

AshwIn Lal Vs. Aruna Lal

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Court : Delhi

Decided On : Dec-14-2010

Judge : Rajiv Shakdher, J.

Acts : Code of Civil Procedure (CPC) (C.P.C.) - Order 12 Rule 6; [Hindu Marriage Act, 1955](#) - Section 13(1)(ia); [Indian Penal Code \(IPC\), 1860](#) - Section 420, 268 and 471; [Code of Criminal Procedure \(CrPC\) , 1973 \(Cr. P.C\)](#) - Section 125; HM Act - Section 25

Appeal No. : IA No. 14466/2009 in CS(OS) No. 793/2007

Appellant : AshwIn Lal

Respondent : Aruna Lal

Advocate for Def. : Ms Gita Dhingra, Adv.

Advocate for Pet/Ap. : Mr Manu Nayar; Ms Aradhna Mittal, Adv.

Judgement :

1. The captioned application has been filed by the plaintiff under the provisions of Order 12 Rule 6 of the Civil Procedure Code, 1908 (in short Code). The plaintiff/applicant has filed a suit for partition and recovery of possession qua an immovable property bearing no. BB-21-A, Ground Floor, DDA MIG Flat, Janakpuri, New Delhi 110 058 (hereinafter referred to as Janakpuri Flat). The suit is instituted by the plaintiff against his own wife, who is the only defendant in the suit. In the suit the plaintiff has claimed one-half share in the Janakpuri Flat.

2. The brief facts, which apparently led to the filing of the present suit and, to the extent they are relevant for the disposal of the present application are set out hereinbelow: 2.1 The plaintiff and the defendant evidently got married on 13.12.1985. They were blessed with two sons; Abhinav Lal and Ankit Lal, presently aged 23 years and 19 years respectively. It appears that the marriage soured and, consequently, the plaintiff filed for dissolution of marriage on, 05.05.2005 under Section 13(1)(ia) of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as HM Act) on the ground of cruelty. The said proceedings were originally registered as Matrimonial Case No. 392/2005, and thereafter, re-registered as HMA case No. 187/06/05. These proceedings are pending adjudication in the District court. The plaintiff, admittedly has also filed a proceeding in the Guardian Court being: 26/B/2007; these proceedings are also pending adjudication.

3. As against this, the defendant it appears has filed a proceeding under Section 125 of the Code of Criminal Procedure, 1973 (in short Cr.P.C).

3.1 Apart from this the defendant, it appears, has also filed a criminal complaint which has been registered with police station Sultanpuri vide FIR No. 453/2007 under the provisions of Section 420, 268 and 471 of the Indian Penal Code, 1860 (in short IPC). The defendant avers that she was forced to file the said complaint with the police as the plaintiff had committed a criminal breach of trust by forging her signatures in order to effect the sale of property owned by her being plot No. 64, Sector 22, Rohini, New Delhi (hereinafter referred to as Rohini property). The defendant alleges that the proceeds from this property were used by the plaintiff to purchase another flat exclusively in his own name, in Dwarka. It is alleged that when this fact came to the knowledge of the defendant, she lodged the aforementioned criminal complaint with the police.

4. In the background of the aforesaid proceedings pending in various courts inter-se the plaintiff and the defendant certain averments have been made by the defendant herein, which the plaintiff submits are an admission of the fact that he has 50% share in the Janakpuri Flat. For the sake of convenience, I am setting out the relevant extracts from the pleadings based on which the plaintiff claims that

there is an admission which, entitles him to relief as claimed in the captioned application. (i) Guardianship Proceedings: Order dated 05.10.2007:

" . Admittedly the flat in question that is FLAT NO. BB21A MIG FLAT, JANAKPURI is co-owned by both the respondent and the petitioner 50-50 ." (ii) Metropolitan Magistrate, Tis Hazari (in proceedings taken out by the defendant under Section 125 of the Cr.P.C.): Extracts from affidavit in reply filed by the defendant herein:

" ..That contents of para 4 of the application are admitted to the extent that settlement had been entered into between the parties but the settlement was not in respect of maintenance/ alimony. It was with regard to the flat No. BB-21A, MIG Flat, Janakpuri, New Delhi which is co-owned by both the parties .."

(iii) Petition under Section 24 of the HM Act:

" ...Flat No. BB-21A, Janakpuri, New Delhi was purchased. Though the flat was purchased by respondent, the petitioner forcibly got his name included in his papers as 50% owner ."

(iv) Rejoinder to the Petition under Section 25 of the HM Act: " .It is denied that respondent was forced to purchase the flat in joint name but the same was done out of love and affection which they then had ." (v) In this court: Reply filed by the defendant in a revision preferred by the plaintiff being CM(M) bearing No. 1583/2006 against the order of interim maintenance passed by the Matrimonial Court. In the captioned application an assertion has been made by the plaintiff that the defendant admitted that in the Janakpuri Flat the plaintiff has one-half share.

5. Reference is also made to the reply filed by the defendant in an application filed under Order 23 Rule 3 read with Section 151 of the CPC filed by the plaintiff in CM(M) 1583/2006. As noticed above, the said CM(M) was filed to impugn the order of interim maintenance passed by the criminal court under Section 25 of the HM Act. In this regard, it is asserted that even in this reply there is an assertion that plaintiff is a 50% owner of the Janakpuri Flat.

6. Based on the aforesaid, it has been argued by the learned counsel for the plaintiff, that an admission in the pleadings has been made by the defendant, not

only in the pleadings filed in this court, but also before other courts, in which proceedings are pending, inter se parties to the effect that: the plaintiff owns one-half share in the Janakpuri flat and hence, a preliminary decree declaring him one-half owner of the suit property, as prayed for in the captioned application, ought to be passed by this court.

7. On the other hand, the learned counsel for the defendant has rebutted the contentions of the plaintiff, and in her rebuttal, has largely relied upon the reply filed to the captioned application.

8. I have heard the learned counsel for the parties. In my view the application under Order 12 Rule 6 of the CPC has to be governed by the following broad principles: (i) The provisions of Order 12 Rule 6 (to seek a decree from a court based on admissions) can be triggered by a litigant at any stage of the proceedings. This provision is available both to the plaintiff and the defendant. Ordinarily, courts are more inclined to entertain an application under Order 12 Rule 6 of the CPC at a stage prior to issues being framed in the suit. However, there have been instances where courts have entertained such an application even after issues have been framed, which in any event appears to be the plain language of the provision.

(ii) A decree on admission is passed by court only when there are clear and unambiguous admissions.

(iii) The provisions of Order 12 Rule 6 of the CPC are wide enough to envelope within its ambit not only admissions made in pleadings but also those made "otherwise". These could include admissions even in documents/ correspondence exchanged between parties.

(iv) The jurisdiction of the court to pass a decree under Order 12 Rule 6 of the CPC is both "permissive" and "discretionary". This is clear as the Order 12 Rule 6 of the CPC uses the word may.

(v) The admissions by a party may be either "oral" or in "writing". This is in contradiction with the provisions of Order 12 Rule 1 of the CPC which refers to

admission made in "pleadings" or "otherwise in writing".

9. In the context of above, I may also note the provisions of Section 58 of the Indian Evidence Act, 1872 (in short Evidence Act). The said provision requires that no fact need be proved in any proceedings which parties thereto or their agents agreed to admit at the hearing or which before the hearing they agree to admit by writing under their hand or by any rule of pleadings in force at the time they are deemed to have admitted by their pleadings. This Section contains a proviso which confers discretion on the court to require that, even facts admitted, be proved otherwise than by admission. There are, therefore, broadly two kinds of admissions: those which are made in pleadings, and those which are made during trial, that is, at or before the hearing. In such circumstances law does away with the rigour of parties having to prove such facts. The logic is quite simple; admitted facts do not require proof. The Supreme Court in the case of Nagindas Ramdas vs Dalpatram Ichharam alias Brijram (1974) 1 SCC 242 had an occasion to deal with admissions evidently made in an application under Order 23 Rule 3 of the CPC. The Supreme Court, while dealing with the admissions in a compromise application, observed as follows:

" .Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

10. In the background of the aforesaid principle of law, let me examine the state of pleadings in the present case. In the written statement filed by the defendant, the averments made in respect of the suit property are broadly thus: 10.1 It is contended by the defendant that in 1988 she purchased the flat bearing No. DG-II/123-D, SFS Flat, DDA, Vikaspuri (in short Vikaspuri property) for a consideration of Rs 95,000/-. It is further averred that the money to purchase the Vikaspuri

property was garnered by the defendant partially from sale of her ornaments, while the balance was received in the form of financial assistance rendered by the uncle and the brother of the defendant. Some portion of the finances is also attributed to money lying with the defendant in the form of savings. It is specifically averred that from sale of her ornaments she collected a sum of Rs 45,000/-, while the uncle and the brother pooled in a sum of Rs 20,000/-. It is further averred, that the Vikaspuri property was sold by the defendant, in 1995, for a sum of Rs 4.30 lacs. The intention behind the sale of the property, as averred by the defendant, was to buy a more commodious property/ house. It is stated that the consideration of Rs 4.30 lacs was received by the plaintiff and, out of that sum, the Janakpuri flat was purchased for a sum of Rs 3 lacs. The balance sum, i.e., Rs 1.30 lacs was retained by the plaintiff and, invested by him elsewhere. It is averred, that it is, in the Janakpuri flat that the defendant is, residing with her sons. These averments have been made in paragraph 8 and 9 of the "preliminary objections" contained in the written statement. Identical averments have been made in paragraphs 1 and 2 of reply on merits, once again contained in written statement. There is an assertion to the same effect even in paragraph 10 to 12 of the reply on merits in the written statement. Though assertion in the said paragraphs of the written statement is similar to the ones contained in other paragraphs noticed above; there is an additional assertion, of which the plaintiff seeks to take advantage. The assertion being that the plaintiff is only a "benamidar" and, therefore, the Janakpuri flat is owned by the defendant alone. Since the plaintiff has laid much stress on this part of the pleadings, I may extract the same for the sake of convenience:

"10-12. Preliminary objections taken in the written statement may be allowed to be urged as part of the reply of paras 10 to 12 of the plaint. Flat NO. DG-II/123D, SFS DDA Flat, Vikaspuri had been purchased by the defendant out of her own funds in 1988 at a consideration of Rs 95,000/- and that the said flat was sold in 1995 at a consideration of Rs 4,30,000/-. After the said flat was sold flat No. BB/21A, DDA MIG Flat, Janakpuri was purchased in 1995 and the name of the plaintiff was added as he insisted for the same, although he had not contributed even a single penny for its purchase. Therefore, though the flat is in joint name plaintiff is only Benamidar and the flat belongs to and is owned by the defendant alone. It is denied that for purchase of the flat in question father of the plaintiff advanced loan

of Rs 5,00,000/-. If plaintiff had taken a sum of Rs 5.00 lakhs, he might have taken for carrying out any other business activity. The said amount, however, was not invested in the flat in question. Flat in fact, had been purchased at a consideration of Rs 3,00,000/- out of sale proceeds of flat NO. DG-II/123D, Vikas Puri, Delhi and question of investing Rs 5.00 lacs apparently is without any basis. It is not disputed that proper sale deed was not executed and the documents like General Power of Attorney, Agreement to Sell, Will etc. had been executed by the seller in the joint name of the plaintiff and defendant. The said documents in original had been and continues to be in possession of the plaintiff."

11. It is also pertinent to note that the defendant has filed a counter claim. The counter claim has been filed by the defendant inter alia to seek a declaration that she is the sole owner of the Janakpuri Flat. In paragraph 2 of the counter claim a similar assertion has been made. Since the same is relevant and was heavily relied upon by the plaintiff, specially the last line of the paragraph 1, the same is also extracted below for the purposes of convenience:

"2. That the said flat of Vikas puri was sold in the year 1995 at a consideration of Rs 4,30,000/- and flat no. BB-21A, MIG Flat, Janakpuri, New Delhi was purchased in the joint names of the plaintiff and defendant. This flat was purchased at a consideration of Rs 3,00,000/- and that balance sum of Rs 1,30,000/- was utilized for acquiring plot admeasuring 60 sq. mtrs. being plot No. 64 in Pocket-5, Sector-22, Rohini, New Delhi in the joint names of plaintiff and defendant."

12. At this stage, since I am on the counter claim I may also advert to certain other extracts of the counter claim, which are as follows:

" . Thus flat NO. BB-21A, MIG Flat, Janak Puri, New Delhi is a property of the defendant and plaintiff has no right whatsoever in the flat in question "

" .Thus defendant is owner of both the flats i.e., flat NO. BB-21A, MIG Flat, Janakpuri, New Delhi which flat is in possession of the defendant as also flat No. 3501, 5th Floor, Sector 6, Plot No. 7, Gyan Shakti Apartment HIG, Dwarka, New Delhi also belongs to the defendant and plaintiff has no right, title or interest whatsoever in the said two flats .." " ..That defendant thus seeks a declaration with

respect to flat No. BB-21A, MIG Flat, Janakpuri New Delhi, that defendant alone is the owner of the flat in question and that plaintiff has no right whatsoever in the said flat ." " It is, therefore, most respectfully prayed that your Lordships may be graciously pleased to declare that defendant is sole owner of flat NO. BB- 21A, MIG Flat, Janakpuri, New Delhi ."

13. I may only notice a similar stand has been taken in the reply filed by the defendant to the captioned application.

13.1 A perusal of the pleadings filed in this court would show that the defendant has attempted to explain as to what her stand is, as regards how the plaintiff came to jointly own the Janakpuri Flat. It was urged before me by the learned counsel for the plaintiff that once the defendant has taken a stand in pleading that the plaintiff was her benamidar then the provisions of the Benami Transactions (Prohibition) Act 1988 (hereinafter referred to as the Benami Act) would get triggered. It was contended that in view of this stand, the defendants defence that she is the real owner of the property cannot be examined by the court. Reliance in this regard was placed on Section 4 of the Benami Act. Before I deal with the same, let me also advert to the averment made by the plaintiff in paragraph 8 and 12 of the "reply to preliminary objections" in his replication filed in this court. These are as follows:

"8. Para no. 8 of the preliminary objections is wrong and denied. It is wrong and denied that Flat No. DG-II/123D, SFS Flat, DDA Vikas Puri was purchased by the plaintiff in 1988 for a consideration of Rs 95,000/-. It is further denied that for the purchase of the same, the defendant sold her ornaments for a sum of Rs 45,000/- and a sum of Rs 20,000/- have been given by the uncle and brother of the defendant and that the balance amount was lying in savings account with the defendant. It is wrong and denied that the entire sale consideration of the said flat in question amounting To Rs 95,000/- had been paid by the defendant. The defendant be put to strict proof of the averments made in this para. However, all the documents in respect of the said property are in possession of the defendant."

12. . It is wrong and denied that all immovable properties starting from property NO. DG-II/123D, SFS Flats, Vikas Puri, New Delhi had been purchased by the

defendant. It is wrong and denied that out of the sale proceeds of the said flat, subsequent property namely Flat NO. BB-21A, Ground Floor, MIG, DDA Flats, Janakpuri, New Delhi and Plot No. 64, Pocket No. V, Sector 22 Rohini, Delhi and Flat NO. 3501, HIG 5th Floor Sector VI, Plot NO. 7, Ghan Shakti Apartments, Dwarka, New Delhi had been purchased out of the initial investment made by the defendant. In fact, the properties in questions belong to the plaintiff and were purchased out of the income of plaintiff alone apart from the loan he had obtained and the defendant has no concern with the properties. It is reiterated that the properties belongs to the plaintiff alone. The plaintiff is the absolute owner of the properties and the entire consideration in purchase of properties belonging to the plaintiff and were out of self-acquired income and there is no contribution of the defendant whatsoever in purchase of the said properties. (the emphasis is mine)

14. A reading of the pleadings filed by the defendant and the vehement refutation by the plaintiff, in particular in the replication filed, demonstrates that there is an assertion of the plaintiff that the entire consideration, amongst others, for the Janakpuri flat had been paid by the plaintiff, and that the plaintiff is the "absolute owner" of the properties referred to in the written statement including the Janakpuri Flat. On the other hand, as noticed hereinabove, the defendant contends to the contrary. What is contended by the plaintiff as an admission, has been attempted by the defendant to be put in a perspective. Whether the defendants version is right or wrong can only be ascertained after evidence has been led by parties.

14.1 In these circumstances, I am of the opinion that there is no clear and unambiguous admission by the defendant. The fact that in other foras pleadings have been filed by parties, to which extensive reference was made by the learned counsel for the plaintiff, would not persuade me to decree the suit at this stage, without a trial, for the reasons that those pleadings may have to be explained by the defendant at the trial. As noticed by me above, the averments in the pleadings filed in this court veer to that position. In other words seek to explain the defendants averment in that behalf.

15. In so far as the submission of the learned counsel for the plaintiff with regard to Benami Act is concerned, I am of the view that the said submission raises a

serious question of law which the court may have to deal with by reading the plaint in a holistic manner and having regard to the provisions of the Benami Act. Though, I do not intend to dilate on the provisions of the Benami Act extensively, at this stage it is pertinent to note that while, Section 4 sub-Section (2) provides that no defence based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property; sub-section (3) clause (b) of Section 4 excludes certain persons from the rigours of sub-Section (1) and (2) of Section 4. These being: either a person, who holds the property in issue in his capacity as a trustee or in a fiduciary capacity and, such property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity. Whether a spouse, i.e., a husband, would come within the ambit of sub-Section (3) clause (b) of Section 4 of the Benami Act is a question that may have to be examined by the court at the stage of trial. This is more so in view of the fact that while sub-Section (1) of Section 3, prohibits persons generally from entering into benami transaction, an exception to this general rule is provided in clause (a) of sub-Section (2) of Section 3, amongst others, in so far as a "wife" or "unmarried daughter" is concerned. Whether, as indicated above, a husband, i.e., the plaintiff in this case, would fall in clause (b) of sub-Section (3) of Section 4 is an aspect which may have to be examined in the schematic context of the Benami Act. In any event, as noticed above, the plaintiff in the replication claims to be the owner of the suit property.

16. Therefore, for the aforementioned reasons, I am of the opinion that the captioned application deserves to be dismissed. It is ordered accordingly.

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