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Court : Delhi

Decided On : Mar-22-2010

Judge : Shiv Narayan Dhingra, J.

Acts : [Arbitration Act, 1940](#) - Section 20; ;Partnership Act - Section 14; ;Code of Civil Procedure (CPC) - Order 7, Rule 11 - Order 10 - Order 12, Rule 6 - Order 23, Rules 1 and 3 - Order 32, Rule 7; ;Indian Penal Code; ;[Constitution of India](#) - Article 227

Appeal No. : CM(M) 881-83/2006

Appellant : Ashok Kumar and ors.

Respondent : A.D. Kumar and ors. Through Lrs.

Advocate for Def. : M. Dutta, Adv. for R-5,; Party-in-Person for R-6 and; I.C.

Advocate for Pet/Ap. : Vinay Bhasin, Sr. Adv.,; M.P. Singh and; H.L. Rana, Ad

Disposition : Petition allowed

Judgement :

Shiv Narayan Dhingra, J.

1. The present petition under Article 227 of the [Constitution of India](#) has been preferred by the petitioner against an order dated 22nd April, 2006 whereby the

learned Civil Judge dismissed an application under Order XII Rule 6 CPC for passing a decree of dismissal of the suit on the basis of admissions made by the plaintiff (respondent herein) Dr. B.D. Kumar (since deceased, now being represented by his Lrs).

2. The brief facts relevant for the purpose of deciding the present petition are that Dr. B.D. Kumar filed a suit for declaration with a prayer that he should be declared exclusive owner and in possession of a plot bearing number 6 and 7, in Block No. 6, Industrial Area, Kirti Nagar, Delhi. His contention was that vide a sale deed dated 10th June, 1960, he purchased these plots and the mutation of the plot was done in his name. After purchasing these plots, plaintiff with his brother and family members decided to start a family business in partnership with each other on these two plots and plaintiff and other partners agreed to have a building constructed on these two plots for running a rolling flour mill business in the name of Kumar Rolling Flour Mills. A partnership deed was executed on 10th November 1961 and a partnership firm under the name M/s Ashok Anil and Company came into existence. The constitution of this partnership firm changed from time to time to induct other family members and the partnership always consisted of family members with plaintiff Mr. B.D. Kumar being one of the partners. It is stated in the plaint that to simplify the matters, a release deed was executed by plaintiff on 6th March, 1972 in respect of the property in question in favour of the partnership firm although the partnership business was running since November 1963 and the factory building was constructed in the year 1960-61. It was stated that it was a term of the lease deed of these plots executed in favour of plaintiff that no transfer shall be effected without prior permission of L&DO.; He referred to Clause 6(b) of the lease deed. He further stated that the lease deed also provided for recovery of unearned increase in the value of the land in the event of any subsequent transfer, to the tune of 50% of profit. He submitted that in view of this prohibition in transfer of the property, the release deed executed by the plaintiff in favour of partnership firm could not have been executed without prior permission of L&DO.; Thus, the plaintiff continued to be the exclusive owner of these plots. The Release Deed was illegal because of the paramount Clause in the lease deed. He took the plea that it was agreed between the partners that the plaintiff would remain the owner of these plots of land and construction would be raised by partnership firm on these

plots. Thus, according to him, although the construction was raised by the partnership firm but the partnership firm had nothing to do with the said plots of land.

3. It is further submitted that the partnership firm was dissolved on June 07, 1972 by one of the partners namely Harvans Lal Kumar who issued notice of dissolution of this firm. The disputes had arisen between the partners. Plaintiff and defendants No. 4 to 6 moved an application under Section 20 of the [Arbitration Act, 1940](#) in the High Court of Delhi for appointment of an arbitrator in terms of the arbitration agreement contained in the partnership deed. However, later on the family members decided to compromise the matter and an application under Order 23 Rule 1 CPC was made by some of the parties to the suit to take compromise on record but the others did not join and ultimately both the applications, one under Order 23 Rule 3 CPC and other under Section 20 of Arbitration Act were withdrawn as not pressed. He pleaded that the accounts of the partnership firm were not gone into and settled. A suit filed in 1973 by Dr. Vijay Sheel Kumar for rendition of accounts in dissolved partnership firm in the High Court of Delhi was pending before the High Court. In 1975, Fateh Chand, another partner filed a suit for rendition of accounts in High Court and that suit was also pending. These two suits being Suit No. 219 of 1973 and 588 of 1975 were still pending. The Plaintiff stated that the cause of action for filing the present suit arose since the plaintiff learnt a few days before filing suit that on 17th January 1985, defendant No. 1 had applied to L&DO; for mutation of the plots in favour of the Firm Ashok Anil and Company of which he was a partner. Thus, defendant No. 1 wanted to appropriate the said property which actually belonged to the plaintiff. Plaintiff had not bothered about the plots earlier because they were used by his own kiths and kins but this mutation application prompted him to file the suit. He, therefore, wanted a decree of declaration about the plots being his property.

4. In the written statement, it was stated by defendants No. 1 to 3 that plaintiff had executed a Release Deed on 6th March, 1972 in respect of the property in question admitting that entire consideration for acquisition of the said property had been paid to him and reimbursed to him by the firm Ashok Anil & Company and also admitted that for all intents and purposes, the plots had been purchased for

and on behalf of partnership business. Defendants also submitted that plaintiff and his other family member retired from the partnership firm in April, 1973 and a compromise was entered into which was filed by the plaintiff in Suit No. 515A of 1972 (being Suit under Section 20 of the Arbitration Act) and according to this compromise, plaintiff and his family members retired from the partnership firm after receiving the amount as mentioned in the compromise as full and final settlement of their amount and as per the compromise, all movable and immovable property of the partnership firm vested with other partners after that day.

5. It was denied that the plaintiff was in possession of the property. It was submitted that the property from the very inception was acquired for and on behalf of the partnership business and the construction over the property was admittedly made by the partnership firm. The plaintiff had received full value of the plots from the partnership firm and the plaintiff after the start of the partnership business had never been in possession and the property had been only in possession of the partnership firm who had been doing business, and more so, after execution of the Release Deed, the plaintiff was left with no right either in the partnership firm or over the property in question. It is submitted that these facts were admitted by the plaintiff in various pleadings as well as in the compromise filed by the plaintiff before the High Court and in the application under Order 32 Rule 7 CPC, filed by plaintiff on behalf of his two minor sons seeking permission of the Court to enter into compromise. Once the plaintiff had expressly given up personal interest and executed a Release Deed, which was duly registered with the Sub Registrar, the claim made by the plaintiff was false, baseless and dishonest. It is further submitted that after execution of the partnership deed dated 10th November 1961, the plaintiff obtained credit of Rs. 43,354/- in the books of accounts of M/s Ashok Anil and Company against consideration of acquisition of plot No. 6 and 7, Kirti Nagar, Delhi and thus he received entire consideration of the property in 1961 itself and this property became assets of the partnership firm. The plaintiff acknowledged this fact when plaintiff executed Release Deed of the plots in favour of the partnership firm. The last partnership deed was executed on 28th January 1972 wherein the shares of the partners were defined. It is submitted that the plaintiff's right from 1961 till filing of the suit had no right or interest in the property and he had admitted and assured that he never, at any point of time had any right,

title or interests in the plots. Later the plaintiff turned dishonest and filed the suit. Regarding legality of the Release Deed, it was submitted that the property was purchased for the purpose of partnership firm even initially and was put into the partnership assets in 1961 and the credit entry was made in the name of the plaintiff in the very beginning. Thus, the release deed executed by plaintiff was a valid Release Deed. Plaintiff never had any personal right, title or interest in the property and plaintiff now cannot plead that the cause of action had recently arisen. Defendants in the written statement gave details of the compromise arrived at regarding accounting of the partnership firm and the amount received by the plaintiff and his family members. It is submitted by the defendants that the suit was not maintainable.

6. Defendants filed documents along with the written statement in order to substantiate the assertions and averments made in the written statement. The defendants also filed an application under Order 7 Rule 11 CPC stating therein that there was no cause of action to file the suit and the suit was barred by limitation and in view of the admissions made in the plaint regarding execution of Release Deed by the plaintiff, the suit of the plaintiff was liable to be rejected. This application was dismissed by the learned trial court holding that the defence of applicants was not to be considered under Order 7 Rule 11 CPC and the pleadings made in the suit alone were to be looked into for deciding whether the suit was maintainable or not and in view of the facts stated by the plaintiff, it could not be said that the suit was not maintainable. The Defendants however had also filed an application under Order 12 Rule 6 CPC which was dismissed vide the impugned order by the learned Civil Judge holding that 'admission' as envisaged under Order 12 Rule 6 CPC was required to be specific and most clear and since the plaintiff had never admitted defendant firm to be owner of the suit property, suit cannot be dismissed under Order 12 Rule 6 CPC. Regarding documents it was observed by the learned trial court that the impact of these documents was to be seen during trial. The trial court also observed that constructive admission must be firmly made and whether the property in question would be property of the firm within the meaning of Section 14 of the Partnership Act can be decided only after taking evidence on record.

7. It is argued by learned Counsel for the petitioner that the trial court's order was untenable and contrary to the settled legal position. The object of Order 12 Rule 6 CPC was to decide the matter in view of clear and unequivocal admission appearing from the pleadings as well as documents admitted by the parties. The Plaintiff in this suit has sought declaration asking the Court to declare him the exclusive owner in possession of the suit property and the documents admitted by the plaintiff unequivocally and clearly show that the plaintiff had released his right, title and interest in the suit property long back. Plaintiff also admitted in the application under Order 23 Rule 3 CPC made by the plaintiff before the competent court that plaintiff had retired from the partnership firm with effect from the date of signing of the application and the share of 37% held by plaintiff and his relatives stood transferred to them. In view of this unequivocal admission about the execution of Release Deed and entering into the compromise between the parties and filing a compromise application, the suit should have been dismissed by the trial court under Order 12 Rule 6 CPC and nothing more was required. Thus, the trial court failed to exercise its jurisdiction vested in it and this Court should interfere under Article 227 of the [Constitution of India](#).

8. Per contra, it is submitted by counsel for respondent that the power under Article 227 of the [Constitution of India](#) should not be exercised by the Court to correct the errors of law or errors of facts since the Court below had taken a view on an application under Order 12 Rule 6 CPC, this Court should not interfere under Article 227 and the matter has to be decided after trial. Reliance was placed on Mohd. Yunus v. Mohd. Mustaqim and Ors. : (1983) 4 SCC 566. It is also submitted by the counsel for respondent that the release deed could be executed only where the property was owned by many owners and one of the owners wanted to release his rights over the property in favour of other owners having legal right in the property vested in the releasee and the releaser can operate to enlarge that right into absolute title. To press this point, reliance was placed on Mahip Singh Thakur v. Hema Thakur 120 (2005) DLT 73 (DB) and Chief Controlling Revenue Authority, Referring Officer v. Rustron Nusserwanji Patel : AIR 1968 Madras 159.

9. It is settled law that evil of filing frivolous suits must be nipped in the bud by the Courts, resorting to a meaningful reading of the pleadings of the parties and the documents relied upon. This power should be exercised by the Courts under Order 7 Rule 11 and this power can also be exercised by the Courts under Order 12 Rule 6 of Civil Procedure Code. Supreme Court in T. Arvindam v. T.V. Satyapal : 1977 (4) SCC 467 mandated as under:

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to. From the statement of facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatama Gandhi:

It is dangerous to be too good.

10. The first question which arises is, can a party after executing a document of transfer of immovable property in favour of another and after receiving consideration, turn around and say that the documents executed by him was illegal and the transfer had not been effected and he continued to be the owner of the property that so when he had taken no steps to get the documents declared null and void through the Court. In the present case, what is revealed by the plaintiff himself is that the two plots were purchased for the purpose of running a partnership firm and immediately after purchasing these plots, the construction of

a factory over the plots was made by the partnership firm out of its own funds. It is not the case of the plaintiff that he made construction over the plots out of his own funds. It is also not denied by the plaintiff that in the accounts of the partnership firm, the amount spent by him on purchasing these plots was credited to his account when he and his family members became partners in the partnership firm. The execution of partnership deeds by the plaintiff from time to time is not denied. These partnership deeds had been placed on record by the defendants and have to be treated as admitted documents. The partnership deed dated 1st September 1967 which is in continuation of the earlier partnership deed of 10th November 1961 and 5th January 1965 show that each of the partner had definite share in the partnership firm and the minor sons of Mr. B.D. Kumar were admitted as partners in 1967. It is specifically recorded in the partnership deed that the amount standing to the credit of parties in the books of accounts of the firm is to be treated as having been continued without any change and shall be treated as their capital.

11. The execution of a registered Release Deed by plaintiff is pleaded by plaintiff himself. A perusal of Release Deed would show that after giving recitals as to how the plots were acquired, the plaintiff recorded in the Release Deed following recitals:

And whereas the entire consideration for the said plots was paid by the firm of M/s Ashok Anil & Company in the following manner:

(i) That Shri B.D. Kumar paid the entire amount of Rs. 43,354/- ostensibly on behalf of the intended firm of M/s. Ashok Anil & Co.

(ii) Later on before the formal execution of the partnership deed dated 10th November 1961 and under mutual agreement the said Shri B.D. Kumar received this whole amount by credit, to his personal account in the books of the said firm of M/s. Ashok Anil & Co., Kirti Nagar, New Delhi-15, vide entry dated 1.5.1961 in the cash Book (page 4) as well as the Ledger (page 10) and thereafter the said plots were held by him in his personal name for the benefit and on behalf of the said firm of M/s Ashok Anil & Co., Kirti Nagar, New Delhi. The balance sheet as on 15.10.1963 of the firm duly audited by M/s S.P. Chopra & Co. New Delhi is attached herewith.

And whereas the first party has throughout been holding aforesaid in plots Nos. 6 Block No. 6 and Plot No. 7, Block No. 6, Industrial Area, Kirti Nagar, New Delhi-15 for and on behalf of the firm of Messrs Ashok Anil & Co., Kirti Nagar, and has no personal interest in the said plots other than his interest as a partner as Karta of HUF of the firm of Messer Ashok Anil & Co., Kirti Nagar, New Delhi-15.

And whereas the said total cost of Rs. 43,354/- has been shown under the head 'Land (at cost)' as being the assets of the firm of M/s Ashok Anil & Co., Kirti Nagar in the balance sheet of the said firm as on 15.10.1963 duly signed by Shri Harivansh Lal Kumar and Dr. B.D. Kumar two of the partners of the said firm and duly audited by Messrs S.P. Chopra & Co., New Delhi, under a Certificate dated 9.9.1965.

Now therefore this release order deed Witnesseth Follow

That for the foregoing consideration and premises the first party hereby releases for all times to come the aforesaid plots, namely:

(i) Plot No. 6, Block No. 6, Najafgarh Road, Industrial Area, Kirti Nagar, New Delhi-15.

(ii) Plot No. 7, Najafgarh Road, Industrial Area, Kirti Nagar, New Delhi-15.

upto and in favour of the firm of Messrs Ashok Anil & Co., Kirti Nagar, New Delhi-15, together with the 99 years leasehold rights therein and all other rights, interests, claims, privileges, easements, appurtenant thereto together with rights of approach and all other consequential rights to erect upon the said plots buildings, factories, for and on behalf of the firm of Messrs Ashok Anil & Co., Kirti Nagar, New Delhi-15.

12. The above Release Deed was executed in 1972, about ten years after the period of receiving consideration by plaintiff and becoming partner of this firm. It is admitted by plaintiff that in 1973, disputes arose between the parties and an application under Section 20 of Arbitration Act was filed in which a compromise was arrived at. This application under Section 20 of Arbitration Act in view of compromise was withdrawn as not pressed. However, subsequently Suit No. 588

of 1975 was filed between the parties regarding effect of this compromise and this suit was decided by this Court on 7th May, 1996. The question considered by the Court in the above suit was if after filing of memorandum of compromise a party resiles from the same and withdrew the petition itself on the ground that it was no longer interested in the compromise and the petition filed by it, would the compromise have no value. The plaintiff Mr. B.D. Kumar was a party to this suit as respondent No. 5. This Court discussed the compromise arrived at between the parties and the different amounts received by the parties under compromise, the shares of the parties in the partnership deed and also discussed the effect of order dated 24th April, 1973 passed by this Court in the petition under Section 20 of the Arbitration Act and came to conclusion that the compromise recorded between the parties was not vitiated because an application filed before the Court to take it on record was not pressed. This Court also observed that the plaintiffs were trying to get out of the situation which they had voluntarily brought about and that the plaintiffs had not made out a case challenging the compromise. This Court further held that the compromise was a valid contract between the parties. Although looking into the long interval between the date of filing of compromise and the matter being taken up for consideration by the Court, the Court directed the defendants in the suit to pay some more amount than what was agreed to in the compromise. It is to be noted that the matter went right up to the Supreme Court. The above judgment of this Court was assailed before the Supreme Court by way of an SLP and the SLP was dismissed by the Supreme Court and the judgment of this Court was upheld. The amount as ordered by this Court was received by the plaintiff.

13. In *Kasturi Lal Jain v. Inder Prakash Jain and Ors.* 73(1998) DLT 520, this Court held that the documents executed without permission of Lessor in violation of Clause 6(b) of the lease deed is neither void nor becomes voidable. I also consider that a party cannot be allowed to take benefit of its own wrongs. A party that executed a document regarding transfer of immovable property after receiving due consideration in lieu thereof, either at the time of executing the document or prior to that by way of credit entry into the partnership business, cannot be allowed to take a stand later that the document executed by it was null and void and he continued to the owner. The plaintiff was at liberty not to execute the release deed.

The plaintiff, after disputes crop up between the parties in 1973 if so advised could have filed a suit for declaring the Release Deed as null and void within the period of limitation but he did not. The plaintiff who was not in possession of the plots or the factory premises and the premises was in possession of the partnership firm cannot be allowed to file a suit after 24 years of divesting himself of the rights and receiving consideration from the partnership firm of seeking a declaration that he was the owner of the property. The learned trial court should have read the pleadings and the documents in a meaningful manner and the suit ought to have been dismissed at the threshold. In fact this kind of frivolous litigation is chocking the dockets in the Court. The people very boldly file any kind of frivolous suit and keep on litigating in the Court for years together because they have enough money. Such suits are ostensibly filed on the plea of exercising a right but in ultimate analysis the motive of such suits is to put the thorns in the way of defendants and to harass them. A person who executes a document with open eyes cannot resile from the averments made in the document on the ground that the document executed by him was a void document. The plaintiff cannot be a judge of himself to declare that the document was a void document and the title in the property still vested with him. He did not approach the Court to get the documents to be declared as null and void. The trial court, therefore, could not have ignored these documents to determine whether any right existed in favour of plaintiff when plaintiff filed the suit.

14. I, therefore, consider that the trial court did not exercise its jurisdiction of scrutinizing the pleadings and the documents on the very threshold and arrive at a conclusion on the basis of admissions made by the plaintiff. The learned trial court also did not bother to read the compromise which was upheld right up to Supreme Court and which categorically showed that the plaintiff herein Dr. B.D. Kumar and his family members had received the amount in terms of compromise and retired from the partnership firm leaving the assets of the partnership firm including these two plots and the building thereon. I accordingly hereby set aside the order of the trial court. The petition is allowed with costs of Rs. 50,000/- on respondents. The application of the petitioners/defendants is allowed. The suit filed by the plaintiff/respondent is liable to be dismissed and is hereby dismissed with costs. The petitioner shall file certificate of costs of suit before trial court.

