

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

Date of Reserve: 29th October, 2009

Date of Order: November 09, 2009

IA No. 3160/2009 in CS(OS) No. 2118/2006

%

09.11.2009

Leena Mehta

... Plaintiff

Through: Mr. Rajesh Gupta, Advocate &
Mr. Harpreet Singh, Advocate

Versus

Vijaya Myne and Ors.

... Defendants

Through: Mr. Prem Kumar with Mr. Nilesh Sawhney
& Mr. Sharad Jha, Advocate for D-4

JUSTICE SHIV NARAYAN DHINGRA

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

ORDER

By this order I shall dispose of an application under Order 7 Rule 11 CPC filed by the Defendant No.4 for dismissal of the suit.

2. The suit was filed by plaintiff making three defendants viz. Vijaya Myne, Gagan Myne and Teena Myne. Vijaya Myne is mother of the plaintiff who is recorded owner of the property bearing plot no. 270, Block No. C-2, Janakpuri, Pankha Road, Delhi measuring 270 sq. mtrs. The contention of the plaintiff is that she is a daughter of late Shri J.K.Myne. Shri J.K.Myne had purchased this plot for a total consideration of Rs.16,600/- from Delhi Development Authority in 1971. He being pre-occupied with various assignments made defendant no.1 as a nominee and asked DDA to transfer the plot in name of defendant no.1 in the records of DDA. Thus, the conveyance deed was executed by DDA in

name of defendant no.1. She submitted that the sole purpose of getting the plot transferred in name of defendant no.1 was that she would manage and take care of the property however the property actually belonged to Shri J.K.Myne. Shri J.K.Myne raised construction over the plot out of his own funds during his lifetime. In the property, two rooms were in occupation of the plaintiff as the same were handed over to her when she was unmarried by her father. Plaintiff got married in 1997 and moved to her matrimonial home but she alleges that she retained the possession of those two rooms on the ground floor. She submitted that the defendants no.1, 2 & 3 assured her that the property would be inherited by all the legal heirs of Shri J.K.Myne in equal share. She alleged that defendant no.1 had not invested or contributed in the creation of the property and all funds and resources were of Shri J.K.Myne. Thus, after death of Shri J.K.Myne on 5th November 1997, she became entitled to 1/4th share in the property. She recently learnt that defendant no.1 was bent upon to create third party interest in the suit property without her consent and therefore she filed the present suit with a prayer that it be declared that Shri J.K.Myne was real owner of the property and not defendant no.1 in whose name the property stood. She wanted a preliminary decree declaring that the plaintiff has 1/4th share in the suit property and wanted a Local Commissioner/Receiver to be appointed to physically partition the suit property by metes and bounds between the parties. The plaintiff also wanted a final decree for partition of the property in terms of her share and permanent injunction against defendants from creating any third party interest.

3. While filing suit she was very well aware that her mother/defendant no.1 in fact had already entered into an agreement to sell the property in question with one Mr. Satya Bhushan Kaura, being the owner of the property by virtue of a conveyance deed dated 14.11.1975. The agreement to sell the property was entered into with Shri S.B.Kaura on 13.4.2004 for a sum of Rs.99 lac and her mother received Rs.7 lac as advance/earnest money and Rs.2 lac thereafter to clear her liability

towards electricity charges, house-tax and to get the suit property converted from leasehold to freehold. A revised agreement to sell was again entered into by defendant no.1 with Mr. S.B.Kaura on 6.4.2005 where the consideration was revised from Rs.99 lac to Rs.1,27,00,000/-. As defendant no.1 had already received Rs.10 lac, an additional advance of Rs.7 lac was paid thus, in all she received Rs.17 lac as earnest money.

4. The filing of this suit by the plaintiff in 2006 after about 9 years of death of her father, after 9 years of her marriage and after her mother had entered into an agreement to sell itself shows the ulterior motive of the plaintiff and more so when she did not make Mr. S.B.Kaura as a party to the suit. However, Mr. S.B.Kaura made an application under Order 1 Rule 10 CPC for being impleaded as a party and he was impleaded as a party. Thereafter, he made this application for rejection of the suit on various grounds.

5. A perusal of suit shows that the plaintiff sought a declaration that the property standing in the name of her mother, did not belong to her and actually belonged to her father. The property was registered in the name of her mother defendant no.1 in 1975. The husband of defendant no.1 remained alive for 22 long years after 1975 and died in 1997. He did not file a suit against his wife seeking a declaration that the property was actually his *benami* property in the name of his wife and he was the real owner. If he had not considered defendant no.1 (wife) as owner of the property and he considered the property as his property, he was at liberty to file a suit against defendant no.1 during his lifetime. The very fact that the husband of defendant no.1 did not file a suit against her seeking a declaration that the property was his property and not the property of defendant no.1, shows that defendant no.1 was an absolute owner of the property to the exclusion of everyone else. Her husband who remained alive for 22 years, after 1975 only treated her as the sole owner of the property. The plaintiff herself, even after attaining the age of majority did

not claim any share in the property either from her father or from the mother. She was married off in 1997 and even after 1997 she did not file a suit within limitation period seeking declaration that the property standing in the name of her mother was not actually the property of her mother but was the property of her father in which she had a right of inheritance. The timing of suit and making only three defendants i.e. her mother, sister and brother, makes it clear that the suit was a collusive suit, filed in collusion with defendants no. 1, 2 & 3 in order to avoid an agreement to sell which defendant no.1 had entered with defendant no.4 and which was not fulfilled and for specific performance of which defendant no.4 had to file a suit. I consider that the suit for declaration filed by the plaintiff seeking a declaration that the property was not the property of her mother but actually property of her father is miserably time barred. The period of limitation for filing such a suit is three years. The limitation starts in this case in 1975, when property was transferred in the name of defendant no.1 by Delhi Development Authority. Suit could have been filed by husband of defendant no.1. He expired in 1997. The suit could have been filed by the plaintiff latest by year 2000. The suit is liable to be dismissed being time barred.

6. The suit is also liable to be rejected on the ground of its not having been properly valued and proper court fee having not been affixed. The plaintiff has given her address as that of G-193, Sarita Vihar, Delhi. She was married in 1997 and moved to her matrimonial home after her marriage. Once a girl settles in her matrimonial home and if still she claims that contrary to the custom that she was keeping possession of part of the property legally owned by her mother, she has to show some prima facie document of her possession. Mere assertion of possession cannot avoid payment of Court fee under any circumstances. She has claimed that the property was worth Rs.1,50,00,000/- and she has claimed 1/4th share in the property valued at Rs.37,50,000/-. She was therefore obliged to pay Court fee on sum of Rs.37,50,000/-. She could not have valued the

suit for the purpose of Court fee at Rs.200/- and for the purpose of jurisdiction at Rs.37,50,000/-. I therefore consider that the valuation done by her in respect of partition of her share is not as per law and she cannot be considered to be in part possession of the property merely on the basis of an assertion without there being any document showing her prima facie possession. The suit has also not been properly valued for the purpose of declaration. The property is worth Rs.1,50,00,000/-, a declaration is being sought in respect of property worth Rs.1,50,00,000/- being the property of her father and not the property of actual owner i.e. defendant no.1, I therefore consider that suit has to be valued for the relief of declaration for purpose of Court fee and for the purpose of jurisdiction at Rs.1,50,00,000/- and she is obliged to pay Court fee for Rs.1,50,00,000/-. The suit is therefore not maintainable on the ground of non-payment of Court fee.

7. An argument has been raised that the Benami Transactions (Prohibition) Act would not cover this property and the plea raised by the defendant no.4 that the suit was barred under the Benami Transactions (Prohibition) Act was not tenable. It is submitted that the Benami Transactions (Prohibition) Act carves out an exception under Section 3(2)(a) where it is provided as under:

3. Prohibition of benami transactions- (1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

8. It is argued by the plaintiff that purchase of the property in the name of wife *benami* was permitted and the provisions of the Benami Transactions (Prohibition) Act would not be applicable.

9. A perusal of Section 3(2) of the Act would show that the law presumes that if the property is purchased in the name of wife or unmarried daughter, the property has been purchased for benefit of the wife and unmarried daughter. It only means that if a property is purchased in the name of wife it is for her benefit and she becomes the absolute owner of the property. It does not mean that the property would still remain a *benami* property of the husband and every other legal heir of the husband would have a share in the property. Section 14 of the Hindu Succession Act, 1956 makes it further abundantly clear that if any property is possessed by a female Hindu whether it is acquired before or after the commencement of Act it shall be held by her as full owner and not as a limited owner unless and until the instrument by which the property has been acquired prescribes a restriction on her ownership of such property. In the present case, the conveyance deed executed by DDA was in the name of defendant no.1, there was no restriction placed in the conveyance deed about the right of ownership of defendant no.1. Defendant no.1 was absolute owner of the property in terms of the title deed in her favour. The property cannot be considered to be either of her husband or of anyone else after 31 years of execution of the title deed in her favour.

10. The present suit is a gross misuse of the judicial process and is liable to be dismissed with exemplary costs. The suit seems to have been filed with a mala fide design of depriving defendant no.4 of his right to get the specific performance of the agreement entered by defendant no.1 with defendant no.4. I consider the suit should be dismissed with heavy costs so that Courts are not used as a tool of harassment and to further mala fide intentions by a litigant.

11. The application is allowed. The suit is dismissed with cost of Rs.1,00,000/-, out of which Rs.50,000/- be paid to defendant no.4 and Rs.50,000/- be deposited with Delhi High Court Legal Services Committee. In case the cost is not paid within 30 days, the same shall be recovered

through Execution. Defendant no.4 is authorized to file such an Execution for recovery of cost.

November 09, 2009
vn

SHIV NARAYAN DHINGRA, J.