Narinder Singh and anr. Vs. Jagmohan Singh and anr.

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Court : Delhi

Decided On : Apr-08-1997

Reported in : 80(1999)DLT107

Judge : A.D. Singh, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 6, Rule 17

Appeal No. : Interim Application No. 661 of 1997 and Suit No. 1213 of 1988

Appellant : Narinder Singh and anr.

Respondent : Jagmohan Singh and anr.

Advocate for Pet/Ap. : K. Venkataraman,; Pushp Gupta and; Sanjeev Khanna, Advs

Judgement :

Anil Dev Singh, J.

(1) This is an application under order 6, Rule 17 for amend ment of the written statement. Defendant No. 1 has moved this application for introducing the following pleas in the written statement:

1.The mother of the parties Smt. lqbal Kaur had created a tenancy in respect of the entire building, namely, J-3/194, Rajouri Garden, New Delhi, except the two

front shops in favor of defendant No. 1 by executing a written rent agreement dated January 18, 1985.

2.The plaintiffs have not claimed relief of recovery of possession in the present suit, and

3.Defendant No. 1 is protected from dispossession/eviction under the provisions of Section 14(1) of the Delhi Rent Control Act.

(2) The plaintiffs filed the instant suit for partition of the property in question. In the written statement filed by defendant No. 1 there is not even a whisper about the alleged tenancy created by Smt-Iqbal aur in favor of defendant No. 1. In the written statement it is inter alias pleaded that defendants No. I and 2 had jointly constructed the building in question at different points of time with their hard earned money and the plaintiffs did not contribute any amount towards the construction. It is, however, admitted that building was partly built by the sources derived from the earnings of the mother and claim received by her in respect of property left in Pakistan. It is note-worthy that defendants No. 1 and 2 in their statements recorded under Order 10, Rule 2 on April 4, 1991 and April 18,1991 did not set up the plea that the mother of the parties had created a tenancy in favor of defendant No. 1. On April 18, 1991 a preliminary decree was passed in the presence of all the parties to the suit. According to the preliminary decree each party was to get th share in the property. On April 25, 1991 a Local Commissioner was appointed to suggest the mode of partition of the property by metes and bounds. The Local Commissioner filed his report dated October 7,1991 in which four portions of the property were allotted to each of the four parties. On April 6,1992 the four portions of the property, as demarcated by the Local Commissioner, were directed to be allotted to the parties through draw of lots. Pursuant to the directions of the Court a draw of lots was held by the Local Commissioner. None of the parties filed any objections to the draw of lots or to the allotment of the shares. In the order dated July 17,1992 the Court recorded that the draw of lots was acceptable to all the parties and they have consented to allotment of portions to each one of them. Since the parties accepted the allotment the Court directed the construction of the dividing walls for actual demarcation of

the portions as suggested by the Local Commissioner. As is evident from the above, after the passing of the preliminary decree the parties were consenting to the orders which had been passed by the Court. At no earlier stage defendant No. 1 set up the plea of tenancy.

(3) It was only on September 27, 1994 that defendant No. 1 by means of an application, I.A. No. 8685/1991, under Section 151, Cr.P.C., set up the plea of tenancy. Defendant No. 1 on the basis of this plea sought modification of the order dated July 17, 1992 permitting the Local Commissioner to demarcate the respective areas and construct walls. The Court while rejecting the plea of defendant No. 1 observed as follows:

'THUS in the written statement filed in the year 1989, defendant No. 1 has not said a single thing about his being a tenant in the property under his mother. Thereafter, follow the orders of this Court regarding the passing of preliminary decree, appointment of Local Commissioner to divide the property by metes and bounds, thereafter regarding appointment of another Local Commissioner to allocate the portions of the property as demarcated by the previous Local Commissioner through draw of lots and finally the order dated 17th July, 1992 directing the actual demarcation of the portions through construction of partition walls etc. All these orders are practically consent orders and at no stage defendant No. 1 had advanced the plea that he was occupying the entire property or any portion of the suit property as a tenant under the mother. He in fact agreed on 17.7.1992 before this Court for demarcation to the four portions of the property through construction of walls separating one portion from the other. All these orders referred to above have been passed in presence of defendant No. 1. thereforee, the present application at this stage where defendant No. 1 has taken a complete somersault deserves to be dismissed. Though in the present application a photo copy of the rent agreement purportedly between the mother of the parties and defendant No. 1 has been annexed, yet I am unable to give any credence to this document specially in view of the fact that it purports to be between mother and sons and more important this document never saw the light of the day till the present application was filed on 27.9.1994. This document is of l8th January, 1985 and since it purports to have been executed by defendant No.

1, it must be within his knowledge. The defendant No. I never advanced any plea based on this document or even otherwise stated that he was a tenant under his mother regard ing any portion of the property in suit. This plea of tenancy cannot be allowed to be raised at stage. This application is dismissed. Since the order regarding actual demarcation of the property through construction of the partition walls already stands passed on 17th July, 1992, there is no reason or ground to interfere with that. The said order should be complied with forthwith. Necessary information in this behalf be sent to the Local Commissioner appointed under the said order and the parties are directed to co-operate in the matter of carrying out the said order.'

(4) Thus, it will be seen that the plea of tenancy raised by the defendant No. 1 was rejected by this Court. Defendant No. 1 not satisfied with the order dated April 17,1996 filed an appeal. The appeal was dismissed as withdrawn on August 6, 1996 on the ground that defendant will be moving an application for amendment of the written statement.

(5) Have heard learned Counsel for the parties, lam of the considered view that the application cannot be allowed at this stage as otherwise it will work injustice to the other side. It is note-worthy that defendant No. 1 had not taken the plea of tenancy in the written statement filed by him on July 1,1989. It was for the first time that defendant No. I took the above said plea in the application, I.A. No. 8685/1991, filed on September 27, 1994 for the purpose of showing ouster of the other parties from the suit property and that too after passing of the preliminary decree when rights of the parties had crystalised. The somersault taken by defendant No. 1 is obviously meant to defeat the preliminary decree passed by this Court and the consequential orders which were passed subsequently with the consent of the parties. The application does not appear to be a bona fide one. It is true that the Court normally grants leave to amend the pleadings but it is equally true that such a permission will not be given where the amendment would work injustice and injury to the opponent which cannot be compensated by costs. (See Pir Gonda Hans Gonda Patel v. Kal Gonda and Others, : [1957]1SCR595 ; and Jai Manohar Lal v. National Building Material Supply, Gurgaon, : [1970]1SCR22 .

(6) Since the amendment sought to be introduced in the written statement will injure the plaintiffs and the injury to them cannot be compensated by costs, the request of defendant No. 1 for amendment must be disallowed. Learned Counsel for defendant No. 1 submitted that the plaintiffs have not made any prayer for possession of their share in the property, and, thereforee, they cannot be put in possession and for this purpose it becomes necessary to seek leave of the Court to amend the written statement.

(7) I have considered the submission of the learned Counsel, but regret my inability to accept the same. In a suit for partition of the property the division of the property is to be made by metes and bounds. The partition is not confined to division of lands and buildings into requisite parts but also includes the delivery of shares to the respective allottees. In other words, partition means the actual division or partition by metes and bounds and handing over possession of the shares to the parties (See Ramagounda Rudregowd a Patil and Others v. Smt. Lagmavva and Others, : AIR1985 Kant82 .

(8) It appears that defendant No. 1 by seeking the amendment is trying to set the hands of the clock back which would render the preliminary decree nugatory and relegate the plaintiffs to a suit for possession of the property which will require the plaintiffs to pay Court fee on the value of the property.

(9) Accordingly, having regard to the above discussion, the application is dismissed.

(10) The learned Local Commissioner, Mr. H.D. Lalwani, Advocate, will visit the premises and hand over the possession of the respective portions of the property to the parties in accordance with the draw of lots. The Local Commissioner will file his report within ten weeks. A copy of this order be given to the learned Local Commissioner. Suit No. 1213/1988; List the matter on August 29,1997.