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

+ FAO(OS) 589/2013 & CM No. 20402/2013

Date of decision : 2nd February, 2016

RAJESH KUMAR ARORA & ORS Appellant
Through: Mr. Vivek Singh, Adv.

versus

SMT SHILA & ORS Respondent
Through: Mr. Nitin Gupta, Adv. for
R-1 to 4
Mr. Rahul Gupta,
Mr. Shekhar Gupta and
Mr. Umang Gupta, Adv. for
R-6

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

Gita Mittal, J

CM No.20403/2013

Heard.

For the reasons stated, delay in filing the appeal is condoned.

This application is allowed in the above terms.

FAO(OS) 589/2013

1. The present appeal has been couched as an appeal under Section 10 of the Delhi High Court Act assailing the order dated 19th August, 2013 to the extent that it has

dismissed IA No.16353/2011 in CS(OS) No. 2015/2009 filed under Order I Rule 10 of the CPC by one of the legal heirs of Smt. Shanti Devi, plaintiff. The appellant also assails the order of the same date whereby the learned Single Judge was pleased to allow I.A.No. 681/2003 which had been filed in the same suit by Sh. Ram Kishan Gera who expired during its pendency and was succeeded by his legal heir Sh. Kundan Lal Gera, seeking impleadment under Order I Rule 10 of the CPC.

2. It appears that the appellants had also sought review of the orders passed in these applications by way of Review Application Nos.510 and 511/2013 which came to be dismissed by the learned Single Judge by the order dated 9th October, 2013.

3. We have heard learned counsel for the parties who have also taken us through the record filed in this appeal. It appears that Late Shri Uttam Chand had acquired several properties during his lifetime including the property bearing no. 13, Krishna Market, Kalkaji, New Delhi. In as much as CS(OS) No.2015/2009 pertains only to this Krishna Market property, we are confining the facts noted by us to this property alone.

4. Late Shri Uttam Chand is alleged to have executed a registered Will dated 27th April, 1960 bequeathing and distributing his properties amongst two of his sons namely Shri Ram Kishan and Shri Kanshi Ram (deceased) and his only daughter Smt. Jamuna Rani. The appellants are claiming

under an agreement to sell dated 4th October, 1987 purportedly executed by Sh. Kanshi Ram Gera alone as owner of the Krishna Market property in favour of Smt. Shanti Devi, their predecessor in interest. By way of CS(OS) No. 2015/2009 Smt. Shanti Devi had sought specific performance of this agreement dated 4th October, 1987 impleading Sh. Kanshi Ram as the sole defendant. It appears that Sh. Kanshi Ram died during the pendency of this suit and his children came to be impleaded as legal heirs.

5. On learning about the filing of the suit, Sh. Ram Kishan Gera, the other son of Sh. Uttam Chand filed I.A.No.681/2003 under Order 1 Rule 10 of the CPC seeking impleadment as a co-defendant in the suit.

6. It is not disputed that Sh. Ram Kishan Gera and his legal heirs are asserting claims with respect to the Krishna Market, Kalkaji property and also defending rights in litigation filed either by them or against them by Late Sh. Kanshi Ram Gera and his legal heirs, in CS(OS) No. 622/1997 and; 432/2006 which are also pending. It is also undisputed that Shri Ram Kishan Gera and Shri Kanshi Ram Gera are deriving rights in this property as sons and heirs of Late Shri Uttam Chand.

7. The impugned order notes the nature of the claimed rights, title and interest of the two branches of Uttam Chand family, i.e. of the family of Ram Kishan on one hand and those of Sh. Kanshi Ram on the other hand. On a

consideration of the rival contentions, the learned Single Judge by the impugned order dated 19th August, 2013 has concluded that Sh. Ram Kishan Gera, and after him his legal heir Sh. Kundan Lal Gera, was interested in the subject matter of the suit and granted the application for impleadment after narrating all the aforementioned facts.

8. The appeal is premised on the sole objection that Sh. Ram Kishan Gera and his son Kundan Lal were strangers to the agreement to sell dated 4th October, 1987 and therefore, cannot be impleaded in the plaintiff's CS(OS) No. 2015/2009 whereby specific performance thereof had been sought. In support thereof reliance has been placed on the pronouncement of the Supreme Court reported at **(1995) 3 SCC 147, Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru**. In this case, it was held that in the suit for specific performance, the only question which is required to be answered is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance or not. The Supreme Court had concluded that since the respondent was not a party to the agreement to sell, it could not be said that without his presence, the dispute to specific performance could not be determined and therefore, he was not a necessary party.

9. In para 10 of this pronouncement, the court had made

observations as to impleadment of a party as a defendant even though no relief may be claimed against him if he was the proper party and that discretion was conferred on the court to add such party if the court would be in a better position to effectually and completely adjudicate upon the controversy in the presence of such person. So far as Specific Relief Act is concerned, it was observed that under Sections 15 and 16 of the Act, based on the fact situation, the court would mould the relief. For these reasons, even though the respondent was claiming under an independent decree declaring his right to the property, but as he was not a party to the agreement to sell, it was held that he was not a necessary and property party to the suit.

10. This principle was followed by the Supreme Court in a later judgment reported at **(2005) 6 SCC 733, *Kasturi v. Iyyamperumal & Ors.***

11. Mr. Rahul Gupta, learned counsel representing respondent no. 6 in this appeal has, however, placed before us the pronouncement of the Supreme Court reported at **(2007) 10 SCC 82, *Sumtibai & Ors. v. Paras Finance Co. & Ors.*** explaining the principles laid down in ***Kasturi v. Iyyamperumal*** and holding that in a suit for specific performance, if a third party had semblance of title and interest in the suit property, he can certainly maintain an application for impleadment. The illuminating observations and legal principles laid down by the Supreme Court squarely

apply to the present case and read as follows :

“9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi v. Iyyamperumal [(2005) 6 SCC 733]. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a ***third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit.*** That would unnecessarily protract or obstruct the proceedings in the suit. ***However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute.*** In the present case, the registered sale deed dated 12-8-1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

10. As observed by this Court in *State of Orissa v. Sudhansu Sekhar Misra* [AIR 1968 SC 647] vide para 13: (AIR pp. 651-52)

“13. ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor

what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, L.C. said in *Quinn v. Leathem* [1901 AC 495 : (1900-03) All ER Rep 1 (HL)] :

‘Now before discussing the case of *Allen v. Flood* [1898 AC 1 : (1895-99) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.’”

(Emphasis supplied)

12. In *Sumtibai*, the court had further relied on the pronouncement reported at *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213; *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 11 and *Bharat Petroleum Corpn. Ltd. v. N.R.*

Vairamani [(2004) 8 SCC 579 : AIR 2004 SC 4778 in support of the proposition that a decision cannot be applied without consideration of the factual matrix in which it was rendered).

13. After these observations, in para 14, the legal principles were culled out in the following terms :-

“14. In view of the aforesaid decisions we are of the opinion that *Kasturi case*[(2005) 6 SCC 733] is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party *C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a* suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

(Emphasis by us)

14. It would, therefore appear that the possibility of multiplicity of proceedings by non-impleadment of a third party in a suit for specific performance and the existence of a ‘semblance of a title’ in the party seeking impleadment would be the guiding criterion for permitting the application for such impleadment.

15. Mr. Rahul Gupta has also placed a Single Bench pronouncement of this court reported at **2011 (122) DRJ 306**

Anjana Vij v. Krishan Dev & Anr. wherein it was said that the Supreme Court, in the case of **(2010) 7 SCC 417 Mumbai International Airport Pvt. Ltd.**, on the examination of its earlier decisions in **(2005) 6 SCC 733 Kasturi v. Iyyamperumal & Ors** and *Sumtibai* felt that there was no conflict between the two decisions since they were dealing with different situations, requiring application of different facets of sub-Rule 2 of Section 10 of Order 1.

16. Mr. Vivek Singh has placed reliance on a Division Bench pronouncement of this court reported at **MANU/DE/3378/2009 Church of India v. Church of North India Trust Association & Ors.** This judgment was rendered in an appeal arising of a suit for declaration of title. We also note that there is no reference therein to the judicial precedents noted by us hereinabove.

17. In the facts in hand, Late Shri Ram Kishan Gera and his heirs were claiming right and interest in the suit property which belonged to his father Shri Uttam Chand and prima facie were able to show the requisite “semblance of title and interest” necessary for impleadment. In view thereof, the challenge in the present appeal by the appellant to the order passed by the learned Single Judge allowing IA No. 681/2003 filed by Sh. Ram Kishan Gera permitting impleadment of his legal heirs in CS(OS) No. 2015/2009 is completely misconceived and is hereby dismissed.

18. We now propose to consider the appellant’s challenge

to the impugned order whereby I.A.No.16353/2011 filed by Sh. Raj Kumar Arora, one of the legal heirs of Smt. Shanta Devi (plaintiff in CS(OS) No. 2015/2009), was dismissed.

19. The appellant has claimed that on the demise of the plaintiff Smt. Shanta Devi in 1991, an application for bringing on record her legal heirs being two sons Raj Kumar Arora, Rajesh Kumar Arora and one daughter Smt. Kamlesh Kumari Arora was allowed by the order dated 23rd November, 1993 was allowed. It appears that Sh. Raj Kumar Arora also expired on 4th July, 2011.

20. On 30th September, 2011, IA No. 16353/2011 was filed by Sh. Rajesh Kumar Arora under Order I Rule 10 of the CPC praying for deleting the name of Sh. Raj Kumar Arora and Smt. Kamlesh Kumari Arora and permission to continue the suit. This application was premised on a memorandum of family settlement dated 6th April, 1994 amongst the legal heirs of Smt. Shanta Devi. As per this family settlement, the suit property had fallen absolutely to the share of the applicant Sh. Rajesh Kumar Arora.

21. This application was opposed by the legal heirs of Sh. Kanshi Ram Gera (respondent nos.2 to 4 herein) inter alia on the ground that the family settlement had taken place in 1994. The application had however, been made in 2011 after 17 years. This application was rejected by the order dated 19th August, 2013 on the sole ground that there is serious opposition to the prayer by the counsel for the defendant and

that the plaintiffs would have an opportunity to prove the family settlement.

22. We have heard learned counsel for the parties. It appears that the widow and two sons of Sh. Raj Kumar Arora had deposed affidavits in support of the execution and bindingness of the family settlement dated 6th April, 1994. They had categorically stated that they have no right, title and interest in the property which was the subject matter of CS(OS) 2015/2009 and supported the deletion application .

23. Our attention is drawn also to the fact that the heirs of Sh. Raj Kumar Arora as well as Smt. Kamlesh Kumari Arora have joined Sh. Rajesh Kumar Arora in filing the present appeal as well and have reiterated their stand under the said family settlement.

24. So far as the apprehension of learned counsel for the respondent that the grant of the prayer made in I.A.No.16353/2011 could impact adjudication of rights between the parties in the main suit is concerned, we are of the view that this apprehension is completely misconceived in as much as there is no expression of opinion on the merits of the claim made in the family settlement dated 6th April, 1994 either by the learned Single Judge or by this court while considering the application for impleadment. The adjudication on the rights and claims of the parties has abide by the pleadings of the parties and the evidence which is led on the rival contentions and claims.

25. It cannot be disputed that the plaintiff is *dominus litus*. We are of the view that prayer for deletion of a party made by way of I.A. No.16353/2011 deserves to be accepted.

In view thereof, the order dated 19th August, 2013 dismissing IA No. 16353/2011 is hereby set aside and quashed and IA No. 16353/2011 is hereby allowed. The appellant shall ensure that an amended memo of parties in terms of this judgment is filed in CS(OS)No.2015/2009 within two weeks from today.

In view of this, the order dated 9th October, 2013 also stands set aside and quashed.

This appeal is disposed of in the above terms.

GITA MITTAL, J

I.S.MEHTA, J

FEBRUARY 02, 2016