also relied upon a judgment passed by P.K. Bahri, J. of this High Court reported as R. Gupta alias Raj Gupta vs. Nirmal Nanda and another 1988 2 R L.R. 311.

(9) There cannot be any dispute about the principle laid down by the Supreme Court but the question that remains to be considered is whether the amendment sought ; for in the written statement, which has since been allowed by the trial court, introduce entirely a new case seeking to displace the plaintiff completely from the admission made by the respondent-defendant.

(10) After careful consideration of the matter, I am of the opinion that the amendment sought for in the written statement by the respondent-defendant does not seek displacement of the petitioner-plaintiff completely from the admission made by the respondent-defendant as is apparent from the pleadings of the parties, the respondent-defendant has already taken a specific stand that Shri Manji Moolji, during his life time has not executed any will in favor of the petitioner-

plaintiff and the Will alleged to have been executed is a forged and fabricated document. The legality of the Will has also been challenged. It has also been alleged that Shri Manji Mooiji was not competent to execute the Will in question. In other words, in the written statement originally filed, the case as set up by the respondent-defendant is two- folds-firstly the Will has not been executed and forged one and secondly the Shri Manji Moolji was not competent to execute the alleged Will.

(11) In other words, the Will has been attacked by the respondent-defendant on the grounds of competency and execution thereof. In the amendment proposed what the respondent-defendant seeks is to explain and elaborate bow Shri Manji Moolji was not competent to execute the alleged Will. Obviously in case the Will is found to be null and void on any of the grounds, the title of such property cannot pass to the petitioner-plaintiff. By the proposed amendment, the attack is of competency of Shri Manji Moolji to make such a Will and in fact it is a different approach to the same defense already taken by the respondent-defendant in the written statement. thereforee, to say that entirely a new case has been set up by allowing the proposed amendment and will displace the petitioner-plaintiff completely from the admission made by the respondent-defendant, is not correct and this contention of the learned counsel must be rejected.

(12) Next ground taken by Mr.Sahai is that the proposed amendment is not necessary to determine the real question in controversy between the parties as even if it is assumed in favor of the respondent-defendant and it is found that the petitioner- plaintiff has no right of ownership on the basis of the Will, at least admittedly Shri Manji Moolji was in possession of the property and the respondent-defendant has been put as a licensee and on these facts Shri Manji Moolji is competent to make a valid Will and he may not necessarily be the owner of the property in order to pass a valid title in favor of the petitioner. He has relied upon *Phiraya Lal alias Piara Lal and Another v. Jia Rani and another* 1972 2 Del 206 whereby the Division Bench of this Court has held that even there is a concept as possessory title and right of possession is heritable and transferable.

(13) With respect I am unable to agree with this submission of Mr. Sahai as well. The present case is not of possessory title but is based positively on the allegations of title of ownership and it has been alleged specifically in the plaint that Shri Manji Moolji who was the owner of the property mentioned above had made a Will and bequeathed the property solely to the petitioner and which execution has been denied by the respondent-defendant. On this the following issue has also been framed:

'WHETHER late Manji Moolji executed a Will dt. 22.1.73 in favor of the pitf.? If so, its effect? OPP.'

(14) The above issue has to be read necessarily in the context of the pleadings of the parties and having regard to para 1 of the plaint whereby the allegations of the passing of the title of ownership by virtue of Will dated 22.1.1973 alleged to be made by Shri Manji Mooiji in favor of the petitioner-plaintiff has specifically been made. In my opinion, the above issue is comprehensive enough to cover both the questions of competency as well as execution of the Will by Shri Manji Moolji. The ownership of the petitioner depends upon not only on the execution of the Will of Manji Moolji but also his competency to make such a Will on the basis of ownership. thereforee, in these circumstances, in my opinion there is no difficulty in holding that such an amendment was necessary to determine the point in controversy between the parties.

(15) Mr, Sahai next contended that the amendment sought for is belated, malafide and intended to delay the proceedings and, thereforee should be rejected outright.

(16) I have been informed that in the suit before the trial court only issues have been framed and evidence has still to be adduced by the parties. To my mind, the amendment sought for cannot be construed as malafide or intended to delay the proceedings of the case. The case cited by Mr. Sahai R. Gupta alias Raj Gupta (supra) is distinguishable as in that case what has weighed in the mind of the learned court for disallowing the amendment was that the documents on the basis of which amendment was applied for were known to the defendant and he was not ignorant of such documents and he could have taken such points in the written statement and the amendment, thereforee, such an amendment was held to be

malafide and intended to delay the proceedings of the case. It is settled principle of law that the amendment can be allowed at any stage, if it is necessary for determining the real question in controversy between the parties and other party can be compensated with costs.

(17) As a matter of fact, after having perused the judgment of the trial court and considered the totality of the circumstances, I find no jurisdictional error. Revision petition is, therefore, dismissed. In the circumstances, however, I make no order as to costs.

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