

Ved Kumari Vs. Tarachand

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)870; 1996(36)DRJ646

Judge : Manmohan Sarin, J.

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

Appeal No. : Interim Application Nos. 1393 and 14194 of 1994 and Suit No. 4577 of 1992

Appellant : Ved Kumari

Respondent : Tarachand

Advocate for Pet/Ap. : S.K. Singla,; P.N. Bhardwaj and; S.C. Dhanda, Advs

Judgement :

Manmohan Sarin, J.

(1) The plaintiff has filed this suit for partition of properties and separate possession of her share of the properties left by her deceased father. In the present IAs. restraint is sought against defendants 1 to 3, who are the brothers of the plaintiff from selling, alienating, transferring in any manner or creating any third party interest in the properties set out in para 2 of the plaint. 2. Let me briefly recapitulate the facts:-

(I)The plaintiff is the daughter of late Shri Ram Prasad Arya and Smt. Sandhya Devi. Defendants 1 to 3 are the brothers of the plaintiff and sons of late Shri Ram Prasad Arya and Smt. Sandhya Devi, while defendants 4 to 7 are the sisters of the plaintiff and daughters of late Shri Ram Prasad Arya and Smt. Sandhya Devi. Late Shri Ram Prasad Arya expired on 17-12-1980. Smt. Sandhya Devi died in 1986. The plaintiffs case is that late Shri Ram Prasad Arya left behind the under mentioned properties:-

(A)Property No-3821 to 3826 Ward No. Iii Morigate Delhi.

(B)Property No.3834 to 3841 Ward No. 1II Morigate, Delhi.

(C)Property No-510 too 513 Ward No.1 Morigate.Delhi.

(D)Property No.515 Ward No.1 Morigate, Delhi.

(E)Property No.3668 Ward No.III Morigate, Delhi.

(F)Property No.I237 Ward No.III Rang Mahal, behind Novelty, Delhi.

(G)Property No-2753 to 2754 Ward No.III Hamilton Road, Delhi.

(E)Property No. 580 to 581 (1580-81) Ward No.V Nai Sarak, Delhi.

(F)Property No.3672 Ward No.III Hamilton Road, Delhi.

(II)The plaintiff claims that she was entitled to 1/9th share in the properties of Late Shri Ram Prasad Arya and also to 1/8th share in the undivided 1/9th share of Smt. Sandhya Devi.

(III)The present suit was instituted in December 1992. The plaintiffs case is that she learnt about a month back that defendant No.2 had instituted a suit bearing No. 50/1973 in this Court, claiming partition and separate possession of immovable properties. The Other parties to the said suit were late Shri Ram Prasad Arya and Smt. Sandhya Devi and defendants I and 3 i.e. the two brothers. The said suit was decreed in terms of the compromise entered into. The plaintiff claims that the said suit was a collusive one and was fraudulently got decreed.

The purpose of the suit was to deprive the sisters of then- inheritance and rightful share in the properties. Only nominal shares were allotted to parents. The decree was not acted upon. The plaintiff claims she is entitled to her share therein and to seek partition. The properties are said to in the possession of the defendants, who are threatening to alienate and part with possession of the same.

(IV)The plaintiff submits that the relinquishment deeds that were got executed from defendants 5,6 and 7 were got done deceitfully.

(V)In the prevent suit defendant No.4 is ex parte. Written statement has been filed on behalf of defendants 5,6 and 7 who have stated that they were not made parties to the decree passed in suit No. 50 of 1973 and the same was a collusive suit. They are not bound by the decree passed in the suit and the property was required to be partitioned as claimed by the plaintiff.

(3) Learned counsel for defendants 1 to 3 submitted that the properties in question were joint Hindu Family properties and accordingly defendant No.2 way back in 1973, during the life time of the parents had sought partition thereof. It is urged that the plaintiff being the eldest child was fully aware of all the legal proceedings. The other defendants namely defendant Nos. 5,6 and 7 who had knowingly executed relinquishment deeds in 1986 are now dishonestly and out of greed seeking to resile from the same. Learned counsel also submits that the present suit has been filed belatedly. The plaintiffs do not have a prima facie case. The decree that was passed in 1973 was duly acted upon and the defendants No.1 to 3 were duly substituted in the pending litigation in respect of the properties that fell to their share.

(4) Learned counsel for the plaintiff in rejoinder submitted that the said decree was not acted upon till date. The properties have not even got mutated with the Municipal Corporation and there was not an iota of evidence produced by the defendants 1 to 3, which shows that the properties in question were joint Hindu Family Properties.

(5) With a view to elucidate the present position with regard to the properties that had fallen to the share of late Shri Ram Prasad Arya and Smt. Sandhya Devi

pursuant to the decree passed on 20th March, 1973, I had recorded the statement of defendant No.2 under order X CPC.

(6) Having heard the counsel for the parties, I am of the prima facie view that the plaintiff and defendants 4 to 6 who are claiming all their rights through late Shri Ram Prasad Arya and Smt. Sandhya Devi cannot go beyond what was claimed and accepted by their parents as their share in the suit 1973. It is not the plaintiffs case that the properties in the hands of her father were ancestral. In para 2 of the plaint, the averment is that late Sh.Ram Prasad Arya left behind the properties mentioned therein. In this view of the matter the properties, that had fallen to the share of Shri Ram Prasad Arya and Smt. Sandhya Devi are the properties bearing No.1237 Ward No. 1II Rang Mahal behind Novelty, Delhi, property bearing No.3668 Ward No. lii Morigate Delhi and property bearing No.3821 to 3826 Ward No. 1II, Morigate, Delhi. The plaintiff and defendants 4 to 7 on a prima facie view of the matter can claim their share only with regard to these properties and restraint on them would be justified. The property bearing No.1237 Ward No.III, Rang Mahal behind Novelty, Delhi is rented property and defendant No.2 is realizing the rents there from on behalf of defendants 1 to 3. While property bearing No.3668 Ward No.III Morigate, Delhi is now a plot of land which is in the possession of defendant No.2. As regards, property bearing No.3821 to 3826 Ward No.III Morigate Delhi, ground floor is tenanted while the first and second floors are in possession of the defendant No.2. 7.The learned counsel for the defendant at this stage, had submitted that having regard to the long period that had elapsed since 1973 and the inaction on the part of the plaintiff, the balance of convenience would be against putting any fetter on the rights of the defendants 1 to 3 who have enjoyed these properties all this while. Further in the 1973 decree had been acted upon. Relinquishment deeds were executed in 1981. The mutation of the property was applied for in 1981 and effected during the years 1984-86. Besides he stated that the plaintiffs case was based on the allegation that the defendants 1 to 3 were assuring them to give their share but did not do so. The plaintiff is guilty of delays and laches in the matter. I am afraid these submissions would not disentitle plaintiff from revue inasmuch in terms of the decree on which defendants 1 to 3 rely, the three properties fell to the share of late Shri Ram Prasad Arya and Smt. Sandhya Devi. This relinquishment deed has admittedly not

been executed by the plaintiff. As regards photo copy of a will dated 5-1-1980, which has been filed along with the documents, purporting to have been executed by late Shri Ram Prasad Arya. The said will is an unregistered will, mention of which was not even made in the written statement. The will filed during the arguments, bequeathes the properties to the three brothers to the exclusion of other heirs. Authenticity of the will is vehemently challenged by the counsel for the plaintiff. In this view of the matter, a restraint on the aforesaid three properties is justified. Defendant 1 to 3 are accordingly restrained from selling alienating or parting with possession of the above three properties or inducting any other tenant therein Without? the leave of the Court till the disposal of the

(7) The IAs stand disposed of.

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