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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : July 15, 2015

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RFA(OS) 67/2014

MR S N PURI

..... Appellant

Represented by: Mr.Arjun Singh Bhati, Advocate

versus

MR RAJAN KAPOOR & ORS

..... Respondents

Represented by: Mr.Vikas Dhawan, Advocate with
Mr.S.Panda, Advocate for R-1
Mr.Rajesh Gogna, Advocate with
Mr.Gaurav Gogna, Advocate for R-2
and R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned order dated November 26, 2013 various applications have been decided by the learned Single Judge, two of which are IA No.853/2013 and IA No.11351/2013. Whereas IA No.853/2013 was filed by plaintiff No.1, IA No.11351/2013 was filed jointly by plaintiff No.2 and defendants No.1 and 3. The former application was filed under Order XII Rule 6 of the Code of Civil Procedure, the latter was filed under Order XXIII Rule 3 of the Code of Civil Procedure. IA No.853/2013 has been allowed. Decree on admission has been passed in favour of plaintiff No.1. IA No.11351/2013 has been dismissed.

2. The appellant who was plaintiff No.2 has filed the instant appeal and

today learned counsel for the appellant states that the appellant's grievance is two-fold. Firstly to the dismissal of IA No.11351/2013 which was filed jointly by the appellant and defendants No.1 and 3. Counsel states that a decree in terms of the compromise ought to have been passed. The second grievance is to the decree being passed in favour of only plaintiff No.1 under Order XII Rule 6 of the Code of Civil Procedure.

3. From the facts which we would be noticing hereinafter it is apparent that the appellant, who was plaintiff No.1 is fighting a proxy second innings and the real beneficiary of the litigation would be Vinod Kumar Bakshi, the real contesting party who was defendant No.3 in the suit.

4. Vinod Kumar Bakshi had filed RFA (OS) No.8/2014 challenging the impugned order in so far it decreed the suit in favour of plaintiff No.1 alone and against him. He was the appellant in FAO (OS) No.140/2014 and his challenge therein was to IA No.11351/2013 being dismissed and a decree not being passed in terms thereof.

5. RFA (OS) No.8/2014 was dismissed vide order dated January 13, 2014 against which the Petition seeking Special Leave to Appeal No.8151/2014 has been dismissed by the Supreme Court on January 19, 2015. FAO (OS) No.140/2014 was dismissed by this Court on December 15, 2014 and we are informed that Vinod Kumar Bakshi has not challenged the said decision before the Supreme Court.

6. Thus, appellate remedy availed of by Vinod Kumar Bakshi with his grievance that the impugned order dated November 26, 2013 is illegal has resulted in the impugned order being upheld, both as regards a decree for possession being passed in favour of Rajan Kapoor, the plaintiff No.1 and not jointly in favour of Rajan Kapoor and S.N.Puri (plaintiff No.2) as also

for no decree being passed as per the compromised effected between S.N.Puri and the appellant.

7. The parties to the suit would be : Sh.Rajan Kapoor (plaintiff No.1), Sh.S.N.Puri (plaintiff No.2), M/s.Simran Rasoi and Caterers, a partnership firm (defendant No.1), Dev Dass Bhalla, partner of defendant No.1 (defendant No.2) and Vinod Kumar Bakshi, the second partner of defendant No.1 (defendant No.3). The appellant in this appeal is S.N.Puri.

8. Being relevant for the purposes of admission of S.N.Puri who, as noted above was plaintiff No.2 and is a co-signatory to IA No.11351/2013, we need to note that in paragraph 1 of the plaint it has been categorically averred that plaintiff No.1 is the owner of property No.IV/1/73, Gopi Nath Bazar, Delhi Cantt – the suit property.

9. The plaintiffs had filed a suit for recovery of possession and mesne profit/damages pertaining to property No.IV/1/73, Gopi Nath Bazaar, Delhi Cantonment, New Delhi. As per the plaint, it was pleaded that on February 15, 2004, the plaintiffs had entered into a lease agreement with Simran Rasoi and Caterers through its partners, Vinod Kumar Bakshi and Dev Dass Bhalla. A written lease deed was executed in respect of the ground floor portion of property No.IV/1/73, Gopi Nath Bazaar, New Delhi ad-measuring 500 sq.ft. at a monthly rent of ₹25,000/-. It was further pleaded that later on the plaintiffs came to know that Vinod Kumar Bakshi, without prior permission, had started utilizing the second floor of the premises and had raised temporary structure on the second floor. Pleading the same to be an act of trespass and breach of the terms of the lease, decree for possession of the ground floor as also the second floor as also arrears of rent and damages were prayed for.

10. The plaint is a little inartistically drafted for the reason what has actually happened is that the lease-deed in question has been executed on behalf of plaintiff No.1 by plaintiff No.2 (S.N.Puri) on the strength of a power of attorney executed by the former in favour of the latter. In paragraph 1 of the plaint, as noted above, after pleading that plaintiff No.1 is the owner of the suit property, it has been pleaded that the plaintiffs let out the same to Simran Rasoi and Caterers. Meaningfully read, the pleadings in the plaint would be that plaintiff No.1 is owner of the suit property and let out the ground floor thereof to Simran Rasoi and Caterers through plaintiff No.2 who was his attorney and authorized to do so.

11. Vinod Kumar Bakshi filed a written statement claiming that Dev Dass Bhalla had no relationship with Simran Rasoi and Caterers, which partnership firm had been dissolved, and that all rights had vested in him. It was further pleaded that he had purchased the ground floor and the second floor of the suit property vide memorandum of understanding-cum-agreement to sell and GPA dated January 24, 2004 i.e. documents allegedly executed in his favour by the owner of the property. Hence, it was claimed by him that he was the sole and exclusive owner and in possession of the ground floor and the second floor of the suit property. Accordingly, the relationship of landlord and tenant, between him and plaintiff No.1 was denied. It was averred that he never paid any rent to the plaintiffs. It was pleaded that the alleged lease-deed dated February 15, 2004 relied upon by the plaintiffs was forged and fabricated.

12. Dev Dass Bhalla (the erstwhile partner of Simran Rasoi and Caterers) filed a separate written statement wherein he admitted that plaintiff No.1 was the owner of the property and that the lease-deed was executed between

the parties as pleaded in the plaint.

13. Plaintiff No.1 filed I.A. No.853/2013 relying upon certain admissions/statements made by Vinod Kumar Bakshi in his pleadings in WP(C) No.170/2008 in which Vinod Kumar Bakshi had admitted the lease-deed in question.

14. The said writ petition was filed by Vinod Kumar Bakshi along with his wife and children against Delhi Cantonment Board seeking a mandamus that the Delhi Cantonment Board be directed to include their names in the electoral list, alleging that he and his family were residents on the second floor of suit property.

15. In the counter affidavit filed, the Delhi Cantonment Board pleaded that Vinod Kumar Bakshi and his family were residing at Pankha Road, New Delhi, and that there existed a lease agreement, copy of which was annexed with the pleadings. It was pleaded that in the lease-deed in question Vinod Kumar Bakshi had disclosed his address as resident of RZ-H/19 Raghu Nagar, Pankha Road, New Delhi. A copy of the lease-deed was annexed as Annexure R-2 to the counter affidavit.

16. In the rejoinder filed to the counter-affidavit filed by the Delhi Cantonment Board, Vinod Kumar Bakshi had admitted the lease-deed being executed by him, and its contents.

17. Treating the same as an admission, notwithstanding the pleadings in the written statement filed, the learned Single Judge decreed the suit for possession by allowing IA No.853/2013.

18. In RFA (OS) No.8/2014, the learned counsel for Vinod Kumar Bakshi had vehemently argued that the said writ petition dealt with the issue of deletion of Vinod Kumar Bakshi's and his family's name from the electoral

rolls and that is why the writ petition was filed to point out that he and his family were residing on the second floor of the suit property and that the names have been wrongly deleted from the electoral rolls. It was argued that the occupancy of the ground floor was not in issue in the said writ petition. It was argued that there was no admission to warrant IA No.853/2013 to be allowed.

19. Before proceeding to deal with the arguments advanced by the learned counsel for Vinod Kumar Bakshi, the Division Bench highlighted one fact. The lease-deed, which is the foundation of the plaint is dated February 15, 2004. As per Vinod Kumar Bakshi, he had purchased the property under a Memorandum of Understanding-cum-Agreement to Sell and a General Power of Attorney dated January 24, 2004. Thus, it was highlighted that if an admission is to be found in the pleadings of Vinod Kumar Bakshi that he had executed the lease-deed dated February 15, 2004, which records the plaintiff No.1 to be the owner and both plaintiffs to be the lessors, estoppel would come in his way to plead a title of somebody else and through him of his. He would be estopped from challenging the title of the lessors.

20. It being settled law that an admission can be found in any document executed by the parties, it could be pleadings in some other proceedings as well, the Division Bench noted in its order dated January 13, 2014 that it is trite that unless explained, a proved admission by a party on a fact in issue can be used as evidence against the maker of the admission. It was noted that based on an admission a suit can be decreed without a trial.

21. To look into the plea of admission the Division Bench called for the records of WP(C) No.170/2008. The said writ petition was filed by Vinod Kumar Bakshi seeking the following relief:-

“a) That by issuance of a Writ of Mandamus, Prohibition or Certiorari or any other appropriate Writ or directions, the decision of the Respondent No.1 sustaining the objections as contained in the Annexure P-3 (Colly.) be quashed/set aside and the Respondent No.1 be further directed to include the names of the Petitioners in the electoral roll/list for the year 2007, Ward No.3 of Delhi Cantonment Board published on 02.01.2008 under Rule 17 of the Cantonment Electoral Rules 2007.

b) That the Respondents be further directed/restrained not to take any further action on the electoral rolls for Ward No.3 of Delhi Cantonment Board published on 02.01.2008.”

22. The Division Bench thereafter noted that in its reply to the Writ Petition, in Preliminary Objection No.4, the Delhi Cantonment Board pleaded as follows:

“4. That the Petitioners have also concealed the material fact that Petitioner No.1 had entered into a Lease Agreement with respect to property bearing No.IV/1/73, Ground Floor shop for carrying out commercial activity and in the said Lease Deed the Petitioner No.1 has shown his residence to be that of RZ-H/19, Raghu Nagar, Pankha Road, New Delhi-46 (copy of Lease Deed is enclosed and marked R-2). Thus it is evident that the Petitioners are not residing in the Cantonment as alleged by them. The Petitioner No.1 is in fact running a shop in the name of M/s Bikaner Sweets and Snacks corner (Simran Rasoi and Caterers) at IV/1/73, Gopi Nath Bazaar, Delhi Cantt and for that he has a trade license also. Copy of grant of trade license for the year 2004-05 is enclosed and marked as R-3.”

23. The Division Bench noted that a typed copy of the lease-deed dated February 15, 2004, executed by the plaintiffs in favour of Simran Rasoi and Caterers, a partnership firm of Vinod Kumar Bakshi and Dev Dass Bhalla

was filed and attached with the said counter affidavit as Annexure R-2.

24. The Division Bench thereafter noted that in para 4 of the rejoinder filed by Vinod Kumar Baskhi, which is a reply to the aforesaid paragraph of the counter affidavit of the Delhi Cantonment Board, Vinod Kumar Bakshi pleaded as follows:-

“4. In reply to para 4 it is submitted that there is no question of concealment of Lease Agreement of premises bearing No.IV/1/73, of the ground floor where the Respondent is being his business. It is submitted that the premises bearing No.IV/1/73 is a residential-cum-commercial as per the lease of the land, copy of which is enclosed as ANNEXURE P-6 to the writ petition and the ground floor lease is only for running the business whereas the present claim of the Petitioner is related to the second floor not that of the ground floor as such all allegations are full of falsehood and is of no consequence. Moreover, nothing is to be looked into the merit once the objections are not preferred in a valid manner.”

22. The Division Bench thereafter opined in paragraph 17 as under:-

“17. A perusal of the said rejoinder filed by the appellant unequivocally demonstrates that the appellant did not deny the execution of the lease agreement dated 15.2.2004. His only plea was that the lease-deed pertained to the ground floor. The appellant forgot that at that stage of the litigation, with reference to the lease-deed the Delhi Cantonment Board was trying to establish the fact that as on the date when the lease-deed was executed i.e. 15.2.2004, the appellant disclosed his residential address to be RZ-H/19, Raghu Nagar, Pankha Road, New Delhi. Be that as it may, there is a clear admission by the appellants that under the lease-deed in question the partnership firm of which he was a partner took on rent a portion of the ground floor from respondents No.1 and 2.”

23. Making a reference thereafter to the provisions of Order XII Rule 6 of

the Code of Civil Procedure and noting various judgments, the Division Bench opined that Vinod Kumar Bakshi not having denied in the said pleadings of the writ petition the execution of the lease-deed dated February 15, 2014, the due execution thereof would be an admission and thus Vinod Kumar Baskhi would be precluded from relying upon a title document in his favour which precedes the date of the lease-deed. Thus, the decree on admission granted by the learned Single Judge was upheld.

24. Deciding FAO (OS) No.140/2014 on December 15, 2014, the Division Bench noted that as far as this Court is concerned, the decision dated January 13, 2014 binds it.

25. The logical corollary of the decision was opined to be that the second plaintiff would have no right, title or interest in the suit property and thus cannot be the co-signatory to any application conceding to a claim in favour of Vinod Kumar Baskhi.

26. For the reason one of the partner of M/s.Simran Rasoi and Caterers : Dev Dass Bhalla admitted the claim of plaintiff No.1 to be the owner of the suit property as also the execution of the lease-deed dated February 15, 2004, the plaintiff No.2 being held to be a mere attorney of plaintiff No.1, was held as not authorized to enter into any settlement admitting ownership of Vinod Kumar Bakshi in the suit property or admitting any interest of Vinod Kumar Baskhi in the suit property.

27. Thus, FAO (OS) No.140/2014 was dismissed.

28. For the reasons contained in the order dated January 13, 2014 dismissing RFA (OS) No.8/2014 and the decision dated December 15, 2014 dismissing FAO (OS) No.140/2014, instant appeal is dismissed with cost against the appellant and in favour of respondent No.1.

CM Nos.5385-86/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 15, 2015
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