

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9131 of 2023

Petitioner :- Smt.Neeraja Takkar

Respondent :- Dr.Neeraj Dhawan And 4 Others

Counsel for Petitioner :- K.R. Singh,Rahul Chaudhary

Counsel for Respondent :- Rahul Sahai,Ajay Shankar

Hon'ble Jayant Banerji,J.

1. Heard Shri K.R. Singh and Shri Rahul Chaudhary, learned counsel for the plaintiff-petitioner, Shri Rahul Sahai, learned counsel for respondent Nos.1 and 2 as well as Shri Ajay Shankar, learned counsel for the respondent No.5, UCO Bank.

2. Though, this petition has been filed seeking several reliefs, however, learned counsel for the petitioner states that at this stage he is confining this petition to press relief Nos. 1 and 6 only, which are as follows:

"i. Set aside the impugned Order dated 20.02.2019 passed by the Learned Trial Court in Original Suit No.382 of 2018 (Neerja Takkar Vs. Neeraj Dhawan and others) as well as Order dated 14.02.2023 passed by the Learned District Judge, Agra, in Misc. Appeal No.69 of 2019 (Dr. Smt. Neerja Takkar Vs. Dr. Neeraj Dhawan and others), whereby the Temporary Injunctions Application under Order 39 Rule 1 & 2 has been rejected;

vi. Expedite the hearing of Original Suit No.382 of 2018 (Neerja Takkar Vs. Neeraj Dhawan and others), pending Learned Civil Judge (Senior Division), Agra within a stipulated period;"

3. It appears that the plaintiff-petitioner filed a suit seeking a declaration of voidance of a will-deed dated 8.9.2010 stated to be executed by the late Shri Shanti Lal Dhawan. A declaration for entitlement of one-third share in the suit property and in other immovable and movable assets of Shri Shanti Lal Dhawan and joint family HUF and of defendant No.4 was also sought. A declaration of the plaintiff being in joint possession of the suit property and permanent prohibitory injunction against the defendants from transferring, alienating etc. the suit property and other properties were also sought. A decree of injunction against the defendant No.5 for restraining it from paying the monthly rents to the defendant Nos. 1 or 3 was sought as well as for a court receiver to be appointed. The property in the suit was described as follows:

"PROPERTY IN SUIT

Land (Plot Nos. 6 & 7) underlying Shilaza Hotel, Building (bearing Municipal No. 1/50, Hariparwat Ward, Agra) of Shilaza Hotel, structures, constructions, fixtures & fittings, furniture's, movables and immovables, comprised in aforesaid Plot Nos. 6 & 7, Raja Mandi Station Road, Delhi Gate, Agra and aforesaid Building bearing Municipal No. 1/50, Hariparwat Ward, Agra and all past and future incomes/proceeds, goodwill,

4. By an order dated 20.2.2019, the application for temporary injunction filed by the plaintiff-petitioner was rejected by the trial court after observing certain contents of a registered will-deed dated 30.4.1971 executed by Lala Manohar Lal Dhawan and the will-deed dated 8.9.2010 that was registered and executed by late Shanti Lal Dhawan. It was noted that there was no evidence filed by the plaintiff-petitioner that could *prima-facie* reflect that the suit property was part of a property of the joint hindu family. Certain documents on record were referred to in this regard which established a *prima-facie* title in favor of Shanti Lal Dhawan. The date of execution of the will-deed dated 8.9.2010 and the death of the testator on 16.2.2016 were also considered. It was further noticed that the plaintiff had admitted that the defendants were in possession and in control over the suit property.

5. In the appeal bearing Civil Appeal No. 69 of 2019 filed by the plaintiff-petitioner, while rejecting the same, the court noted that a lease deed was executed by Nagar Nigam, Agra in favor of Shanti Lal Dhawan in 1958 and a certified copy was on record as paper No. 38C. It was noted that in the lease deed, there was no mention of the source of funds being from any joint family, but the amount of premium for the lease was paid by the lessee Shanti Lal Dhawan. It was further noted that document No. 40C1 to 40C6 reflect that the plots were changed to freehold in favor of Shanti Lal Dhawan and the entire amount that was reflected in the freehold deed, was paid by Shanti Lal Dhawan. It was noted that the will-deed is a registered document. Under the facts, it was noted that the plaintiff-petitioner had knowledge of the will-deed from a prior date.

6. Learned counsel for the petitioner has emphatically stated that late Shanti Lal Dhawan had no source of funds and it was the funds that were of the joint hindu family that were utilized by him in making the payments for the lease as well as for the freehold conversion of the suit property. It is stated that under the circumstances, the courts ought to have grant an injunction restraining the parties from alienating the suit property. Learned counsel for the petitioner has relied upon a judgment of the Supreme Court in the matter of **K.V. Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer** reported in **AIR 1965 SC 289** to contend that the question whether a joint family has sufficient funds from which an acquisition of property can be made, is of great importance and this aspect ought to have been considered by the courts while considering the application for grant of

temporary injunction.

7. Learned counsel for the respondents has opposed the petition stating that a clear finding has been recorded regarding the suit property being leased in favor of late Shanti Lal Dhawan and that he had provided the funds for the lease premium as well as for the conversion of the nature of the land as freehold.

8. Having heard learned counsel for the parties, as is evident from perusal of the orders impugned, the documents of lease and freehold that are on record of the suit as paper Nos. 38C and 40C reflect that the source of funds is not from the common fund of any joint hindu family but of late Shanti Lal Dhawan himself. However, this is a *prima-facie* finding. The question whether the source of the funds for the lease premium and freehold conversion where of the joint family, would be a matter of evidence that would be considered at an appropriate stage.

9. The judgment in the case of **K.V. Narayanaswami Iyer** (supra) that is cited by the learned counsel for the petitioner is of no assistance to them inasmuch as the judgment was passed by the Supreme Court after a preliminary decree was made in the suit which was subject to challenge in an appeal before the High Court which allowed the plaintiff's appeal and then the matter came before the Supreme Court. It is further noted that the observations made by the Supreme Court in paragraph Nos. 14, 15 and 16 of the judgment, which paragraphs have been specifically referred to by the learned counsel for the petitioner, reflect that the Supreme Court had referred to the evidence on record that was duly considered by the courts, while making the preliminary decree and allowing the first appeal. In the instant case, the question whether the suit property belongs to a joint family is itself an issue which is to be proved after due evidence.

10. As far as the second prayer made by the learned counsel for the petitioner that the suit be expedited, it is noted that the order-sheet of the trial court is not before us from which it could be evinced that at which stage is the trial. In view of the above, the relief sought for cannot be granted.

11. Under the circumstances, no interference is required in this petition. It is, therefore, **dismissed**.

Order Date :- 22.11.2023
K.K.Tiwari

(Jayant Banerji, J.)