

Vindhya Kukrety Vs. Shushma Kukrety and anr

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Court : Delhi

Decided On : Dec-04-2012

Judge : V. K. Jain

Appellant : Vindhya Kukrety

Respondent : Shushma Kukrety and anr

Advocate for Pet/Ap. : Mr. Aruneshwar Gupta, Mr. Manish Gupta

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

04. 12.2012 CS(OS) 1970/2011 VINDHYA KUKRETY Plaintiff Through: Mr Aruneshwar Gupta and Mr Manish Gupta, Advs. for plaintiff No. 1 versus SHUSHMA KUKRETY & ANR Defendants Through: Counsel for the defendant. CORAM: HON'BLE MR. JUSTICE V.K.JAIN JUDGMENT V.K.JAIN, J.

(ORAL) IAs No.12826/2011 and 12827/2011 (Exemption) Exemption allowed, subject to all just exceptions. The applications stand disposed of. IAs No. 12824/2011 and 18104/2011 (O. 39 R. 1&2 CPC) and 12825/2011 and 18102/2011 (O. 40 for appointment of receiver) The plaintiff is the mother-in-law of defendant No. 1 and grandmother of defendant No.

2. Primarily, the dispute between the parties is in respect of Flat No. 43, Karuna Vihar, Sector-18, Dwarka and G-324, Gama-II, Greater Noida. As far as Flat No. 43, Karuna Vihar, Sector-18, Dwarka is concerned, admittedly, the case of the

plaintiff is that it was owned exclusively by late Shri Rakesh Kukrety, son of the plaintiff, husband of defendant No. 1 and the father of defendant No.

2. The learned counsel for the defendants states that, in fact, the aforesaid property was in the joint name of late Rakesh Kukrety and defendant No. 1, which is disputed by the learned counsel for the plaintiff, who maintains that the property stood in the sole name of Rakesh Kukrety. A perusal of the demand letter dated 02.01.2011 filed by the defendant would show that the demand was raised only in the name of Late Shri Rakesh Kukrety, who was the member of Karuna Vihar, CGHS. This would indicate that the property was allotted by the society solely to Shri Rakesh Kukrety. However, the loan from ICICI was obtained jointly by Rakesh Kukrety and Sushma Kukrety which would indicate that either the property was owned solely by Shri Rakesh Kukrety and Ms Sushma Kukrety was only a joint applicant with him in taking loan or that the name of Sushma Kukrety was got added by Rakesh Kukrety as a co-allottee. Be that as it may, it would make no difference as far as the interim order is concerned since in either case, the property would not belong solely to the defendants and the plaintiff would have a share in it. If the property was owned solely by late Shri Rakesh Kukrety, the share of the plaintiff in the property would be one-third, whereas in the event of this property being jointly owned by Rakesh Kukrety and Sushma Kukrety in equal shares, the share of the plaintiff in the said property would be one-sixth. The parties have agreed after arguments that they shall not create any third party interest in the aforesaid property, during pendency of the suit. Ordered accordingly. The plaintiff had also sought appointment of a receiver to take charge of the movable properties of M/s Indo Fuji Elevator Company, which was the proprietorship concern of late Shri Rakesh Kukrety. The case of the defendants is that they are not in possession of any asset of the said firm. It is stated in para 13 of the plaint that defendant No. 1 on 29.05.2011 had barged into the office of M/s Indo Fuji Elevator Company, broken open all the locks and taken away cash amounting to Rs 5 lakh, besides important documents. This has been emphatically denied by defendant No.1. There is no proof of the defendants being in possession of any assets of M/s Indo Fuji Elevator Company. In para 21 of the plaint, it is alleged that Mr Deepak Sharma, brother of defendant No. 1 had taken away the car, mobile phone and other assets of the said proprietorship firm.

However, no registration number of the car has been given. Similarly, no IMEI number of the mobile phone has been given in the plaint. No other asset of the proprietorship firm M/s Indo Fuji Elevator Company has been specified. In these circumstances, no order at this stage needs to be passed either for appointment of a receiver or with respect to dealing with the assets of the erstwhile proprietorship firm of late Shri Rakesh Kukrety. As regards the property at Greater Noida, admittedly, this property stands in the name of plaintiff Smt. Vidhya Kukrety. The case of the defendants is that the aforesaid property was purchased in name of the plaintiff from the funds of the family. In the counter-claim, the defendants do not plead existence of any particular HUF. The counter-claim does not specify as to when, in what manner, and how much amount was contributed by the alleged joint family for purchase of this property. At this stage, there is no material on record to show that either defendant No.1 or her husband had made any contribution towards purchase of the property at Greater Noida. The counter-claim does not specify, when, in what manner and how much contribution was made by defendant No. 1 or her late husband for purchase of this property. The property stands in the sole name of the plaintiff. In the absence of there being any proof, contribution from defendant No. 1 or her late husband, there is no justification for passing any restraint order in relation to the said property. All the applications stand disposed of in terms of this order. CS(OS) 1970/2011 The following issues are framed on the pleadings of the parties:- 1. Whether Flat No. 43, Karuna Vihar, Sector-18, Dwarka was jointly owned by late Shri Rakesh Kukrety and defendant No. 1 Deeptanshu Kukrety, as alleged in the written statement? OPD 2. Whether the plaintiff is entitled to partition of Flat No. 43, Karuna Vihar, Sector-18, Dwarka and if so, what is her share in the said property? OPP 3. Whether defendant No. 1 has appropriated the assets of M/s Indo Fuji Elevator Company, proprietor concern of late Shri Rakesh Tyagis alleged in the plaint? OPP 4. If issue No. 3 is proved, to what amount, if any, the plaintiff is entitled towards her share in the assets of M/s Indo Fuji Elevator Company? OPP 5. Whether property No. G-324, Gama-II, Greater Noida was purchased by the plaintiff from the funds of the joint family, as alleged in the written statement/counter claim? OPD 6. If issue No. 5 is proved, whether defendant No. 2 is entitled to partition of property No. G-324, Gama-II, Greater Noida and in that event, what is his share in the said property?

OPD-2 7. Whether defendant No. 2 is entitled to a share in the business of Ishit Engineering India Private Limited? OPD-2 8. Relief. No other issue arises or is claimed. The affidavit by way of evidence be filed within four weeks. The parties to appear before the Joint Registrar on 01.02.2013 for fixing dates for crossexamination of witnesses of the plaintiff. V.K. JAIN, J DECEMBER 04 2012/bg

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