

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

+ FAO 440/2012

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Date of decision: October 19, 2012

SMT. NIRMAL & ANR

..... Appellants

Through : Mr. T.K.A. Padmanabhan, Adv.

versus

MURARI LAL SHARMA & ANR

..... Respondents

Through : None

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.(ORAL)

CM No. 18205/2012 (exemption)

Exemption as prayed is allowed, subject to just exceptions.

Application stands disposed of.

FAO No. 440/2012

1. By way of this appeal, a challenge has been made to the impugned order dated 30.08.2012 passed by the learned Addl. District Judge, Dwarka Courts, Delhi wherein the application of the appellants/plaintiffs under Order 39 Rule 1 and 2 CPC filed in a suit for declaration for consequential relief and permanent injunction against the respondents/defendants, has been dismissed.

2. The appellants herein are the plaintiffs before the learned trial court. They have filed a suit for declaration with consequential relief of permanent injunction against respondents/defendants which is pending consideration before the learned trial court. Both the appellants are sisters of respondent no. 1/defendant no. 1. It is alleged that appellants/plaintiffs and respondent no. 1/defendant no. 1 and the LRs of their deceased brother namely, Om Prakash has inherited 1/4th share each in the property No. 620, measuring 140 sq. yds. within old Lal Dora of Village Jharoda Kalan, New Delhi from their parents. It is alleged that the aforesaid property is an ancestral property. It is alleged that the appellants/plaintiffs are in possession of first floor of the suit property whereas the respondent no. 1/defendant no. 1 is in possession of ground floor. It is alleged that the respondent no. 1/defendant no. 1 has unauthorisedly sold the entire suit property to respondent no. 2/defendant no. 2 without their knowledge on 22.07.2005 and the appellants/plaintiffs have come to know of the same only on 23.09.2010 when the respondent no. 2/defendant no. 2 gave threats of selling the said property on the basis of aforesaid sale deed. The prayer has been made in the suit declaring that the aforesaid sale deed is illegal and void. Along with the suit, an application under Order 39 Rule 1 and 2 CPC has been filed wherein prayer has been made for grant of ex parte ad interim injunction restraining the respondents from selling the aforesaid property till the disposal of suit.

3. Respondent no. 2/defendant no. 2 has filed written statement wherein he has alleged that the respondent no. 1/defendant no. 1 had sold the suit property

to him vide registered sale deed on 22.07.2005 for a consideration of ₹ 5 lakhs and after selling the property, respondent no. 1/defendant no. 1 has become dishonest and false suit has been filed against him. It is alleged that the appellants/plaintiffs along with other family members i.e. respondent no. 1/defendant no. 1 and LRs of other brother have filed a collusive suit. It is alleged that it is the respondent no. 1/defendant no. 1 who is trying to create a third party interest in the suit property. It is alleged that respondent no. 1/defendant no. 1 was the exclusive owner of the suit property and being the exclusive owner he had sold the same to the respondent no. 2/defendant no. 2. Learned trial court after considering the respective stand of the parties has dismissed the application under Order 39 Rule 1 and 2 CPC by observing that the sale deed in favour of respondent no. 2/defendant no. 2 is dated 22.07.2005 and it is not believable that the appellants/plaintiffs who are the sister of respondent no.1/defendant no.1 and the LRs of their deceased brother Om Prakash i.e. defendants 3 to 5 in the suit were not aware of the sale deed. It is also noticed that there was an earlier litigation between respondent no. 1/defendant no. 1 and respondent no. 2/defendant no. 2 wherein the respondent no. 2/defendant no. 2 had given a statement that he will not evict respondent no.1/defendant no.1 without due process of law.

4. Aggrieved with the same, the present appeal is filed.

5. Learned counsel for the appellant has submitted that the disposal of main suit will take time and if in the meantime the respondent no. 2/defendant no. 2

will create some third party interest in the suit property, it will create multiplicity of litigation and in the facts and circumstances of the case it will be appropriate if respondent no. 2/defendant no. 2 be restrained from selling the suit property during the pendency of the suit.

6. It is admitted position that the suit property was sold on 22.07.2005 by the respondent no. 1/defendant no. 1 who is the brother of appellants/plaintiffs to respondent no. 2/defendant no. 2. The stand of the appellant is that they had come to know only on 15.09.2010 when respondent no. 1/defendant no. 1 gave a public notice in 'Punjab Kesari' in respect of suit property stating that he had not received the sale consideration from respondent no. 2/defendant no. 2. The stand of the appellants/plaintiffs is that the respondent no. 1/defendant no. 1 has sold their share also to the respondent no. 2/defendant no. 2. There is nothing on record placed by them to show prima facie their alleged share in the suit property. There is also nothing on record to show as to whether any action was taken by the appellants/plaintiffs against their brother i.e. respondent no. 1/defendant no. 1 when they had allegedly come to know through public notice dated 15.09.2010 about the sale of the suit property. On the other hand, the stand of the respondent no. 2/defendant no. 2 is that it is a collusive suit. It has also come on record that firstly the respondent no. 1/defendant no. 1 had filed a suit in respect of suit property against respondent no. 2/defendant no. 2 for declaration and permanent injunction in which respondent no. 2/defendant no. 2 has given the statement that he will not evict respondent no. 1/defendant no. 1 without due process of law and thereafter the learned Judge has dismissed the

relief of declaration. In these circumstances, the learned Judge has rightly not granted the ad interim stay by observing that on the face of it, it appears to be a collusive suit. It has also come on record that the independent application under Order 39 Rule 1 and 2 CPC was also filed by the respondent no. 1/defendant no. 1 against respondent no. 2/defendant no. 2 wherein prayer was made for restraining respondent no. 2/defendant no. 2 from evicting the respondent no. 1/defendant no. 1 till the disposal of the suit and the said application was dismissed vide order dated 16.08.2010. The learned ADJ finding that there was no prima facie case in favour of appellants/plaintiffs has dismissed the application under Order 39 Rule 1 and 2 CPC. The detailed reasoning given in the impugned order is as under:-

“i. Plaintiff claims to be one of the legal heir of common ancestors of Chattar Singh who died in the year 25/9/1987 what plaintiffs and other legal heirs were doing since 1987 till the date of filing of the suit has not been explained.

ii. Plaintiff claim that they came to know about the sale deed executed by the defendant no. 1 in favour of defendant no. 2 only on 15/1/2010 that the sale deed dtd 22/7/2005 was executed by defendant no. 1 in favour of defendant no. 2. The alleged sale deed is executed by defendant no. 1 in favour of defendant no. 2 on 22/7/2005 claiming himself to be owner of the suit property. Plaintiffs are sisters of defendant no. 1 and it is very surprising that they don't know about the execution of sale deed dtd 2/7/2005 despite being sisters of defendant no. 1. Defendants no. 3 and 4 are the resident of vicinity. It is further surprising

that they do not know about the execution of the sale deed in favour of defendant no. 2 on 22/7/2005.

iii. Instead of filing suit for declaration of cancellation of Sale deed with consequential relief of permanent injunction. Plaintiff and other LR could have filed the suit for recovery to the extent of their share against the defendant no. 1, instead they have filed a suit against independent person who have nothing to do with the intense dispute between the plaintiff and other LRs and the defendant no. 1.

iv. After execution of the sale deed dt. 22/7/2005 in January 2010, one Sh VS Tomar advocate had issued a press release stating that sale deed in favour of defendant no. 2 has been cancelled as he has not received the money. Immediately after this press release defendant no. 1 Murari Lal Sharma filed a suit against defendant no. 2 for declaration and permanent injunction in which defendant no. 2 gave the statement that he will not evict the plaintiff in that suit without due process of law and then the Ld. Judge had dismissed the relief of declaration in that suit. Hence the present suit filed by the plaintiff appears on the face of it as a collusive with defendant no.1.

v. In this court also defendant no. 1 filed an independent application u/o 39 rule 1 and 2 CPC seeking that defendant no. 2 be restrained from evicting the defendant no. 1 till final disposal of the suit. The application filed in this case has since been dismissed by this court vide order dtd

16/8/2010.”

7. I find no illegality in the impugned order. Justified reasons are given in the impugned order in dismissing the application under Order 39 Rule 1 and 2 of CPC.

The appeal is rejected. It is clarified that nothing stated herein shall have any bearing on the merits of the case.

CM No. 18204/2012 (stay)

In view of the order on the main appeal, no orders are required on this application.

The same stands disposed of accordingly.

VEENA BIRBAL, J

OCTOBER 19, 2012
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