

Vineet Kumar Gupta Vs. Pradip Kumar Gupta

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)891; 61(1996)DLT734; 1996(36)DRJ685

Judge : N.G. Nandi, J.

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

Appeal No. : Interim Application No. 7963 of 1994 and Suit No. 322 of 1990

Appellant : Vineet Kumar Gupta

Respondent : Pradip Kumar Gupta

Advocate for Def. : Mr. Sethi

Advocate for Pet/Ap. : P.C. Khanna,; Sanjeev Sindwani,; Ravinder Sethi,;

Judgement :

N.G. Nandi, J.

(1) On attaining the majority, the plaintiff has filed the suit for declaration that the agreements, one dated 1.7.1977 and the other dated 21.8.1979, executed between defendants No. 1 to 5 and the General Power of Attorney, are null and void and not binding on the plaintiff or alternatively that the same have become infructuous and can not be enforced now and for a decree for possession of the

property directing defendant No.5 to hand over the possession of the suit property to the plaintiff and also restraining defendants 1-4 by permanent injunction from selling the property to defendant No.5 or to any body else and also further restraining defendant No.1 from demolishing the original structure built or portion of original construction or any portion and from making any new construction or alienating the property in any manner. The plaintiff by this Ia, seeks to restrain defendant No.5 from further demolishing the original structure or changing physical features of the suit property in any manner or to make fresh construction thereon pending the hearing and disposal of the suit.

(2) The say of the plaintiff is that by perpetual lease deed dated 8.3.1938, one Smt. Rama Bai w/o Dr. Tulsi Ram Was the lessee of Plot measuring 0.956 acres or thereabout, situated at Block No.205, presently known as 20, Bara Khamba Road, New Delhi; that lessee constructed residential house and out-houses on the said plot; that by indenture dated 24.5.1938, rights and interests of Smt. Rama Bai in the said property, were transferred in favor of Smt. Lila Wati w/o Shri Gulraj Gupta, grand-father of defendant No.1; that Shri Gulraj Gupta and Smt. Lilawati Gupta had three daughters and two sons, Hans Raj Gupta and Dev Raj Gupta (defendant No.2); that Gulraj Gupta died on 1.8.1941; that defendant No.2 filed a suit being S.No.70 of 1966 for partition of his 1/3rd share against his brother Hans Raj Gupta and mother Smt. Lilawati Gupta; that in the said suit, preliminary decree, on the basis of compromise, came to be passed on 11.4.1967 by this court whereby 1/3rd share came to each one of the parties; that Smt. Lilawati Gupta died on 26.11.1969, after passing of the preliminary decree but before the final decree could be passed, leaving her Will dated 31.1.1968; that in accordance with the said Will of Smt. Lilawati, 2/3rd of her 1/3rd share, in the said premises (i.e. 2/9th share of the whole of the premises) devolved upon her daughter Smt. Bimla Lal and remaining 1/3rd (i.e. 1/9th of the whole of the premises) on Smt. Subhadra Devi, w/o defendant No.2 and mother of defendant No.1 and 3; that Smt. Subhadra Devi, the holder of 1/9th share, died intestate on 11.2.1970, leaving behind her, heirs and successors as her husband defendant No.2, her two sons, defendants No.1 and 3 and one married daughter (defendant No.4), as exclusive heirs and so defendant No. 1,3,4 and Bimla Lal were impleaded and substituted as defendants in S.No,70/66, pending final decree; that deed of compromise dated

15.12.70 was executed between the above parties, pursuant to which the whole of the said premises was to be divided into two equal shares, as indicated in the plan attached to the said compromise; that Hans Raj Gupta, defendants No.1 to 4 amongst themselves to be the exclusive owners of another half with provision of common use of some servant quarters and cow-shed; that accordingly, in half the house, 26/36th share came to defendant No.1, 1/9th share to defendant No.1 & 3 each and 2/36th share to Defendant No.4; that out of 26/36th share of defendant No.2, 2/3rd or 24/36th share was held by him in his capacity as Karta of the Huf consisting of himself and his sons defendants No. 1 & 3; that by oral partition effected on 6.5.1974 between the coparceners, the 24/36th share was equally divided amongst each three holding 8/36th share each as a result of Which in the property belonging to the family of Dev Raj (defendant No.2), Dev Raj had $10/36 = 5/18$ share, defendants No. 1 & 3 each had $12/36 = 1/3$ share and Lalita Khandelwal had $2/36 = 1/18$ share; that the shares of defendant No.2 and 4 are individual shares while those of defendant No.1 and 3 are Huf shares; that even though the partition was effected of the family of defendant No.2 and the shares were determined, yet the joint status of the property has never been severed nor the possession of the separate shares has been allotted to the members of the Hindu Joint Family; as a matter of fact, the property can not be partitioned in view of clause li of the lease deed dated 8.3.1938 and as such the property is still undivisible; that defendants 1-4 by agreement dated 1.9.77 between the defendants, inter- se, and subsequent building agreement and supplementary sale agreement, both dated 21.8.79, decided to sell the suit premises to defendant No.5 without any legal necessity and without any authority including the share of the plaintiff, which action of the defendants is illegal, malafide, arbitrary and against the interests of the plaintiff; that at the time of the execution of the aforesaid agreements, the plaintiff was a minor and was not aware of his rights qua the suit property; that the plaintiff attained majority only on 31.1.1987 and was appraised of his legal rights qua the suit property.

(3) The say of the contesting defendant i.e. defendant No.5 is that he is a bonafide purchaser of half portion of the owners' share of 0.956 acres of land at block No.205, 20-Bara Khamba Road, New Delhi; that the plaintiff and all other defendants are the members of the family of late Gulraj Gupta and his wife late

Lilawati Gupta; that the suit has been filed by the grand-son of defendant no.2 and the son of defendant No.1, obviously in collusion and at the behest of and at the instance of the sellers, defendants 1 to 4 only in an attempt to resile from the sale of the aforesaid property to the defendant No.5 since the suit property being covered and located in a prime area in heart of New Delhi, is now extremely valuable; that as early as July 1,1977, defendant No.5 executed an agreement to sell with defendant No.1 to 4 whereby and whereunder the said defendants, according to the recital in the said agreement, held themselves out as owners of the suit property and defendant No.5 accepted, as owners and after being satisfied after reasonable enquiries and taking due and reasonable care and caution to ascertain the ownership of the defendants, purchased the suit properties admeasuring 0.478 acres (being the owners' share of half of the plot of 0.956 acres) and as more particularly indicated in the map/plan annexed to the said agreement to sell for a then prohibitive consideration of Rs.62,50,000.00 of which a princely sum of Rs.15.00 lakhs was paid by way of earnest money immediately on execution of the said agreement to sell; that the defendant also paid another sum of Rs.15.00 lakhs of (he total consideration and with the payment of remaining amount of Rs.10,50,000.00 on 1.3.81, this defendant paid the entire sale consideration and pursuant to the said agreement, defendant No.5 was put in possession of the suit property and came to be protected under Section 53-A of the Transfer of Property Act, to over-come which the son/grand-son of the sellers has been set up to resile from the sale; that on 21.8.79, defendants 1- 4 also executed an irrevocable power of attorney in favor of defendant No.5 and its Managing Director in respect of the suit property. Thus, this defendant has been the owner and in actual possession of the suit properties since 1.7.1977/21.8.1979 having bonafide purchased the suit property for valuable and prohibitive consideration and that the plaintiff and defendants 1-4 in collusion, with a view to deprive defendant No.5 of the fruits of the purchase of the suit property, have come forward with this suit almost after a decade and a half of the transaction.

(4) It is not in dispute that the property originally belonged to Smt. Ram Bai w/o late Tulsi Ram as the lessee and thereafter, the property came to the hands of Smt. Lilawati w/o Gulraj Gupta by transfer and after the death of Gulraj Gupta in 1941, a suit for the partition of the properties; being S.No.70/66 came to be filed

between defendant No.2, his brother Hans Raj Gupta and his mother Lila Wati. IT is also not in dispute that a preliminary decree came to be passed in the said suit and 1/3rd share came to the each of the parties to the suit viz. Dev Raj Gupta (defendant No.2), Hans Raj Gupta and Lila Wati; that after the preliminary decree but before the final decree, Lilawati died leaving behind her Will dated 31.1.1968 and her legal representatives were brought on record and by a Deed of Compromise dated 15.12.70, executed between the parties to the suit, pursuant to which final decree for partition of the properties came to be passed. It is also not much in dispute that pursuant to the partition of the immoveable properties between defendant No.2, Hans Raj Gupta and deceased Lila Wati (through her L.Rs.) all the three branches had their share partitioned.

(5) The diversion in the contention of the plaintiff and defendant No.5 follow after the partition of the properties between defendant No.2, Hans Raj Gupta and deceased Lila Wati, substituted by her I.Rs. in S.No.70/66. In the submission of Mr. Khanna, counsel for the plaintiff, after the partition of the properties between defendant No. 2, Hans Raj Gupta and deceased Lila Wali, as far as the property which came to the share of defendant No.2, there is a joint Hindu family with the suit property as the joint property of defendant No.2 and his sons, defendants 1 & 3 whereas in the submission of Mr. Sethi, counsel for defendant No.5, after the partition of the properties between defendant No.2, his brother Hans Raj and deceased Lila wati, the property is a co-ownership property of defendants 1 to 3. Thus, for the purpose of deciding this Ia, what has to be prima-facie seen is whether the suit property was a joint family property, with the plaintiff having share therein as member of the Joint Family on the dale of transaction with defendant No.5, as contended by Mr. Khanna or it would be the co- ownership property of defendants 1 to 3, as contended by Mr. Sethi, counsel for defendant No.5?

(6) At more than one places, in the written statement, defendant No.5 has in categorical terms averred that defendants 1-4 held themselves out as the owners of suit property and defendant No.5 accepted them as such and after being satisfied after reasonable enquiries and after taking due and reasonable caution to ascertain the ownership of the defendants, purchased the suit property. Thus, according to defendant No.5, the suit property was of the ownership of defendants

1-4 and defendant No.5 had also made reasonable enquiry and had taken due and reasonable care and caution to ascertain the ownership of the defendants and then purchased the suit property. It has been categorically averred in para 25 that the question of legal necessity does not arise at all as the property was sold by defendants 1-4 with valid authority being the owners of the said property. Thus, according to defendant No.5, defendants 1-4 had the valid authority being the owners of the suit property to sell the same and therefore, the question of legal necessity does not arise at all.

(7) In the submission of Mr. Khanna, defendant No.5, at the time of entering into the transaction, was aware of the suit property being joint family' property and that defendant No.5 did not act bonafide; that plaintiff has 2/27th share in the suit property and under Sec.4 of the Partition Act, plaintiff has the right/option to purchase the remaining part of the property; that the property was purchased in the name of Lilawati from the funds of joint property and that is why the property was the joint family property of defendant No.2, Hans Raj Gupta and deceased Lila Wati and that the share received by defendant No.2 on partition of the property under the decree in S.No.70/66, as far as defendant No.2 and his sons are concerned, is a joint family property.

(8) Copy of the agreement dated 1.7.1977 produced at page 7 has been referred to on behalf of the plaintiff. At page 3, para Vii thereof, there is a reference to Suit No. 70/66 filed by Dev Raj (defendant No.2) against Hans Raj and Lilawati for partition of the said properties. Para Xv thereof refers to final decree, on the basis of the compromise, passed in the said suit for partition. The property having been partitioned between defendant No.2, Hans Raj Gupta and deceased Lila Wati (substituted by her LRs) and the shares falling to each branch have been mentioned in the documents, which is also reproduced in the plaint as pointed out above. The agreement dated 1.7.77 referred to above, is in the capacity as the owners by the vendors i.e. defendants 1-4. The execution thereof by defendants 1-4 is in their individual capacity as the owners.

(9) Copy of the power of attorney suggests execution of the same by defendant No.1 to 4. It is pertinent to note that the body of the writing does not indicate that

the property comprised therein is a joint Hindu family property or that the same is being executed on behalf of the Huf or in the capacity of the Karta of Huf nor the execution part of the power of attorney suggests even remotely for the present limited purpose that the same has been for and on behalf of the joint family and in the capacity of the manager/karta of the joint family. The copy of the document titled 'SUPPLEMENTARY AGREEMENT' suggests the executors of this documents are defendants 1-4 as the vendors. The writing employed in this document does not refer to any Joint family concerning any of these signatories except defendants 1 & 3 above who's signature it is typed 'for self and Karta of HUF'. The typed words 'for self and Karta of HUF' above the signatures of defendants 2 is not to be seen on page 5 of this writing. Copy of document titled 'BUILDING AGREEMENT' is at page 34 to 59 and also document titled 'POWER Of ATTORNEY' at page 60 to 71. Same is the position for those two documents also as regards the typed writing 'for self and Karta of HUF' above the signatures of defendants No.1 & 3. It is pertinent to note that in all these three documents, below the signatures of defendants 1 & 3, it is not indicated that it is signed as the Karta of their respective HUF. It is only above the signatures of both these signatories the words 'for self and Karta of. HUF' have been typed. It may also be noted that defendant No.2, the father of defendants 1 & 3, is also a party to all these documents. The signatures of defendant No.2 In any of these documents do not in any manner indicate that the same is in the capacity of the manager or karta of the Huf below his signatures suggesting the capacity in which the documents are signed/executed.

(10) In the case of *Girijanandini versus Vijendra Narain* reported in : [1967]1SCR93 , it is observed in para 7 that 'partition may ordinarily be affected by institution of a suit, by submitting the dispute as to division of properties to arbitrators, or by conduct which evinces an intention to sever the joint family, it may also be effected by agreement to divide the property. But in each case the conduct must evidence unequivocally intention to sever the joint family status....'

(11) It may be appreciated that the suit property was purchased by Lilawati from the funds provided by Gulraj Gupta for the joint Hindu family, as averred in plaint para 5. It need hardly be said that there could be a joint family of husband and

wife, a person and widow of his brothers, father sons, daughters. The acquisition of the property in the name of Lilawali, as averred in plaint para 5, which is not much disputed, would be the joint family property of Lilawati and Gulraj Gupta. It is pertinent to note that after the death of Gulraj Gupta in 1941, defendant No.2 filed suit for partition of immoveable properties being S.No.70/66 against his mother Lilawati and his brother Hans Raj, claiming 1/3rd share in the property and thereafter, 1/3rd share of the property came to the hands of defendant No.2 on partition of the joint family property. It is a settled law that the property received on partition of joint family property, would be a joint family property in the hands of defendant No.2. There is a presumption of a Hindu Family being joint in food, worship and estate. Defendants 1- 3, father and two sons were joint in food and worship and staying as one family as suggested prima-facie, would constitute joint family and the property would be the joint family property of defendant No.2 and his sons defendants 1 & 3. It is not the say of the defendant that the joint family of defendant No.2 and his two sons had divided/partitioned and that there was severance of status between the members of joint Hindu family of defendants 1-3. Thus, it appears that there was a joint family property of defendant No.2 and his two sons defendant No. 1 and 3, and the property of the said joint family was the 1/3rd share of the property got on partition by defendant No.2. It is not the say of defendant No.5 nor suggested that the members of joint family i.e. defendants 1 to 3 ever unequivocally intended by their conduct to sever the joint family, before entering into agreement to sell in favor of defendant No.5 in the year 1977. And even assuming that there was a joint family of defendants No. 1 to 3 and the status was severed even then the share falling to defendant No. 1, would be a joint family property of defendant No.1 and the plaintiff who was minor then, and the property could not be sold without for the benefit of estate or for legal necessity. This being the position, it prima facie appears that the plaintiff as the member of the Huf has the undivided share in the joint family property and admittedly the transaction with defendant No.5 by defendants No. 1 to 3 is in their individual capacity as the owners.

(12) Defendant No.5 has come forward with a specific contention that this defendant accepted defendants 1-4 as the owners and after being satisfied after reasonable enquiries and taking due and reasonable care and caution to ascertain

the ownership of the defendants, purchased the suit properties and the defendant has further come forward with a specific say that there was no question of his enquiring into the legal necessity and benefit of estate for the transaction in question as the property was not a joint Hindu family property. The bone of contention by defendant No.5 is that defendants 1 & 3 have put forward the plaintiff as the price of the property has been escalating. Thus, on defendant's own say, the agreement to sell by defendants 1-3 was not for the legal necessity or for the benefit of estate and that these questions do not arise as the defendants 1-3 are the owners of the property in question. As pointed out above, as far as the property in question is concerned, the same having come to defendant No.2 on partition of the joint family properties and defendants 1,2 and 3 being the members of the family the presumption that the Hindu family is presumed to be joint in food, worship and estate, unless otherwise shown, the suit property would be a joint family property of defendant No.1 to 3 and defendants 1 & 3 having not shown by unequivocal intention by their conduct to sever the status and having entered into agreement to sell in favor of defendant No.5 not as a manager or karta of their unit respectively for the benefit or for legal necessity, the same can not be binding to the plaintiff, as the plaintiff would be entitled to the share in the joint family property. It is pertinent to note that the transaction with defendant No.5 has been admittedly without any enquiry with regard to the benefit of estate and the legal necessity and the powers of the father as the Karta/manager of the joint Hindu family, though wide, would be only in case of benefit of estate and legal necessity so as to make the transaction binding to the plaintiff. That being not the position, on defendants own say and the disputed property, prima-facie, appears to be a joint family property on the date of agreement to sell in favor of defendant No. 5 for the reasons aforesaid and by virtue of provisions contained in Section 4 of the Partition Act of 1893, the plaintiff, would also be entitled as one of the co-owners, in case of a dwelling house to the right of pre-emption in case of partition of the family property, to purchase the rest of the part of the property.

(13) Section 8 of Hindu Minority and Guardianship Act, 1956 provides that 'powers of natural guardian are restricted inasmuch as the natural guardian of a Hindu minor has power, subject to the provisions of Section 8 to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the

realisation, protection or benefit of the minor's estate; but the guardian can in no case 'bind the minor by a personal covenant'. Sub-section (2) provides that 'the natural guardian shall not, without previous permission of the court, (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or (b)

Sub-section (3) provides that 'any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him'.

(14) Thus, it will be seen that powers of the natural guardians in the matter of dealing with the interests of the minor, are restricted, as provided in sub-sections (1) and (2) of Section 8 of the Hindu Minority and Guardianship Act, 1956, pointed out above. In the instant case, no permission under sub-sec.(2) has been obtained by the natural guardian of the plaintiff who was minor when the agreement to sell was executed in favor of defendant No.5 by the natural guardian of the plaintiff.

(15) It has been submitted by Mr. Sethi, counsel for defendant No.5 that defendant No.5 be permitted to make construction at the disputed site since defendant No.5 has paid huge amount of Rs-62.50 lakhs to defendants 1-4 and that defendant No.5 should not be deprived of the fruits of the transaction having paid such a huge amount. In this regard, reliance is placed in the decision of this court reported in 1986 Rlr (Notes) Note 2. It may be appreciated that defendant No.5 is a builder/organizer and that the construction that he would undertake on the disputed land, would change hands since the purpose of construction would be to sell the same. In that event, after the construction, the equities would change and third parties would come on the scene and at that time, in the event of defendant No.5 ultimately losing in the case, removal/demolition of the property would be almost impossible or extremely difficult and it may so happen that condition requiring defendant No.5 to remove the construction on the suit plot in the event of his losing in the case finally, especially considering the presence of third party purchasers at the site, may become a paper condition. For this reason, the decision of this court (supra) would not be applicable to the fact of the present case and therefore not helpful to defendant No.5. Looking to the facts and circumstances, I do not deem it proper/desirable to permit defendant No.5 to carry

out the construction on condition of requiring demolition/removal of the same in the event of defendant No.5 ultimately losing in the suit.

(16) It, therefore, follows from the above that the plaintiff has been able to show questions involved in the suit requiring further scrutiny and for that matter, prima-facie case for the grant of equitable relief of injunction. Refusal to grant ad interim injunction would cause irreparable injury to the plaintiff inasmuch as the plaintiff's rights in the suit property as also the option/right of pre-emption under section 4 of the Partition Act, would be seriously affected. The balance of convenience also requires that defendant No.5 be restrained by injunction.

(17) In the result, defendant No.5 is restrained in terms of the prayer of this application pending the hearing and disposal of the suit.

(18) is stands disposed of accordingly.

(19) It is wished to be clear that the observations in this order are only for the purpose of deciding this is and shall not prejudice the either side at the later stage of the proceedings.

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