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Court : Delhi

Decided On : Nov-29-2012

Judge : Kailash Gambhir

Appellant : Sona

Respondent : Raj Rani and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 851/2010 SONA Plaintiff Through Mr. A.K. Bhattacharya, Adv. versus RAJ RANI & ANR Through Defendant Mr.ParveenMendiratta, Adv. for D-1 Mr. G.D. Parashar for D-2 CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR ORDER % 29.11.2012 IA No.20029/2011 1. By this application moved under Order 7 Rule 11 read with Order 2 Rule 2 and Section 151, Code of Civil Procedure, 1908, the defendant no.1 seeks rejection of the plaint.

2. Before dealing with the said application moved by defendant No. 1, it would be appropriate to give a brief narration of the facts of the case as set out by the plaintiff in his plaint. The present suit was filed by Smt. Sona, wife of late ShriHarpal, through her attorney ShriDevender Kumar on 21 st February, 2010 seeking relief of declaration, cancellation, mandatory and permanent injunction. On the date of filing of the suit, the plaintiff, Smt. Sona Devi was alive, but immediately thereafter on 25 th February, 2010, she died and the said ShriDevender Kumar was substituted as the plaintiff in her place. ShriDevender Kumar, plaintiff herein claims himself to be the grandson of the deceased Smt.

Sona Devi, and son of Late Smt. Shakuntala, Sona Devis daughter. It is the case of the plaintiff that late Smt. Sona Devi and her husband late ShriHarpal had adopted Smt. Shakuntala at the age of 5 years, before panchayat of their community and after the death of Shakuntala, her son Devender Kumar, the plaintiff herein was looked after by Smt. Sona devi and her husband during their stay in the suit property. It is also the case of the plaintiff that late ShriHarpal, who was an employee in Jal Mal Department of Govt. of NCT of Delhi was allotted Government built property bearing No. 114, Vinobapuri, Lajpat Nagar-II, measuring 100 sq.yds by Deputy Land and Development Officer vide registered conveyance deed dated 22.4.1971, duly registered in the office of Sub Registrar as document No. 277 in Addl. Book No. 1, Volume No. 2630 on pages 12-13.

3. It is also the case of the plaintiff that defendant No. 1, Smt. Raj Rani is the daughter of the brother-in-law of late Smt. Sona Devi. The defendant no.1 along with her husband and 1 years old daughter approached late Smt. Sona Devi and her husband in the year 1985, with the request to permit them to stay in their house for few months and consequently, they started residing with them. It is also the case of the plaintiff that ShriHarpal, husband of late Smt. Sona Devi died on 1.9.1989, leaving behind his widow, Smt. Sona Devi and the present plaintiff as his grandson. It is also the case of the plaintiff that after the death of Mr. Harpal, defendant No. 1 and her husband asked Smt. Sona Devi to affix her thumb impressions/signatures on some blank papers on the pretext, that the same is for the purpose of getting her widow pension from the Jal Mal Department of Govt. of N.C.T. of Delhi, and being an illiterate, late Smt. Sona Devi acceded to their request and affixed her thumb impressions/signatures on such blank papers. It is also the case of the plaintiff that defendant No. 1 and her husband took Smt. Sona Devi to the office of L&DO, NirmanBhawan, New Delhi and there also she was told to put her signatures/thumb impressions on certain papers and forms, for the purpose of getting the said property transferred in her name. Likewise, Smt. Sona Devi was taken to various other offices where she was made to sign certain papers and put her thumb impressions at the instance of defendant No. 1, because of her dependence on the defendant No.1 and her husband and being an old lady, she was strained to put her thumb impressions. It is also the case of the plaintiff that in the year 2008, Smt. Sona Devi being an aged and ailing lady asked

for some monetary help from the defendant No. 1, but defendant No. 1 declined to give any financial help to her and thereafter late Smt. Sona Devi told defendant No.1 to leave the suit property, but defendant No.1 informed her that they have been residing in the suit property as the owner of the same and not at the mercy of the plaintiff.

4. Thereafter, late Smt. Sona Devi called a meeting of a few respectable people of the locality seeking their help and in the said meeting, the defendant No.1 and her husband produced the papers of the property, showing that the ownership of the said property has been vested with defendant No.1. It is also the case of the plaintiff that on 13.5.2008, late Smt. Sona Devi made an application before the office of L&DO under the Right to Information Act, 2005 seeking information about the status of the said property and also for providing the copy of the documents through which the property was transferred in favour of defendant No.1. It is also the case of the plaintiff that the copy of the release deed dated 3 rd July, 1989 was supplied to late Smt. Sona Devi by the office of L&DO on 3 rd February, 2009, through speed post and it is after the perusal of the same, Smt. Sona Devi had realized that a serious fraud was played upon her by the defendant No. 1 and her husband, taking an advantage of her being an illiterate, poor and an old lady. It is also the case of the plaintiff that late Smt. Sona Devi had filed a suit for declaration and permanent injunction against defendant No.1 in the Court of Additional District Judge, New Delhi on 18th March, 2009, to seek declaration of the release deed as null and void and in the said suit without filing the written statement, defendant No.1 had filed an application under Order 7 Rule 11 CPC, 1908, to seek rejection of the plaint. It is also the case of the plaintiff that through the said application filed by defendant No.1 under Order 7 Rule 11 CPC certain new facts came to the knowledge of late Smt. Sona Devi such as that the defendant No. 1 claimed herself to be the adopted daughter of late Smt. Sona Devi, and also that late Smt. Sona Devi had executed a registered Will dated 29.3.1989 in her favour, the filing of joint application by late Smt. Sona Devi and defendant No.1 to seek mutation of the said property in their favour, the execution of conveyance deed in favour of defendant No. 1 on 22nd January, 2002 by L&DO and after having learnt about all these facts and considering the fact that valuation of the suit property had increased to about Rs. 23 lakhs, late Smt. Sona Devi withdrew the said suit from

the Court of learned ADJ on 30th October, 2009 and then filed the present suit challenging all the said documents, which were allegedly executed by defendant No. 1 and her husband by playing fraud upon Late Smt. Sona Devi.

5. On the other hand, the Defendant No. 1 herein has sought rejection of the plaint mainly on two grounds, firstly, that the plaintiff has no cause of action to file the present suit and secondly, the suit filed by the plaintiff is not maintainable as the plaintiff as per the mandate of order 23 Rule 1 CPC, failed to take any leave to file a fresh suit, before withdrawing the earlier suit.

6. The case of defendant No. 1 is that late Smt. Sona Devi and her husband Harpal had adopted defendant No.1, as their daughter and to establish this fact the defendant no.1 has placed on record the PAN card issued by the Income Tax Department wherein the name of ShriHarpal is mentioned as the father of defendant No.

1. It is also the case of defendant No.1 that during his lifetime late ShriHarpal had submitted nomination form in his office wherein he declared Smt. Sona Devi as his wife and defendant No.1 as his only daughter. It is also the case of defendant No. 1 that after the demise of late ShriHarpal on 1.9.1989, his gratuity and other dues were disbursed by the Delhi Water Supply and Sewage Disposal, in favour of late Smt. Sona Devi and defendant No.1 in equal shares as per nomination given by late ShriHarpal. It is also the case of defendant No.1 that late Smt. Sona Devi had executed a Will dated 29.3.1989, which was duly registered in the office of Sub-Registrar, wherein also she had clearly stated the relation of defendant No.1, being that of an adopted daughter. It is also the case of defendant No. 1 that on 15.3.1989, Smt. Sona Devi and defendant No. 1 had jointly applied to seek mutation of the subject property in their favour, being the only legal heirs left by late ShriHarpal and accordingly, the office of L&DO had substituted the said property in their favour. It is also the case of defendant No.1, that on 3.7.1989, late Smt. Sona Devi had voluntarily executed a release deed in favour of defendant No.1, thereby relinquishing her right, title, interest in the said property in favour of defendant No.1 and the said lease deed was duly registered in the office of Sub-Registrar on 3.7.1989. It is also the case of defendant No.1 that on the basis of the

registered release deed, defendant No. 1, applied for the mutation of the said property in her favour, in the office of the L&DO and the office of L&DO vide their letter dated 2nd March, 1990 substituted/ mutated the name of defendant No. 1 in the records. It is also the case of defendant No.1 that based on the said mutation, and the letter issued by the office of L&DO in favour of defendant No.1, the said property got mutated in her favour in the records of the MCD. It is also the case of defendant No.1 that defendant No.1 got the said property converted from lease hold into free hold and thereafter, the L&DO had also executed conveyance deed dated 22nd January, 2002 in her favour. It is also the case of defendant No.1 that she had been paying property tax, electricity and water charges since the year 1989. It is also the case of defendant No.1 that all these facts were well known to late Smt. Sona Devi and it is the plaintiff Devender Kumar, who, without having any locus standi and with a sole demurrer to blackmail the defendant No.1, had filed the present suit taking advantage of the ill health of late Smt. Sona Devi.

7. I have heard the Counsel for the parties and also perused the various documents placed on record by both the parties. The documents which have been placed on record by the defendant No.1 are mainly from various Government departments, therefore, the authenticity of the same cannot be easily doubted. Defendant No. 1 has also placed on record photocopy of the letter dated 28th October, 2011 issued by Bank of India, in favour of defendant No. 1 informing her, under the Right to Information Act 2005, that in the SB Account No. 11859, which is in the name of late Smt. Sona Devi, it is mentioned that she had nominated Smt. Raj Rani as her nominee in the said account. In the photocopy of the PAN card number also, the name of the father of defendant No.1 has been shown to be that of Mr. Harpal. Defendant No.1 has also placed on record photocopy of the cheques dated 1.8.1990 issued by the MCD disbursing the amount of gratuity and other dues in equal proportion in favour of defendant No.1 and late Smt. Sona Devi respectively.

8. On perusal of various documents placed on record by the Defendant No.1, there does not remain any iota of doubt that the present suit filed by the plaintiff is wholly false, frivolous and vexatious suit, which deserves an outright dismissal without wasting any further precious time of this Court. The counsel representing

the plaintiff was helplessly unanswerable with respect to the said documents placed on record by defendant No.1.

9. It is often said that humans can tell a lie but the documents speak for themselves and in the present case also, these documents are not coming from any private source, but from the Government departments, therefore their precision cannot be prodded. The present plaintiff Devender Kumar, who has not even placed any document on record to prima facie show that his mother, Smt. Shakuntala had been adopted by late Smt. Sona Devi and her husband, thus cannot claim himself to be the grandson of late Smt. Sona Devi and therefore, cannot maintain the present suit claiming himself to be a successor-in-interest of late Smt. Sona Devi. Defendant No.1 on the other hand has placed on record sufficient documentary evidence to show that she was the adopted daughter of late Smt. Sona Devi and her husband Harpal and this fact was not only acknowledged by late ShriHarpal but even by late Smt. Sona Devi herself.

10. The present suit filed by the plaintiff is absolutely false and bogus suit and is a brazen act on the part of the plaintiff to abuse and misuse the process of the Court. The suit filed by the plaintiff is also not maintainable in the eyes of law as late Smt. Sona Devi had failed to obtain any leave, at the time of withdrawal of the earlier suit No. 390/09, from the Court of Ms. Ina Malhotra, Additional District Judge, Patiala House Courts, New Delhi and without taking any leave, late Smt. Sona Devi is precluded from filing the present suit based on the same cause of action. The plaintiff, Devender Kumar cannot claim that the cause of action for filing the present suit is distinct, as the defendant No.1 became the sole owner of the said property only after the release deed was executed by late Smt. Sona Devi in her favour and, therefore, the release deed has been the subject matter of controversy even in the previous suit filed by the plaintiff. Although the plaintiff has challenged the validity of other documents as well in the present suit, but that will neither change nor alter the initial cause of action, based on which the present suit has been filed by the plaintiff.

11. The point for consideration in the present suit is, whether the plaintiff after withdrawing the suit filed by her in the Court of Additional District Judge, without

the permission to institute a fresh petition can file a fresh suit in the High Court. Considering the principle underlying in Rule 3 of Order XXIII of the Code, the present suit is clearly not maintainable. In totality of the above circumstances, this suit deserves an outright rejection because of the failure on the part of the plaintiff herein to seek leave in terms of Order 23 Rule 3(b) of CPC, 1908, from the court of Additional District Judge, Patiala House Courts, precluding the plaintiff from instituting a present suit and therefore, the present suit filed by the plaintiff merits rejection under Order 7 Rule 11, CPC, being clearly barred by law. This suit also merits rejection as the same is filed on wholly false, frivolous, vexatious grounds. The Honble Supreme Court, in the case of N.V. Srinivasa Murthy v. Mariyamma, (2005) 5 SCC 548. while advertent to the T. Arivandandam v. T.V. Satyapal, 1977 (4) SCC 46. in paragraph 17 held as under: This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T. Arivandandam v. T.V. Satyapal: The trial court must remember that if on a meaningful 'not formal' reading of the plaint is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC.

12. Hence, the present plaint is rejected. Exemplary cost of Rs. 25000/- is imposed on the plaintiff for making an attempt to abuse the process of this Court and initiating such frolicsome litigation and wasting the precious time of the Court. Let the cost be paid to the Delhi High Court Advocates Welfare Fund within six weeks. It is ordered accordingly. KAILASH GAMBHIR, J NOVEMBER 29 2012 rkr

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