

Flora Bose Vs. Suprotik Bose

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Court : Delhi

Decided On : Dec-01-1994

Reported in : 58(1995)DLT224; 1995(32)DRJ290

Judge : M.J. Rao, C.J. and; Anil Dev Singh, J.

Acts : [Specific Relief Act, 1963](#) - Sections 22

Appeal No. : First Appeal No. 240 of 1994

Appellant : Flora Bose

Respondent : Suprotik Bose

Judgement :

M. Jagannadha Rao, C.J.

(1) A suit was filed for declaration that the respondent/plaintiff is joint owner of the property with the appellant/wife. Pending suit an application under Order 39, Rules 1 & 2 Civil Procedure Code was filed for restraining the appellant/ wife from alienating the property or from inducting any third party into possession. The injunction which was already granted earlier on 19.8.1991 was made absolute under the impugned order dated 28.4.1994. Aggrieved by the said order, this appeal has been preferred by the wife. Learned Single Judge while granting the injunction also came to the conclusion that having regard to the facts and the circumstances of the case, and the sources of the wife for purchasing the property,

it could not be said that she could have purchased the property with her own monies.

(2) Learned counsel has raised a contention relying upon the decision of the Supreme Court in Ram Saran and Another vs . Smt. Ganga Devi : AIR 1972 SC2685 to the effect that a simple suit for declaration with regard to title to property is not maintainable without any relief for possession. We are of the view that the above said decision which is rendered under Section 42 of the old Specific Relief Act is not prima facie applicable to the facts of the case for various reasons. We find that Section 22 of the new Specific Relief Act permits a simple suit for declaration to be filed and as per the said Section any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for possession, or partition and separate possession. In fact, sub-section (2) of Section 22 contains a proviso to the effect that the plaintiff may at any stage amend the plaint seeking the consequential relief. We may also point out that under the new Limitation Act of 1963, a separate set of Article have been evolved in Part 111, Articles 56 to 58 which deal with simple suits for declaration without any consequential relief. Yet another reason as to why the contention of the learned counsel for the appellant is prima facie not acceptable is that in case the plaintiff succeeds in proving joint ownership of the property Along with the defendant, the declaration of such joint title would itself be sufficient to allow the plaintiff to enter into the property as a co-owner of the property. For these reasons, prima facie, we are unable to agree with the contention of the learned counsel for the appellant that a simple suit for declaration is not maintainable.

(3) Learned counsel has also relied upon a decision of the Orisa High Court in the case of Jemma vs . Raghu : AIR1977 Ori12 . The facts set out in paragraph 2 of the said judgment would show that a declaration was sought for by the plaintiff, who was out of possession, and a permanent injunction was sought to restrain the defendant from entering into the property. This was held to be not maintainable. The plaintiff, who admitted the possession of the defendant could not straightaway ask for an injunction restraining the defendant from entering into the property. The said case is also clearly distinguishable.

(4) We do not find any merit in the appeal. Accordingly, the appeal is dismissed.

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