

Sonali Gulati Vs. State and anr

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Court : Delhi

Decided On : Sep-10-2001

Reported in : 94(2001)DLT499; 2002(61)DRJ159

Judge : Vijender Jain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 6, Rule 17

Appeal No. : I.A. 6184 and 6792/2001 in P.R. 51/1998

Appellant : Sonali Gulati

Respondent : State and anr

Advocate for Def. : Rakesh Khanna and ; Aditya Tiwari, Adv.

Advocate for Pet/Ap. : Rajesh Yadav, Adv

Disposition : Application dismissed

Judgement :

Vijender Jain, J.

is 6792/2001 in PR 51/98.

1. Counsel for the applicant says that in view of the order passed by the Division Bench in FAO(OS) 325/2001, this application has become infructuous. Counsel

wishes to withdraw the same. Dismissed, as withdrawn.

is 6184/2001.

2. It is an application filed on behalf of respondent no. 2 under Order 6 Rule 17 read with Section 151 of CPC for amendment to the objection to the grant of Probate. It is contended by counsel for the applicant/defendant that respondent No. 2 filed detailed objections in the Probate proceedings alleging forgery and falsification of the Will. However, a pertinent and relevant objection pertaining to the ownership of Vasant Vihar house which was relevant was left out inadvertently in the objections filed earlier, those Probate proceedings. By the present application, the respondent no. 2 wants to incorporate paragraphs 2A which is to the following effect:-

'2A That the Will is forged and fabricated. The Will bequeaths the property, House No.B-69, Paschimi Marg, Vasant Vihar, New Delhi to the Petitioner absolutely and forever. As the Sale Deed dated May 5th, 1981 pertaining to this property, the testatrix, is not the Sole owner of the House, and the said property is jointly owned by late Smt. Sushma Gulati (the testatrix) and M/s Radhey Shayam investments (P) Limited, a Company registered under the Companies Act 1956. Late Mrs. Sushma Gulati, was well aware of the fact that she is not the sole owner of the said property. Had the Will been prepared by the testatrix or upon her instructions the fact of the joint ownership of house by a private limited company would have been set out in the will as the Testatrix would have known that she could not bequeath the property as if she is the Sole owner. All these facts clearly indicate and create a strong suspicion that the Will is forged and fabricated and could not have been prepared by or upon instruction from Late Smt. Sushma Gulati, as it bequeaths properties which is not even fully owner by her. The Will is forged fabricated and is a result of the Conspiracy between the Petitioner and the two at testators of the Will.

3. The Objector wants to incorporate paragraphs 2B, 2C and 2D also.

4. Learned Counsel for the respondent has contended that the above amendments sought by respondent no. 2 are necessary for the purpose of

adjudicating the real question in controversy between the parties. He has further contended that the amendments sought are clarificatory in nature and the same are facts which were not in the knowledge of respondents no. 2 at the time of filing of the objections and the same were inadvertently and erroneously left out of the objections filed earlier by respondent no. 2. In support of his submissions, learned counsel for the respondent no. 2 has cited P.C. Kunhaliumma and others vs. P.C. Rabiumma and others 1998 AIHC 1884.

5. On the other hand, counsel for the non applicant/petitioner has contended that a suit for partition was filed by respondent No. 2 on 18.2.98 and no such plea was taken by respondent No. 2, who is applicant in the suit No. 299/98. He has further contended that the objection was filed by respondent No. 2 on 28.1.99 and no such plea that the executrix was not the owner of the house was taken by respondent No. 2. He has further contended that if the amendment sought for are allowed, the same will change the nature of the objections and it will amount to introducing altogether a fresh cause of action.

6. I have given my careful considerations to arguments advanced by learned counsel for both the parties.

7. The law regarding allowing of amendment is well settled. If the proposed amendment extends the period of limitation, the same should not be allowed. Similarly, if the amendment sought for the mala fide, the same should also not be allowed. Lastly, if by proposed amendment, a fresh cause of action is added, the same should also not be allowed.

8. In the present case, it was respondent No. 2 who filed a suit for partition in 1998. In paragraph 5 of the plaint, this is how the respondent No. 2 has averred:-

'That Smt. Sushma Gulati owner extensive immovable and movable properties which are listed in schedule-I hereto annexed.'

9. Along with the plaint, schedule 1 has been filed by respondent no. 2 in the said suit under heading 'List of assets left behind by late Sushma Gulati.' The first immovable assets is house no. B-69, Paschimi Marg, Vasant Vihar, New Delhi.

10. In the present petition for Probate in the objections which run into 25 pages, nowhere it has been averred that executrix Sushma Gulati was not the owner of the property. The stand of the applicant/respondent No. 2 is falsified by the suit filed by respondent No. 2 in this Court that said fact was inadvertently left out. In the application before me, it has been stated by the applicant that applicant did not know the facts that executrix was not the owner of hundred per cent house at Vasant Vihar whereas in the suit which was filed prior to filing of the objections by respondent No. 2, the stand of respondent no. 2 was that Sushma Gulati, the executrix of the Will was the sole owner of Vasant Vihar house. It is all the more important to note that the agreement on the basis of which the present application for amendment has been filed was filed by the respondent No. 2 Along with the suit. In any event of the matter the Probate petition is not a suit for title. The amendment sought for will not only be creating new cause of action but amounts to dilatory tactics same is an abuse of the process of Court. The matter is listed for evidence of respondent on 15th and 16th October, 2001.

11. I dismiss this application with cost of Rs. 10,000/-.

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