

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO No. 285 of 2008

Date of Decision : 26 -09-2008

RAKESH KUMAR ANAND Appellant
Through: Mr. Abhishek Singh, Advocate
with Mr.Prithvi Sidhu, Advocate

versus

JANG BAHADUR ANAND Respondent
Through : None

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the 'Digest'? Yes

REKHA SHARMA, J.

The appellant and the respondent are real brothers. Their mother Smt.Krishna Anand had expired on December 27,2007. The ashes of their mother were still smouldering when dispute arose between them with regard to the rear portion of property number 13/27, Moti Nagar, New Delhi comprising of one room, latrine, bath and kitchen which was in occupation of their mother till her death. The front portion is in occupation of the appellant who is living there with his wife and children.

It is alleged by the appellant that after the death of the mother, on December 30, 2007, the respondent along with his two sons entered the rear portion of property No. 13/27 and forcibly tried

to dispossess him from that portion. He made an urgent call to the police control room whereupon the police arrived on the spot and took the respondent and his sons to the police station. But, thereafter, the police in connivance with the respondent forcibly affixed an 'iron door' at point A in the said premises and locked the same.

After the aforesaid incident the appellant filed a suit in the trial court seeking a declaration that both he and the respondent are the joint owners of property bearing number 13/27, Moti Nagar, which is on the ground floor and No. 13/27A, Moti Nagar, on the first floor. He has also sought partition of the suit property and a mandatory injunction directing the respondent to remove the iron door and the lock illegally put in between property No.13/27 on the ground floor. He further has sought a decree of permanent injunction restraining the respondent from selling, transferring or disposing of or creating any mortgage or interest of any third party either in property No.13/27 or in 13/27A, Moti Nagar. Along with the suit he also filed an application under Order 39 Rules 1 & 2 CPC and by way of interim relief sought a direction to the respondent to remove the iron door and the lock shown at point 'A' in the site plan of property number 13/27 and also a restraint order against him from selling, transferring or disposing of or creating any mortgage or third party interest in the suit property. The learned Additional District Judge who dealt with the application vide his order dated January 24,2008 directed the parties to maintain status quo in respect to the suit property but passed no order with regard to the relief of removal of the iron gate and the lock put thereon. However, a Local Commissioner was appointed to visit the site to ascertain whether the respondent had installed a new iron door at the rear portion and had locked the same and also whether the books

pertaining to the son of the appellant were lying in the rear portion.

Feeling aggrieved by the non-grant of relief on the second count the appellant preferred an appeal before this court which was disposed of on May 5, 2008 with a direction to the trial Court to pass appropriate orders on the second relief as well. In compliance with the direction of this court, the learned Additional District Judge re-heard the application under Order 39 Rule 1 & 2 CPC but by an order dated August 6, 2008 declined to grant any relief to the appellant vis-à-vis the removal of the iron gate and the lock. By way of present appeal, the appellant has once again come to this Court impugning the said order.

The case of the appellant as borne out from his plaint in the suit for declaration, partition for permanent and mandatory injunction (a copy of which has been placed on the appeal record) is that the suit property Nos. 13/27 and 13/27A, Moti Nagar, was allotted to their late father Shri Bansi Lal and upon his death, it devolved upon him, his mother, the respondent and their three sisters to the extent of 1/6th share each. On August 20, 1994, the wife of the appellant had left her matrimonial home and while she was away, he sustained severe fracture injuries on his legs. Because of his such state of health, he became totally dependent on the respondent and his mother for maintenance, food and medical treatment. It is alleged that taking advantage of his helplessness, the respondent represented to him that as the suit property was continuing in the name of their late father for a long time, any problem could arise and accordingly he proposed to get the same mutated in the name of their mother. With this in view, the respondent obtained the signatures and thumb impressions of the appellant and his sisters on certain documents.

Later, it was found that he got the property mutated not only in the name of the mother but also in his own name. The appellant thereupon filed a civil suit No. 200/98 titled 'Rakesh Kumar Anand Vs. Jang Bahadur Anand' for declaration and mandatory injunction. The said suit was dismissed by the court of Shri Vinay Singhal, Civil Judge, vide judgment dated March 1, 2005. It is further the case of the appellant that their mother on realizing the mischief done by the respondent executed a Will dated September 17, 2004 and thereby bequeathed her undivided share in the suit property in his favour solely and exclusively and on the same date, the said 'Will' was got registered in the office of the Sub Registrar.

From the pleadings of the appellant as contained in his plaint before the trial court, it is not in dispute that the property bearing No. 13/27 & 13/27A has been mutated in the name of the respondent and the mother of the parties. The appellant no doubt has alleged fraud and deceit on the part of the respondent in his having got the property mutated not only in the name of their mother but also in his own name but the veracity of the allegation so made has yet to be tested and it is a matter of trial. As of today, the property stands in the name of the mother and the respondent. It is also not in dispute that the mother of the appellant was living in the rear portion of property No. 13/27, Moti Nagar. The said portion appears to be a separate unit in itself as besides a room, it has a latrine, a bath and a kitchen. The appellant is living in the front portion of the said property. Having regard to the fact that during the life time of the mother, the appellant had filed a suit against her and the respondent, it seems unlikely that he was living in the rear portion also along with the mother. In any case, this again is a matter of trial. The 'Will' dated

September 17, 2004 on the basis of which the appellant has staked his claim to the suit property has been disputed by the respondent. According to him, the mother could not have bequeathed her share in the property in favour of the appellant particularly for the reason that when the 'Will' was allegedly executed, the appellant was in litigation with the mother. He alleges that the Will is a forged document. The parties are seriously at issue with regard to the genuineness of the Will. Therefore, it is difficult at this stage to grant any interim relief to the appellant on the basis of the 'Will'.

Let me also have a look at the report of the Local Commissioner for it is contended by the appellant that the Local Commissioner in his report has said **"that a new iron door having lock was found affixed at rear portion of flat No. 13/27, ground floor, Moti Nagar, New Delhi. Apparently, the iron door was installed relatively recently by the respondent."** There is no doubt that the Local Commissioner has so stated in his report but it cannot be inferred from the same that the rear portion was in possession of the appellant. The Local Commissioner in his report has also said that **"few books belonging to the son of the plaintiff were found lying in the rear portion of flat No. 13/27, Ground Floor, Moti Nagar, ... In addition to this, two text books stated to be belongings of the son of defendant were also found lying in the rear portion of flat No. 13/27, Ground Floor, Moti Nagar, New Delhi."** What does this show? Prima facie, it goes to show that soon after the death of their mother, there was an attempt on the part of the brothers to occupy the rear portion of the house and in order to show their possession, they tried to create evidence by putting books of their children in that portion.

In the above facts and circumstances of the case, I am of the view that the learned Additional District Judge rightly disallowed the prayer of the appellant to remove the iron gate and to open the lock put thereon. I see no ground to interfere with the impugned order. The appeal is dismissed.

It is, however, clarified that nothing stated in this order shall be taken to be an expression of opinion on the merits of the case which the trial court will decide uninfluenced by the present order.

REKHA SHARMA, J.

SEPTEMBER 26, 2008
g/sl