Mr. Govind Parshad Vs. Mr. Lalit Parshad and ors

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SooperKanoon Citation : sooperkanoon.com/920050

Court : Delhi

Decided On : Aug-01-2011

Judge : V.K. Jain, J.

Appeal No. : CS(OS) 2506/2008

Appellant : Mr. Govind Parshad

Respondent : Mr. Lalit Parshad and ors

Advocate for Def. : Mr. Abhinash Kr. Mishra; Mr. B.S. Rana; Mr. Rohit Valecha, Advs.

Advocate for Pet/Ap. : Ms. Mala Goel, Adv.

Judgement :

1. This is a suit for partition of various movable and immovable properties. The plaintiff is the grandson of Sh. Alopi Parshad and his wife Smt. Shakuntala Devi, both of whom have expired. Sh. Alopi Parshad and Smt. Shakuntala Devi were survived by two sons namely Krishan Parshad and Rajinder Parshad. Sh. Krishan Parshad was survived by four children namely defendant No.1 Lalit Parshad, plaintiff Govind Parshad, defendant No.2 Veena Bansal and late Smt. Shashi Bala Gupta. Smt. Shashi Bala Gupta, who died on 27th October 2004, was survived by defendants No.3 to 5. Sh. Rajinder Parshad, the other son of Sh. Alopi Parshad was survived by one son namely Arun Kumar and three daughters, who are defendants No.7 to 9 in this suit. Sh. Arun Kumar has since died and was survived

by defendant No.6, who is his son, his widow Smt. Satya Gupta and daughter Seema Gupta.

2. The partition has been sought in respect of the following immovable properties:-

(i) 1, Gwalior Road, Agra Cantt, Agra, Plot of 17500 sq. yds. with structures thereon including 'Mehar Theatre'.

(ii) 349, (346-349) Kucha Ghasi Ram, Chandni Chowk, Delhi-110006.

(iii) Rights in 1361 and 1379, Sultan Singh Building, Kashmere Gate, Delhi.

3. As regards the properties at serial Nos.(ii) and (iii) i.e. 346-349, Kucha Ghasi Ram, Chandni Chowk, Delhi and 1361 and 1379, Sultan Singh Building, Kashmere Gate, Delhi, the parties agree that they will maintain status quo with respect to title and possession of the aforesaid properties, during pendency of the suit. This, however, will not come in the way of defendants No.1 and 10 releasing their rights in the aforesaid properties in favour of defendant No.6 in view of the compromise between them.

4. As regards property No.1, Gwalior Road, Agra Cantt, Agra, admittedly this property stands in the name of defendant No.10/Alop Parshad & Sons Pvt. Ltd. The case of the plaintiff is that this property was in fact purchased from the funds of the HUF headed by late Sh. Alopi Parshad. The company could have utilized the funds of the HUF or of its members, for the purchase of the aforesaid property only in two manners i.e. either by taking a loan from the HUF and/or its members or by utilizing the share capital, if any, contributed by the HUF and/or its members, while subscribing to the shares of the company. In either case, the property acquired by the company does not become the property of the HUF or any of its members. Since a company is a separate legal entity capable of acquiring, holding and disposing of property, if it acquires any property either utilizing its share capital or taking loan, that does not become the property either of the share holder or of the lender. The property in such a case belongs to the company though in case it has taken a loan for acquiring the property, it would be liable to return that loan to the lender in terms of the loan agreement between it and the lender. Even if either

the HUF or one or more of its members have 100% shareholding in a company, the property owned by the company cannot be said to be property either of the HUF or of its members, so long as the company is not wound up. In these circumstances, I see no justification for placing any embargo on the right of defendant No.10 company to deal with the aforesaid property in any manner it desires. The learned counsel for defendant No.10 states that in case defendant No.10 wants to sell, transfer or otherwise dispose of the aforesaid property during pendency of this suit, it will inform this Court at least one month in advance with intimation to the opposite party. The learned counsel for the plaintiff states that the stand of the plaintiff is that the property at 1, Gwalior Road, Agra Cantt, Agra, through registered in the name of defendant No.10, in fact belongs to HUF and the plaintiff has a share in it. However, prima facie the plea taken by the plaintiff in this regard is untenable.

5. Coming to the movable properties, as far as Mercedes car valued at Rs.4 Crore by the plaintiff is concerned, the learned counsel appearing for defendant No.1 and 10 informs, on instructions, that this car had been sold even prior to filing of the suit and the sale consideration was Rs.5,40,000/-. Regarding the movable properties mentioned at serial No.1 to 5 and 7 to 9, the learned counsel for the parties agree that they will maintain status quo to the extent these properties are in their possession. It is made clear that licences for holding of the swords, which are shown at serial No.9 in the list of movable assets, in terms of the compromise referred earlier, will not amount a contravention of this order so long as the swords are preserved by the person in whose name the licences are transferred.

This application stands disposed of in terms of this order.

IA 2765/2011 (u/S. 151 CPC)

This is an application by the plaintiff seeking payment of Rs.1 Crore to him during pendency of the suit. At this stage, no such order can be passed, particularly when the parties have already been directed to maintain status quo with respect to the suit properties except the property at Gwalior which prima facie belongs to defendant No.10 company and not to the HUF.

The application is accordingly dismissed. IA 993/2010 (u/O 7 R 11 CPC)

The learned counsel for the applicant does not press this application and states that all these objections can be considered by the Court while framing issues. The IA stands dismissed as not pressed.