Rakesh Kumar Gupta and anr. Vs. Umesh Kumar Gupta and anr.

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SooperKanoon Citation : sooperkanoon.com/714267

Court : Delhi

Decided On : Sep-03-2007

Reported in : AIR2008Delhi73; 2007(99)DRJ194

Judge : Mukundakam Sharma, C.J. and; Sanjiv Khanna, J.

Acts : Delhi High Court Act - Sections 10; Indian Stamp Act, 1899 - Sections 2(15); Code of Civil Procedure (CPC) - Order 47, Rule 1

Appeal No. : FAO(OS) 333/2007

Appellant : Rakesh Kumar Gupta and anr.

Respondent : Umesh Kumar Gupta and anr.

Advocate for Def. : M.A. Niyazi, Adv.

Advocate for Pet/Ap. : S.S. Gautam, Adv

Disposition : Appeal dismissed

Judgement :

Mukundakam Sharma, C.J.

1. The present appeal has been filed as against the order dated 30th July, 2007 dismissing the application of the appellant under Order 47 Rule 1 of the Code of Civil Procedure for review of the order dated 12th March, 2007. We do not think

that an order dismissing a review application is a judgment under Section 10 of the Delhi High Court Act and can be made subject matter of an intra-Court appeal. However, as we have heard learned Counsel for the appellant on this appeal, we deem it appropriate to deal with the contentions and issues raised on merit.

2. The appellants herein are plaintiffs, who had filed a suit for partition of property bearing No. 1580A/1-C, Raj Block, Navin Shahdara, Delhi - 110 032. The defendants contested the suit on the basis of oral partition. On 12th March, 2007, the Court recorded a finding that there was no dispute between the parties that each of them had 50% share in the property and the only defense of the defendants was based on oral partition, which plea the defendants gave up during the course of hearing on the said date. The court also recorded the statements of the plaintiffs / appellants that so long as they receive market value for their 50% share in the property, the plaintiffs / appellants are not interested in any other relief. The parties also agreed that the market value of the property was Rs. one crore and accordingly the share of the plaintiffs-appellants was Rs. 50 lacs.

3. After recording the contentions of the parties, the Court passed a decree declaring that the plaintiffs / appellants and defendants / respondents have 50% share each in the property. Direction was thereafter given to the Registry to draw up decree sheet on the plaintiffs' / appellants/ filing requisite court fee. The defendants / respondents were directed to make payment of Rs. 50 lacs on/or before 31st July, 2007 failing which they would be liable to pay interest @ 15%. By order dated 16th May, 2007, learned Single Judge clarified that the plaintiffs/appellants are not required to file court fee but stamp duty, which is payable for preparation of a partition decree.

4. Learned Counsel for the appellants submits that order dated 16th May, 2007 was not passed in the presence of the plaintiffs. He also submits that no order for preparation of partition decree has been passed and, thereforee, stamp duty is not payable. Lastly, it is submitted that the respondents / defendants have agreed to purchase the share of the appellants / plaintiffs and, thereforee, no stamp duty is payable. On these grounds, order dated 30th July, 2007 is sought to be challenged.

5. We do not agree with the learned Counsel for the appellants. Order dated 12th March, 2007 clearly states that decree for partition declaring that the appellants / plaintiffs and respondents/defendants each have 50% share in the suit property stands passed. The partition decree has to be stamped in terms of Section 2(15) of the Indian Stamp Act, 1899, which reads as follows:

2(15). 'instrument of partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and award by an arbitrator directing a partition.

6. A decree for partition passed by a Civil Court is an instrument of partition, even if the plaintiffs / appellants were in possession of the suit property and, thereforee, had paid fixed court fees. A decree of partition being an instrument of partition is required to be stamped in accordance with the provisions of Indian Stamp Act, 1899.

7. The learned Single Judge has specifically recorded in the impugned order that the Court passed a decree for partition and thereafter on the basis of the statement made by the counsel for the parties, it is recorded that the defendants / respondents as co-sharers have agreed to purchase the rights of the plaintiffs/appellants in terms of the partition decree. Order dated 16th May, 2007 is merely clarificatory as it records that the appellants-plaintiffs shall have to pay stamp duty and not court fee as recorded in order dated 12th March, 2007.

8. We do not feel it to be a fit case in which we should interfere with the order passed by the learned Single Judge. The appeal is accordingly dismissed.