Veena Monga Vs. Ravi Monga and ors

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SooperKanoon Citation : sooperkanoon.com/924479

Court : Delhi

Decided On : Feb-06-2012

Appellant : Veena Monga

Respondent : Ravi Monga and ors

Judgement :

.* HIGH COURT OF DELHI: NEW DELHI Order Announced on: 06.02.2012 + I.A. No.13559/2011 in CS (OS) No.1686/2010 VEENA MONGA ..... Plaintiff Through Mr. P.S. Patwalia, Sr. Adv. with Mr. Sidhant Goel, Mr. Mohit Goel and Mr. Yawar Masood, Advs. Versus RAVI MONGA and ORS ..... Defendants Through Defendant No.1 in person. Mr. Sunil Mittal, Adv. with Mr. Rajesh Baweja and Mr. K. Mittal, Advs. for D-7 to.

10. Mr. H.S. Kohli, Adv. for D-11. Mr. Parminder Singh, Adv. for D-12, 14 to.

16. Mr. Vishal Bansal, Adv. for D-19. Mr. Nitin Kumar, proxy counsel for Mr. Siddharth Bambha, Adv. for D-23. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J..

1. By this order, I propose to dispose of the application filed by defendant Nos.7-10 under Section 151 CPC, seeking permission to rent/lease out the property, bearing Shed No.3, Plot No.9/45, Kirti Nagar Industrial Area, New Delhi (hereinafter referred to as the "Shed No.3") in I.A. No.13559/2011 in CS(OS) No.1686/2010 Page No.1 of 6 the suit filed for separate possession by way of

partition, under Section 26 read with Order VII, Rule 1 CPC..

2. The brief facts, as per the case of the plaintiff, are that the plaintiff herein is the widow of Late Shri Gopal Mohan Monga, who is one of the five sons of Late Shri Haveli Ram Monga. Late Shri Haveli Ram Monga purchased property bearing Plot No.9/45, Industrial Area, Kirti Nagar, New Delhi (herein after referred to as the "Joint Property/Said Property"), at a public auction held on 08.12.1958 out of the joint funds. The said property is divided into three parts, Shed 1, Shed 2 and Shed.

3. After the death of Shri Haveli Ram Monga, the said property devolved upon his five sons. On 18.12.1970, by virtue of a family settlement (hereinafter referred to as the "First Family Settlement"), Late Shri Haveli Ram Monga, his wife Late Smt. Pushpawati Monga and his five sons reduced in writing the terms of settlement and it was agreed mutually that each will be the owner to the extent of one-seventh (1/7th) share in the joint property. Late Shri Haveli Ram Monga died on 09.02.1986..

3. Again on 08.04.1988, Late Smt. Pushpawati Monga and her five sons made a family settlement (hereinafter referred to as the "Second Family Settlement") that each would be the owner of one-sixth (1/6th) share of the said property. And the Second Settlement was furthered by adding a clause that after the demise of Smt. Pushpawati Monga, the five sons would become the joint owners, having one-fifth (1/5th) share each in the said joint property..

4. During the lifetime of Late Smt. Pushpawati Monga, she voluntarily executed a Will, by which she bequeathed all her properties equally to all I.A. No.13559/2011 in CS(OS) No.1686/2010 Page No.2 of 6 her five sons. The plaintiff herein after the death of Shri Gopal Mohan Monga, requested defendant No.1 and defendant Nos.11-13 to carry out partition by metes and bounds so that each may take their respective shares in the said property. Defendant Nos.11-13 expressed their willingness for the same, but defendant No.1 did not accede to the request and on one pretext or the other, he avoided the partition. The respective shares of the concerned parties are as follows:- Plaintiff : 1/5th share Defendant No.1 : 1/5th share Defendant No.11 : 1/5th share Defendant No.12 : 1/5th share Defendant No.13 : 1/5th share.

5. The plaintiff states that defendant Nos.1 and 2 have entered into an Agreement to Sell with defendant Nos.7-10 and have illegally obtained a Possession Letter without the consent or knowledge of the plaintiff who is the joint owner of the said property..

6. Defendant Nos.7 to 10 have moved this application seeking to lease out their portion, i.e. Shed No.3. The said defendants state that they are the bonafide owners of the said Shed and also in exclusive possession thereof..

7. The contention of the plaintiff is that the sale consideration paid by the applicants/defendant Nos.7 to 10 to defendant Nos.1 and 2 for the said property is under-valued and not as per the circle rate. Mr. Patwalia, learned Senior counsel appearing on behalf of the plaintiff has argued that even as per the alleged agreement to sell dated 08.04.2010, it is the admitted position that the sellers have themselves mentioned therein that I.A. No.13559/2011 in CS(OS) No.1686/2010 Page No.3 of 6 they are the alleged owners of the undivided 3/7th share of built-up industrial property, and the purchasers have also admitted to purchase the undivided 84% share which comes to 670 sq. yards of the undivided 3/7th share, total of 800 sq. yards. He further argued that defendant Nos.7 to 10 are not entitled to the possession because they have purchased the suit property from defendant Nos.1 and 2 from their undivided share. Therefore, the application filed by defendant Nos.7 to 10 is not maintainable. The learned Senior counsel also argued that in case this Court is inclined to allow the present application, defendant Nos.7 to 10 should be directed to deposit the entire rent before this Court in order to strike the balance between the parties and considering the fact that the sale of the suit property is bad under the law. Further, in any case, defendant Nos.7 to 10 would only be entitled to receive 3/7th share of the rent. He further states that another tenant, Mr. Durgesh Ghai is prepared to take the suit property on lease consisting of ground floor and the entire vacant set- back of all three sides of Shed No.3, comprising of 4000 Sq. Feet covered area, in a monthly rent of Rs.1,50,000/-. The affidavit of said Mr. Durgesh Ghai has also been filed during the course of hearing of the application by the plaintiff..

8. On the other hand, Mr. Sunil Mittal, learned counsel appearing on behalf of defendant Nos.7 to 10 has denied all the contentions raised by the learned Senior counsel for the plaintiff. He submits that the plaintiff has no right to oppose the prayer made in the application. The suit of the plaintiff is not maintainable, as the suit property has already been partitioned. The learned counsel has referred the order passed by the Income-tax Officer, Distt.1(1), Chandigarh, dated 30.11.1976 for the Assessment Year of I.A. No.13559/2011 in CS(OS) No.1686/2010 Page No.4 of 6 1971-72 filed along with the list of documents. He further states that defendant Nos.7 to 10 do not propose to give the entire suit property on lease. Only a portion of the suit property is intended to be given to the tenant who will pay rent @ Rs.84,000/- per month for the ground floor. The said tenant has already filed an affidavit in the form of an undertaking that the tenant would hand over the possession as and when directed by the Court. Mr. Mittal has also argued that defendant Nos.7 to 10 are agreeable that in any case if the prayer made in the suit is allowed and for the enquiry of mesne profits, defendant Nos.7 to 10 are agreeable to pay the share of rent @ Rs.1,50,000/- as suggested by the learned counsel for the plaintiff..

9. It is the admitted position that when the matter was listed earlier before the Court on 12.10.2011, the learned Senior counsel appearing on behalf of the plaintiff submitted that principally, the plaintiff has no objection to the property being given on rent, subject to all objections taken by the plaintiff that defendant Nos.1 and 2 could not have sold this property and the defendant Nos.7 to 10 are in illegal possession. It is also pertinent to mention here that in furtherance of the order dated 29.07.2011, defendant Nos.7 to 10 have negotiated with Sh. Prakash Chand Jain, Director of M/s Ritu Stones Pvt. Ltd. for leasing out the said property. Copy of the draft lease deed has also been filed along with the application. As already stated, the affidavit by way of undertaking is also placed on record..

10. After having considered the rival submissions of the plaintiff as well as that of defendant Nos.7 to 10 and without going into the merits of the case, as well as no objection raised by the plaintiff which was recorded in I.A. No.13559/2011 in CS(OS) No.1686/2010 Page No.5 of 6 the order dated 12.10.2011, I allow the present application, subject to the following terms and conditions:- (i) Defendant

Nos.7 to 10 are permitted to let out the said portion as stated in the application to the tenant who is willing to pay rent @ Rs.84,000/- per month for the ground floor. The affidavit filed by the said tenant is taken on record as undertaking to the effect that the tenant will hand over the possession as and when directed by the Court. (ii) Defendant Nos.7 to 10 are directed to file an affidavit to the effect that the lease deed would be executed initially for a period of 11 months, and in the affidavit, a statement should also be made that in case the prayer made in the suit is allowed, they would be paying the share of mesne profits to the plaintiff as per her share @ Rs.1,50,000/- per month as suggested by the plaintiff..

11. It is clarified that the objection raised by the plaintiff that defendant Nos.1 and 2 could not have sold this property to the defendant Nos.7 to 10 who are in illegal possession, will remain retained as recorded in the earlier order and the said objection shall be considered in due course on merits..

12. The application is accordingly disposed of. CS(OS) No.1686/2010 and I.A. No.1887/2012 (u/o XII, R.6 CPC) and I.A. No.9502/2011 (u/o VII, R.11 CPC) List on 17.04.2012 the date already fixed. MANMOHAN SINGH, J. FEBRUARY 06, 2012/ka I.A. No.13559/2011 in CS(OS) No.1686/2010 Page No.6 of 6