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S. Darshan Singh Vs. S. Didar Singh and ors.

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Court : Delhi

Decided On : Dec-08-2005

Reported in : 2006(86)DRJ569

Judge : R.S. Sodhi, J.

Acts : Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 22 and 24; ;Benami Transactions Act - Sections 3 and 4

Appeal No. : Regular Second Appeal 11/2003

Appellant : S. Darshan Singh

Respondent : S. Didar Singh and ors.

Advocate for Def. : R. Day, Sr. Adv. and ; Raj Kumar, Adv. for R-1 to R-4, ; G

Advocate for Pet/Ap. : Geeta Luthra, Adv

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. RSA 11/2003 is directed against the order dated 24.12.2002 of the Additional District Judge in RCA 12/2001 whereby the learned Judge has upheld the order of the trial court dated 31.07.2001 whereby the learned Judge has decreed the suit

for declaration and consequential relief of perpetual injunction.

2. Facts of the case as noted by the Civil Judge are as follows:-

In brief, the case of the plaintiff as alleged in the plaint is that S.Sant Singh, defendant No. 2, father of the plaintiff as well as of the defendants No. 1, 3 and 4 was a displaced person from Pakistan. He had left property in West Pakistan and in lieu thereof he was granted compensation by the Rehabilitation Department. He was also given a Refugee Card by the Government.

In Delhi he started a milk shop after migration and settled initially at Siddi Pura and thereafter at Moti Nagar on the allotment of Property No. F-18(A.B.), Moti Nagar, New Delhi. Defendant No. 1 was employed as an attendant in the Agricultural Department on a salary of Rs. 50/- per month. Defendant No. 1 is the eldest amongst the sons of Defendant No. 2.

It is alleged by the plaintiff that defendant No. 2 got his claim from the Rehabilitation Department and transferred the same in the name of his son S.Darshan Singh, Defendant No. 1 in order to get the property No. F-18(A.B.), Moti Nagar, New Delhi on perpetual lease from defendant No. 5. It is also alleged that S.Sant Singh purchased other claims and also paid the balance amount of Rs. 660/- towards the total consideration for the suit property from his own earnings and savings. It is further claimed that entire investments for the purchase of lease hold rights of the property in question was of defendant No. 2 because his house in Lyalpur (West Pakistan) was his personal/self acquired property where he was doing his business. It is alleged that the property was taken at the cost, instance and assistance of defendant No. 2 for the benefit of all of his sons on the assurance of the defendant No. 1 that he would give equal rights and shares to his younger brothers.

It is stated by the plaintiff that in 1963 the defendant No. 2 got the property divided orally in three shares giving 1/3rd share to each of his sons i.e. one share to the plaintiff, second to defendant No. 1 and third to defendant No. 3; that the defendant No. 4 was married daughter as such she was not given any share in it and this was also one of the reasons to get the property allotted in the name of

defendant No. 1 so that his daughter or her heirs may not claim any share therein after his death.

It is stated by the plaintiff that in order to get this partition effected, the plaintiff and defendant No. 3 got the documents of agreement to sell, power of attorney and a WILL executed from defendant nNo. 1 of their respective portions so allotted to them in the family partition as per the site plan and even defendant No. 1 also wrote to MCD for effecting the mutation of the respective portions in their respective names which was accordingly done in the name of plaintiff, defendant No. 1 and defendant No. 3 respectively. It is stated by the plaintiff that no deed of family partition or settlement was executed/registered because defendant No. 2 believed that all his sons would get their separate one third portion in the house as promised by defendant No. 1.

It is claimed by the plaintiff that the raised further construction over his portion of the house so allotted to him at his own cost after getting necessary permission from MCD as initially there was only one bathroom, one latrine one kitchen and a store with open space in his share and since then the plaintiff is in exclusive possession on the portion so given to him by the defendant No. 1 at the instance of defendant No. 2, similarly the defendant No. 3 is in possession of his own portion. It is further alleged that defendant No. 1 did not invest any amount on construction on the portion in his possession.

It is stated by the plaintiff that the property being on lease was not divisible as per the rules and conditions of the perpetual lease as such only mutation in house tax records was got effected from defendant No. 1 for the portion of the land and super structure so allotted to the plaintiff and the defendant No. 1 also acknowledged to have received the entire sale consideration for the said one third portion of the property from the plaintiff as per agreement to sell. It is claimed that the plaintiff has been paying house tax for the entire property including the portion of the defendants and the parents of the plaintiff have also been living with the plaintiff.

It is alleged by the plaintiff that though the defendant No. 1 had given in writing to the MCD for separation of house tax of each portion after mutation but now the

defendant No. 1 wants to take benefit of the lease deed/conveyance deed which is in his exclusive name though he is estopped by his own conduct and deeds from claiming any right on the portion of the property given to plaintiff and defendant No. 3, who allowed them to raise constructions on their portions, allowed the mutation to be done, allowed the plaintiff and defendant No. 3 to live as joint owners in the property in their respective portions. The plaintiff claims that even otherwise the possession of the plaintiff is hostile, adverse and against the interest of all the defendants which is for the last more than eighteen years. It is alleged by the plaintiff that defendant No. 1 wants to sell the entire property without any interest, title and claim over the portions of the plaintiff/defendant No. 3. The plaintiff valued his suit for the purposes of court fee and jurisdiction as Rs. 10,000/- stating the rateable value of the entire property as Rs. 1170/- assessed in municipal records. He stated that on 15.12.1981 some persons came at the suit property with an intention to purchase the same;

Further defendant No. 1 refused to acknowledge his title.

The defendants No. 2 to 4 after receipt of sumons of the suit did not contest the suit, however, they filed their written statement supporting the claim of the plaintiff, They claimed that there was an understanding to get the property for the benefit of the member of the family and there was no contribution of the defendant No. 1 for getting the property and that the property was divided by the family settlement equally in three parts to avoid any future complications.

The defendant No. 1, S.Darshan Singh resisted the suit and filed his written statement taking various preliminary objections and pleas about the non-maintainability of the suit alleging that plaintiff has no legal character or right in the suit property; that the suit is bad for non-compliance of mandatory requirements of Section 80(2) CPC and; that the suit has not been properly valued for the purposes of court fee and jurisdiction.

It is claimed by the defendant No. 1 that he was allotted tenement No. F- 18(A.B.), Moti Nagar, New Delhi vide allotment order No. H.R.O./MW/F/18AB dated 14.2.1956 on the strength of his family members. He alleged that defendant No. 2 associated his claim compensation towards the cost of the said property and

executed an affidavit to effect transfer of property in favor of defendant No. 1 exclusively having no interest in the property nor any claim therein. It is claimed by the defendant No. 1 that since the compensation of defendant No. 2 as an associatee was not sufficient to cover the cost of the property, he got the claim of another associatee adjusted towards the property and paid the balance in cash. He claimed that the lease deed/conveyance deed were issued by defendant No. 5 on 31.8.1962 in his favor after payment of entire cost of the property. The defendant No. 1 denied that the defendant No. 2 got the suit property allotted in his name or that the allotment was made in favor of defendant No. 1 on the strength of hs family members.

The defendant claimed that defendant No. 2 was allotted a separate evacuee property No. XIV/13563/8737/1, Siddi Pura, Delhi and his (defendant No. 1) allotment of the suit property was much later. He alleged that the association of claim by defendant No. 2 was against consideration so it does not in any manner constitute the status of the family as joint Hindu family. Defendant alleged that defendant No. 2 had no right to divide the property as alleged due to the reason that defendant No. 1 is the absolute owner and lessee of defendant No. 5 and even the documents though not admitted are of no legal consequences with the efflux of time as the alleged mutation in MCD records does not create or confer any title because the title arises or accrues only by operation of law from a competent authority and not by any administrative/executive authority or an act of MCD. The defendant alleged that the alleged permission for construction from MCD was procured by the plaintiff at his back and such permission does not bind him in any manner and the possession of plaintiff and defendant No. 3 is merely permissive possession. The defendant No. 3 cannot co-equate themselves to be co-owners of the suit property and as such he has unfettered right of disposition his own property without interference from anybody.

The replication to the written statement of the defendant No. 1 was filed by the plaintiff reiterating the facts of the plaint to be correct. He denied the allegations of the defendant and claimed his right and title in the suit property.

The defendant No. 5 did not contest the suit and was proceeded against ex- parte. During trial defendants No. 2 to 4 did not appear and they were also proceeded against ex-parte. It is pertinent to mention that during trial, defendant No. 2 expired. His legal heirs are already on record.

From the pleadings of the parties, following issues were framed vide order dated 16.9.1983:

1. Whether the savings and earnings of the plaintiff and defendants 1 to 4 were also invested in respect of the purchase of the property in suit? OPP.

2. Whether there was any family partition between the parties as alleged in paras 9 and 10 of the plaint? If so to what effect? OPP.

3. Whether the plaintiff is entitled to the relief claimed? OPP Note: This issue is amended vide order dated 30.09.1983.

4. Whether the suit is bad by Sec 80(2) CPC? OPD.

5. Whether the suit has not been valued for the purposes of court fee and jurisdiction? OPD

6. Whether this court has no jurisdiction to try the suit? OPD

7. Whether the defendant No. 1 is the sole owner of the property in suit? OPD.

8. Relief.?

3. The trial court on the basis of evidence adduced came to the conclusion that relatives of the respondent herein were entitled to property claim.

4. The aforesaid order was challenged by way of an appeal whereby the learned Additional District Judge went into the matter in detail and came to the conclusion that the judgment of the trial court suffered from no infirmity.

5. It is contended by counsel for the petitioner that the following substantial questions of law arise.

1. Whether a suit filed in 1981 i.e. after 25 years of the allotment and 19 years of the conveyance deed , is barred by limitation?

2. Whether the courts below have not lost sight of the provisions of Section 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 which provides a remedy by way of appeal in 30 days which has not been resorted to?

3. Whether, when a remedy by way of appeal is provided in a special statute, a suit can be filed to circumvent the bar under Sections 22 and 24 of the Displaced Persons Act?

4. Whether the suit is not barred in view of provisions of Sections 3 and 4 of the Benami Transactions Act?

5. Whether the courts below have not omitted vital evidence which is on record for consideration?

6. Whether the appellant, who is a bona fide purchaser of the suit property having made the entire payment of the cost price from his own earnings/savings and by adjustment of the claim of another person, could be non-suited particularly in view of the statement of PW-2, Mr.S.K. Burman?

7. Whether the oral self-serving statement of late Shri Sant Singh, respondent No. 2, and his son, Didar Singh, respondent No. 1, can override the contents of the registered lease deed and conveyance deed, Ex. DW-1/4 and DW-1/5 duly executed by the Ministry of Rehabilitation in favor of the appellant on 31.7.1962?

8. Whether the finding of the courts below is not perverse and erroneous as no evidence was led by respondent No. 1 to prove that the entire cost price of the suit property was paid by late Shri Sant Singh and respondent Nos. 1 and 3?

9. Whether the courts below have not misconstrued and mis-interpreted the documents i.e. agreement to sell, special power of attorney and will alleged to have been executed by the appellant in favor of the respondent No. 1 which are exhibited as PW-1/7 to PW-1/9?

10. Whether the respondent/plaintiff failed to discharge the onus with regard to the non-forcibility of the alleged agreement to sell, special power of attorney and will, Ex. W-1/7 to PW-1/9 which are without any consideration?

11. Whether the courts below have not placed reliance on inadmissible evidence specially when the material admissible evidence placed by the appellant clearly establishes that he is the absolute owner of the property in question?

6. Counsel for the respondent on the other hand, contends that the issues on which the parties went to trial have been framed and each and every issue has been answered by the court categorically with the evidence on record. The issues sought to be raised before this court are not issues of law much less substantial issues of law.

7. I have heard counsel for the parties. With their aid I have gone through the judgments under challenge. I find that parties had gone to trial on issues framed which have been answered by two courts by concurrent findings of fact which cannot be disturbed in a Regular Second Appeal in view of the judgment of the Supreme Court in Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors., : [1999]2SCR728 as the same does not raise any question of law much less substantial question of law. I may also rely upon judgment of the Supreme Court in G. Mahalingappa v. G.M. Savitha, : (2005)6SCC441 .

8. In view of the above RSA 11/2003 stands dismissed.

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