

Rakesh Arora Vs. S.D. Technical Service (P) Ltd. and ors.

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 61(1996)DLT852

Judge : K. Ramamoorthy, J.

Acts : [Succession Act, 1925](#)

Appeal No. : Suit Nos. 3726 of 1990 and 687 of 1993 and Interim Application Nos. 6584 of 1993 and 578, 2527, 2578

Appellant : Rakesh Arora

Respondent : S.D. Technical Service (P) Ltd. and ors.

Advocate for Pet/Ap. : C.M. Chopra,; S.N. Marwah,; V.K. Raina and;

Judgement :

K. Ramamoorthy, J.

(1) The point involved in the two suits involves the construction of the Will dated 23.2.90 by one Ram Prakash Arora. The execution of the Will is admitted by the parties. Before I deal with the applications in the two suits and the reliefs to be granted in the two suits, a few facts have to be noticed.

(2) Ram Prakash Arora married Phool Wati @ Janak Dulari. Four issues were born out of the wedlock :

1. Mrs. Raksha Arora (daughter) 2. Kanwal Kishore Arora (son) 3. Chand Kiran (pre-deceased son) 4. Sneha Prabha (daughter)

(3) In the Will he bequeathed the properties, mentioned therein, expressing his intentions. We are concerned with only one property in the Will. Mrs. Raksha Arora filed Suit No. 3726/90. The plaint was presented on 30.11.90, four months after the death of the father Ram Prakash Arora on 25.7.90. The reliefs prayed for in the amended plaint are as follows :-

(A) A decree for grant of prohibitory injunction may be granted in favor of the plaintiff and against defendant No. 1 restraining the defendant No. 1 from consuming electricity from K.No. 521706 (Meter No. 0918839) and K.No. 5204836 (Meter No. 0993632) installed in premises No. B-87, Mayapuri Industrial Area, Phase I, New Delhi, with sanctioned load of 75.73 Kv and 1 Kv respectively; (b) A decree for mandatory injunction may be passed in favor of the plaintiff and against the defendant No. 1 directing the defendant to remove itself from the licenced portion of factory No. B-87, Mayapuri Industrial Area, Phase I, New Delhi and referred to in para No. 1 of the plaint and not to obstruct the plaintiff from entering into the said licenced portion; (c) A decree for Rs. 20,675.00 may be passed in favor of the plaintiff and against the defendant as arrears of electric and water consumption charges and for installation of pollution control plant; (d) A decree for payment of consumption for use and occupation of the license portion of property No. B-87, Mayapuri Industrial Area, Phase- 1, New Delhi be passed in favor of the plaintiff and against the defendant @ Rs. 50,000.00 per month or at such other rate as this Court may deem just and proper and for such period as this Court may found due to the plaintiff. (e) Such other relief may also be granted as this Court may deem just and equal under the circumstances of the case. (f) Cost of the suit may allowed to the plaintiff '

(4) There are four defendants. First defendant is stated to be the licensee from the father; second defendant is Kanwal Kishore Arora, the brother of the plaintiff; third defendant is the sister of the plaintiff; and Fourth defendant is the mother of the

plaintiff. First defendant filed the written statement. Defendants 2 and 3 filed separate written statement. Fourth defendant did not file any written statement.

(5) Defendants 2 and 3 claim rights as per the Will of the father.

(6) Defendants 2 and 3 in Suit No. 3726/90 filed suit No. 687/93 for partition. The following reliefs are claimed :-

(A) to direct partition directing property shown as uncolored including entire mezzanine and entire terrace in the plan attached as half share of each of plaintiffs and that shown green in the plan as that of defendant No. 1 and common passage shown by arrow in the plan to plaintiffs and only right of passage to defendant No. 1; (b) to direct defendant No. 3 by a mandatory injunction to discharge its legal obligations to mutate and give effect to the ownership of the plaintiffs and defendant No. 1 and substitute their names in place of Sh. Ram Parkash Arora in defined shares plaintiff No. 1 as owner of 50%, plaintiff No. 2 as owner of 50% and defendant No. 1 as owner of green portion only with common passage of the parties as indicated by arrow as per plan attached of the property No. B-87 Mayapuri Ind. Area Phase I New Delhi so that each of the plaintiffs and defendant No. 1's dealing with defendant No. 2 would be related to their respective part of the property, directly in respect of rights and obligations regulated and enforced by the plaintiffs and the defendant No 2 under the perpetual Lease Deed. (c) Pass a decree of permanent injunction in favor of the plaintiffs and against defendant No. 3 restraining it, its employees from recovering any amount of property, tax from the plaintiffs beyond the rateable value of Rs. 20960.00 as there existed no assessment list for the period from 1977-78 to 1992-93 qua the property in question and Will then even no House tax is payable, and further till mutation is effected by their respective ownership in place of late Shri Ram Prakash Arora which it is legally bound to do as per Will of Shri Ram Parkash and show the plaintiff No. 1 as owner of 50%, plaintiff No. 2 as owner of 50% and defendant No. 1 as owner of Green with common passage shown with arrow and in the plan attached and as defendant No. 3 held proceedings against Ram Parkash who was dead and treating him yet alive, regarding property No. B-87 Mayapuri Phase I and to pass decree in the same terms in favor of the plaintiffs and against the

defendant No. 3; (d) to direct by mandatory injunction against the defendant No. 4 to give effect to in the record the names of plaintiffs and defendants of respective 50% shares as shown in the plan and defendant No. 4 to issue the factory license in favor of the plaintiff No. 1 as applied for him and his son Amit ; (e) to direct by mandatory injunction against the defendant No. 1 to remove the tin shed, or other obstructions created in the common passage as well as from the front of the factory premises including the Generator and restrain by perpetual injunction from in any way interfering with the right, title and interest and possession of the plaintiffs and their licensee S.D. Technical Services (P) Ltd. and to confine herself only to the portion which defendant No. 1 got under the Will of the father late Shri Ram Parkash Arora on an area of 200 sq. yds. as shown green in the plan attached to confine herself only to Chowkidar room on the left side of the gate; (f) may pass such further relief as may do complete justice on the facts and circumstances of the case.' The defendants are as follows :-

1. Ms. Raksha Arora
2. Delhi Development Authority
3. Municipal Corporation of Delhi.
4. Assistant Commissioner (Factories) M.C.D.
5. Smt. Phool Wati @ Smt. Janak Dulari

(7) The first defendant (plaintiff in Suit No. 3726/90) maintains the same stand.

(8) As stated above, the point is whether Kanwal Kishore and Sney Prabha could claim rights under the Will as per the disposition made by the father or as contended for by Mrs. Raksha Arora whether the entire bequest is in her favour.

(9) After several hearings, ultimately the matter was posted for arguments on the question of construction of the Will. Mrs. Raksha Arora had been changing Counsel from time to time and finally Mr. Arun Mohan Senior Advocate appeared and submitted his arguments with reference to the true construction of the Will highlighting the intentions of the testator.

(10) Perhaps the arguments of Mr. Arun Mohan was not to the liking of the plaintiff. She changed the Counsel and wanted to address arguments in person. I gave another opportunity to her. In the subsequent hearing she filed IA.9493/95 seeking permission to engage a Counsel. Having noticed her conduct, I dismissed the petition.

(11) Finally, the plaintiff sought permission to address arguments on her behalf by her daughter Ms. Smita Arora, who has just now finisher her law course. I gave permission to the daughter of the plaintiff to argue the matter.

(12) The daughter of the plaintiff very courageously made her submissions. She was able to pin point her case with clear appreciation of the contentions of the defendants. If she concentrates on the profession, I am sure she will reach the top very early in her career. Seldom lawyers are able to speak with clarity in debunt. For a beginner to argue about the construction of Will is really a very difficult task. I am happy to place on record Ms. Smita Arora, on behalf other mother, performed her job in a splendid manner. She relied upon a judgment of the Supreme Court reported in Kaivehkalikkalambunhi (Dead) by LRs. and Others v. H. Ganesh Bhandary, : AIR 1995 SC2491 . She submitted that the two important clauses in the Will are inconsistent and in particular the earlier disposition in favor of defendants 2 and 3 in suit No. 3726/90 is inconsistent with the later disposition made by the testator. She submitted that as per the law laid down by the Supreme Court if there are two inconsistent provisions in the Will, the later part would prevail over the former. thereforee, as per the judgment of the Supreme Court, in the instant case in the Will dated 23.2.90 later part in the Will is destructive on the earlier part of the Will in favor of defendants 2 and 3 and, thereforee, the plaintiff, her mother should get the suit property also. Consequently, there is no bequest in favor of defendants 2 and 3 and defendant No. I also does not get any right, who is claiming rights through the second defendant.

(13) Now we have to see the relevant provisions of the Will which are as follows:-

'5.Iam not keeping good health. I have been recently diagnosed as suffering from Hodgkin's disease by Batra Hospital, New Delhi. My life is uncertain. I am going to United States of America for expert medial treatment. I do not want that there

should be any dispute with regard to my estate between my heirs. I am, therefore, executing this last Will bequeathing all my estate as under:- (a) I bequeath and devise my residential house No. BF-27, Tagore Garden, New Delhi in favor of my daughter Smt. Raksha including all household effects lying therein. (b) I am running a partnership-firm styled as Ram Prakash Kanwal Kishore and Prakash Steel Industries in partnership with Smt. Raksha in factory building No. B-87, Mayapuri Industrial Area, New Delhi under a Deed of Partnership dated January 5, 1975. Other portions of that property are in possession of M/s. S.D. Technical Works, 8, Bhagat Singh Market, New Delhi who are manufacturing engineering goods under my supervision and charge and I am being paid supervision charges by them on the basis of manufactured goods. M/s. S.D. Technical Works are using the premises as my licencees. The portion in which M/s. Ram Prakash Kanwal Kishore and Prakash Steel Industries are presently run shall stand absolutely bequeath in favor of my daughter Raksha while the other portion presently in use of M/s. S.D. Technical Works stand bequeathed to my son Kanwal Kishore and my daughter Sneh Prabha in equal shares. All my investment in the partnership concern M/s. Ram Prakash Kanwal Kishore and Prakash Steel Industries shall stand bequeathed to Smt. Raksha who shall become the sole owner of this business and the premises with all quota rights, raw materials, finished and semi-finished products and all other assets of the firm to the total exclusion of Shri Kanwal Kishore and Smt. Sneh Prabha. (c) All my other properties such as Bank Deposits FDRs, movable wheresoever whatsoever shall stand bequeathed absolutely to Smt. Raksha. (d) If Smt. Raksha predecease me, that the properties bequeathed to her shall stand bequeathed to her daughter Kumari Smita. (e) My daughter Smt. Raksha and her daughter Kumari Smita shall look after and provide all the necessities of life and decent living to my wife Smt. Phoolwati.'

(14) The argument is in clause 5(B) 'the portion in which M/s. Ram Prakash Kanwal Kishore and Prakash Steel Industries are presently run shall stand absolutely bequeath in favor of my daughter Raksha'.

(15) The devise in favor of defendants 2 and 3 is in the following terms :-

'WHILE the other portion presently in use of M/s. S D. Technical Works (first defendant) stand bequeathed to my son Kanwal Kishore and my daughter Sneh Prabha in equal shares.

(16) The portion relied upon by the plaintiff Mrs. Raksha Arora which according to her destroys the earlier disposition in favor of defendants 2 and 3 is as follows:-

'ALL my investment in the partnership concern M/s Ram Prakash Kanwal Kishore and Prakash Steel Industries shall stand bequeath to Smt. Raksha who shall become the sole owner of this business and the premises with all quota rights, raw materials, finished and semi-finished products and all other assets of the firm to the total exclusion of Shri Kanwal Kishore and Smt. Sneh Prabha'.

In the plaint after extracting the Will, she has added an appended an addenda in the following terms:-

'THE last portion of para 5(B) of the Will dated 23.2.1990 bequeathing the entire premises No. B-87, Mayapuri Industrial Area, Phase I, New Delhi, is irreconcilable with the proceeding portion of the said para, and therefore the last portion is to prevail. The plaintiff is thus the owner of the property.'

(17) I am not able to appreciate the stand of the plaintiff. It is contended by the learned senior Counsel Mr. Marwah on behalf of defendants 2 and 3 that on a proper construction of the Will, reading the Will as a whole the intention of the testator is very clear and the testator had given in clear terms expressing his desire as to who is to take which property. According to him, the property in the occupation of the first defendant business carried on should come to defendants 2 and 3. A local Commissioner was appointed who had submitted the plaint showing the extent in the occupation of defendants 2 and 3 through first defendant.

(18) It is well settled rule of construction that the Will .is a whole should be read for ascertaining the intention of the testator. The provisions in the Indian [Succession Act, 1925](#) would give us clear guidelines for the interpretation of a Will. In Chapter Vi in the Indian Succession Act, the provision are given laying down the rules for the interpretation of a Will. Section 75 give us the idea to determine question as to

object or subject of Will. The Section reads as follows :-

'75. Inquiries to determine questions as to object or subject of Will.-For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used. (i) A, by his Will, bequeaths 1,000 rupees to his eldest son or to his youngest grand child, or to his cousin, Mary. A Court may make inquiry in order to ascertain to what person the description in the Will applies. (ii) A, by his Will, leaves to B 'my estate called Black Acre'. It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator is called Black Acre. (iii) A, by his Will, leaves to B 'the estate which I purchased of C'. It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.'

Section 78 states as how to rejection of erroneous particulars in the subject matter of the Will to be made. Section 78 reads as follows :-

'78. Rejection of erroneous particulars in description of subject-If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect. Section 79 deals with as to when part of description may not be rejected as erroneous. Section 79 reads as follows :- '79. When part of description may not be rejected as erroneous.-If a Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply. Explanationn-In judging whether a case falls within the meaning of this Section, any words which would be liable to rejection under Section 78 shall be deemed to have been struck out of the Will.'

Section 82 states that the meaning of clause in a Will is to be collected from the entire instrument and all its parts are to be construed with reference to each other. Section 84 gives us the choice when two possible constructions are possible. Section 84 reads as follows:-

'84.Which of two possible constructions preferred.-Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred. Section 85 would state that no part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it. Section 87 clearly lays down that Testator's intention shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

(19) Section 90 gives us the rule as to the date on which the properties to be ascertained. Section 90 reads as follows :-

'90.Words describing subject refer to property answering description at testator's death.-The description contained in a Will of property, the subject of gift, shall, unless a contrary intention appears by the Will, be deemed to refer to and comprise the property answering that description at the death of the testator.'

(20) In Halls bury Law of England, 4th Edn. Vol. 50 the law is stated thus regarding the construction of Wills :-

'THE only principle of construction which is applicable without qualification to all Wills and overrides every other rule of construction, is that the testator's intention is collected from a consideration of the whole Will taken in connection with any evidence proper admissible, and the meaning of the Will and of every part of it is determined according to that intention.'

(21) I have considered carefully the Will reading it as whole in ascertaining the intention of the testator. I have no doubt in my mind that the bequest in favor of defendants 2 and 3 is clearly mentioned and it can be correlated on ground. As a matter of fact, as observed by me earlier, the Commissioner's report and the plan would clearly show the extent of the property that is given to defendants 2 and 3

by the testator.

(22) Ms. Samita Arora, daughter of the plaintiff, on the basis of Section 88 of the Indian Succession Act contends that there is inconsistency between the bequest made in favor of defendants 2 and 3 and later clause in the Will. Section 88 reads as follows:-

'of two inconsistent clauses prevails, - Where two clauses or gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.'

(23) In the case before the Supreme Court in *Kaivehkalambunhi (Dead) by LRs. and Others v. H. Ganesh Bhandary*, : AIR 1995 SC2491 , the Kerala High Court had taken the view that an absolute estate created in favor of one Kannan, son of his direct sister, had been subsequently directed to be enjoyed as a 'Tavazhi' and apparently the High Court felt that there was inconsistency between the earlier and the later clauses and the later clause prevailed. The position in the instant case is quite different the Supreme Court had noticed that the rule of interpretation laid down in Section 88 only if different clauses cannot be reconciled. It was not argued before me that the clauses in the Wills cannot at all be reconciled and the intention of the testator cannot at all be ascertained because of the blatant inconsistency between the two dispositive words. The father Ram Prakash Arora had in unmistakable terms indicated his intention to give that property, mentioned by him to his Will, to defendants 2 and 3.

(24) thereforee, I am of the view that on a proper construction of the Will, the defendants 2 and 3 shall take and absolutely enjoy the property, shown by the local Commissioner in his plan, and the portions shown in possession of the plaintiff shall be enjoyed by her. Accordingly, Suit No. 3726/90 is dismissed.

(25) In Suit No. 687/93, it is declared that the plaintiffs are entitled to a preliminary decree on the basis of the provisions of the Will about which I had already adverted to. It will be open to the plaintiffs to make an application for the appointment of local Commissioner separately for the division of the properties by metes and bounds.

(26) The Dda and the Mcd and Assistant Commissioner of Factories shall issue licences and whatever permission required to plaintiffs in Suit No. 687/93 to enable them to run the business through the first defendant or anybody of their choice.

(27) This application is filed by defendants 2 and 3 in Suit No. 3726/90 wherein they have prayed that as per the relief prayed in IA.7672/94 that the plaintiff has no right, title or interest in any part of the suit property except the area covered under the business run by the father of the portions of which area was about 200 sq. yds. and also for a direction to Desu to recover the amount due from plaintiff only with reference to her portion, for a direction to Desu to give separate power meter to second defendant in respect of the property in the occupation of the second defendant. In the light of the directions given by me in the suit, no orders are necessary in this IA. 578/95 and the same stands disposed of.

(28) This application is filed by the plaintiff Mrs. Raksha Arora under order 13 Rule 2 to file documents. That is all unnecessary and it is dismissed.

(29) This application is filed by the plaintiff for sealing the documents. That is also not necessary and it is dismissed and documents filed by Mrs. Raksha Arora shall be returned by the office to her.

(30) This application is filed by Mrs. Raksha Arora to transfer the Suit No. 1134/ 94 pending in the Court of Sh. J.S. Jugti, Addl. District Judge , Tis Hazari, Delhi, filed by S.D. Technical Services (P) Ltd., first defendant in Suit No. 3726/90, to this Court to be tried along with the suits which have been disposed of by me. It is not necessary to get that suit because the result in that suit would depend upon the rights of the parties declared by me in the above two suits. thereforee, it is not necessary to get that suit transferred to this Court. Accordingly, IA.8329/95 is dismissed.

(31) This application is filed by the plaintiffs in suit No. 687/93 for the clarification of the order dated 26.3.94 for the issue of industrial factory license in favor of plaintiff No. 1 and his son Amit for carrying on business in the suit factory premises at plot No. B-87, Mayapuri Phase I, as mentioned in the plan attached with the

plaint, as prayed for in IA.3284/93.

(32) I have already passed orders that the public authorities shall pass appropriate orders granting relief to plaintiffs 1 and 2 for carrying on business in the premises and, therefore, no further direction is necessary in any of the IAs. Accordingly, IA.6584/93 stands disposed of.

(33) The two suits stand disposed of. IAs.2578/95, 2575/95 and 8329/95 filed by Smt. Raksha Arora are dismissed. IAs. 578/95 and 6584/93 filed by the plaintiffs in Suit No. 687/93 stand disposed of, as mentioned by me in my judgment. There shall be no order as to costs in the suits as well as in all the applications.

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