

Jagmohan Kapur Vs. Manmohan Kapur

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Court : Delhi

Decided On : Feb-09-1996

Reported in : 1996IAD(Delhi)933; 62(1996)DLT25; (1996)113PLR29

Judge : Devinder Gupta, J.

Acts : [Partnership Act, 1932](#) - Sections 2

Appeal No. : Interim Application No. 3235 of 1994 and Suit No. 1174 of 1985

Appellant : Jagmohan Kapur

Respondent : Manmohan Kapur

Advocate for Pet/Ap. : Daljit Singh,; M.S. Vinayak,; Mukul Rohatagi and;

Judgement :

Devinder Gupta, J.

(1) This application was filed on 2nd April, 1995 by defendant No.1, in which following prayers have been made :-

'(A)restrain the plaintiff from deploying its Huf funds for the purposes of inter se bidding; (b) restrain the plaintiff from depositing in this Hon'ble Court Fdr Bonds, securities standing in the name of third parties (including Lips Publications Pvt. Ltd.) as a security for the purposes of inter se bidding; (c) divide the property after

conversion into freehold in such a manner as both the defendant and the plaintiff get two independent three-bed duplex units with individual titles and complete rights of ownership; (d) direct an open auction instead of inter se bid between the plaintiff and the defendant No.1.'

(2) The plaintiff on 5th July, 1985 filed suit for partition of movable and immovable properties. Immovable property sought to be partitioned is D-43, defense Colony, New Delhi. On 21st November, 1988, the case came up for framing of issues. Issues were framed pertaining to the disputes between the parties for partition of movable properties only. The Court observed that there was no dispute that the plaintiff and defendant No.1 are the co-owners of the immovable property in equal shares. Consequently, a preliminary decree for partition was passed declaring the plaintiff and defendant No.1 to be the co-owners of D-43, defense Colony, New Delhi in equal shares. Shri M.L-Jain, Advocate, was appointed as the Commissioner to submit his report on the mode and manner of dividing the property amongst the plaintiff and defendant No.1 in two equal shares, if the property was partible.

(3) After it was found that it is not possible to partition the property in two equal shares, on 16th August, 1991, it was recorded that parties had agreed to give inter se bid in respect of the property. This order was clarified on 10th October, 1991 and 20th November, 1991. There are various orders passed thereafter on the inter se bid amongst plaintiff and defendant No.1. Order dated 5th August, 1994 records the last bid of defendant No. 1 to be of Rs. 1,22,83,000.00 . It is also records that the plaintiff did not bid thereafter. Inter-se bidding was thus closed at Rs.1,22,83,000/- .The case was posted for acceptance of the bid. Learned Counsel for the plaintiff on 15th February, 1995 contended that in view of prayer (d) made by defendant No.1-in his application (I.A.No.3235/94), the plaintiff acquired a right to get the property on value, as per Section 3 of the Partition Act and in view of the decision of the Supreme Court in R. Ramamurthi (dead) by L.Rs. v. Rajeswara Rao, : [1973]1SCR904 . Parties thereafter were heard on this question.

(4) It was in reply to the miscellaneous application under hand that the plaintiff stated that defendant No.1 is not entitled to any relief and in view of prayer (d) made in the application, the plaintiff has become entitled to get the property at a value to be determined by this Court.

(5) The prayers, which defendant No. 1 made in the aforementioned application have been quoted above. Such prayers were made by defendant No.1 in the light of various averments made in the application, wherein he stated that the plaintiff was proposing to use the money belonging to third parties in the interest bid, therefore, the defendant was constrained to move the application praying that the plaintiff be restrained from using H.U.F. money or money belonging to third parties. The defendant always understood that inter se bid means bidding between the plaintiff and defendant No. 1 wherein only individual funds of the two brothers would be deployed. The purpose of inter-se bid was that property in question would continue to remain with one of the brothers. In case funds of third parties are allowed to be deployed in the interest bid, the entire purpose of inter-se bid would be defeated and the parties would be deemed to be bidding on behalf of outsiders and inter-se bidding would be no different from an open auction. In this background, defendant No.1 prayed that a direction be issued that open auction of the property be held instead of inter-se bidding between the plaintiff and defendant No.1.

(6) In the light of the averments made in the application, there can be no other view possible than the one that the defendant No.1 prayed that property be sold by open auction. There is also no dispute that to this prayer made by defendant No.1 to direct an open auction of the property, the plaintiff in his reply has stated that he is entitled to buy the property at the value to be determined by the Court. In the light of these circumstances, ratio of the decision in K.Ramamurthi's case (supra) is fully applicable that if the nature of the property is such or the number of shareholders is so many or if there is any other special circumstance and division of the property cannot reasonably or conveniently be made, the Court can in its discretion, on the request of shareholders interested individually or collectively, to the extent of one moiety or upwards direct the sale of the property and distribute the proceeds amongst the shareholders and where the Court has been

requested to direct a sale, any other shareholder can apply for leave to buy at a valuation, the share or shares of the party or parties asking for sale. The Supreme Court interpreted Sections 2 and 3 of the Partnership Act holding that in such a situation it has been made obligatory that the Court shall order a valuation of the share or shares and offer to sell the same to the shareholder, who has applied for leave to buy the share at a price ascertained by the Court.

(7) The contention of learned Counsel for defendant No.1 is that I.A.3235/94 stood disposed of by an order dated 16th May, 1994 cannot be accepted since on 16th May, 1994, the order passed was not disposing of the application. In fact no such order was passed on 16th May, 1994 dealing with this application.

(8) In view of the prayer made by defendant No.1 for sale of the property, there is no other course left open except to allow the plaintiff's prayer and to direct the valuation of the share and offer the property to the plaintiff, who has sought leave to buy the share at a price to be ascertained by the Court. The application accordingly stands disposed of. The plaintiff is held entitled to have the share of defendant No. 1 in the property transferred in his name at a price to be ascertained by the Court. S.No. 1174/85 List for direction on 5th February, 1996 before the appropriate Bench.

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