

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

Pronounced on: March 09, 2016

+ **LPA 723/2015**

KIRAN ABNASHI CHAWLA & ANR Appellants
Through: Mr. Amit Sibal, Sr. Adv. with
Mr. Abhishek Kr. Rao, Mr. Shailesh
Suman, Ms. Tushita Ghosh,
Mr. Bhavya Bharti, Ms. Pooja Garg,
Advocates

Versus

MARGUERITE CHAWLA Respondent
Through: Mr. Peeyoosh Kalra, Adv. with
Mr. Ankit Khurana, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: **Ms. G.ROHINI, CHIEF JUSTICE**

1. This appeal is preferred against the order of the learned Single Judge dated 05.10.2015 in IA No.1253/2015 in CS(OS) No.2951/2014 allowing the application filed by the plaintiff under Order XII Rule 6 of CPC and granting a decree for recovery of the possession of the suit property.

2. The defendants in the suit are the appellants before us. For the sake of convenience the appellants and the respondent herein shall hereinafter be referred to as they were arrayed in the plaint, i.e., defendants and the plaintiff respectively.

3. The preliminary objection raised by the respondent herein/plaintiff as to the maintainability of the present appeal in view of the statutory bar under Section 6(3) of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') was considered and overruled by us by a detailed order passed on 23.11.2015. Pursuant thereto, we have heard the learned counsel for both the parties on merits of the case.

4. The plaintiff filed CS(OS) No.2951/2014 under Section 6 of the Act seeking a decree against the defendants to hand over the vacant and peaceful possession of the first and Barsati floor of the property bearing No.N-258, Greater Kailash-I, New Delhi (hereinafter referred to as the 'suit property'). The case of the plaintiff was that the suit property was owned by her husband H.P.S. Chawla and on his demise on 04.03.2014, she being the Class-I legal heir, succeeded to the suit property. It is pleaded in the plaint that though she is an American citizen, she lived in India off and on along with her husband. It is also claimed that the status of the suit property as her matrimonial home remained unaltered and that she continued to have constructive possession of the same through her husband. It is alleged that the defendants trespassed into the suit property on the basis of the Will dated 03.11.2013 allegedly executed by her husband appointing the defendant No.1 as one the executors of the Will.

5. Though the defendant No.1 contested the suit claim by filing a written statement, the plaintiff filed IA No.1253/2015 under Order XII Rule 6 of CPC with a prayer to pronounce the judgment in terms of the prayer made in the plaint on the basis of certain admissions made by the defendant No.1 in her written statement. By the order under appeal, the learned Single Judge

allowed the said I.A.No.1253/2015 and accordingly decreed the suit in favour of the plaintiff with a direction that the possession of the suit property shall be handed over to the plaintiff within two weeks. Aggrieved by the said order, the defendants No.1 and 2 preferred the present appeal.

6. Order XII Rule 6 of CPC provides for giving the judgment where admissions of the fact have been made either in the pleadings or otherwise whether orally or in writing without waiting for the determination of any other question between the parties. Whenever such a judgment is pronounced having regard to the admissions, a decree shall be drawn up in accordance with the judgment. Order XII Rule 6 of CPC may be reproduced hereunder for ready reference:

“6. Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of an party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as It may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

7. The plaintiff prayed for a judgment under Order XII Rule 6 of CPC claiming that the averments in the written statement of defendant No.1 would amount to admissions of fact entitling her for a decree for recovery of the possession of the suit property. According to the Plaintiff, the following facts have been admitted:

- i. The plaintiff is the legally wedded wife of Late H.P.S.Chawla and the only surviving Class-I legal heir.
- ii. Suit property belonged to Late H.P.S.Chawla and it was his permanent place of residence in India before his demise.
- iii. Defendant No.1 is in possession of the suit property as an executor of the alleged Will dated 03.11.2013.

8. It was claimed by the plaintiff that the suit property being the matrimonial home of plaintiff and her husband at India, the plaintiff was always in possession of the same and was holding the same in her own capacity as also through her husband and that the defendant No.1 who was not in possession of the suit property prior to 12.04.2014, had forcibly entered the suit house only on 12.04.2014 on the basis of the alleged Will dated 03.11.2013 claiming herself to be an executor of the said Will.

9. Thus, the plaintiff contended that the ingredients required to be proved for the purpose of a suit under Section 6 of the Specific Relief Act, i.e., previous possession, dispossession and filing of the suit within six months of dispossession stood proved and admitted and consequently she is entitled to a decree for restoration of possession of the suit property in terms of Order XII Rule 6 of CPC.

10. The defendant No.1 in her reply contended that there is no admission of any fact by the defendants with respect to the plaintiffs' claim of title or possession over the suit property and thus, the application is misconceived.

11. The learned Single Judge allowed the application and decreed the suit in favour of the plaintiff holding that the plaintiff having been in constructive possession of the suit property through her husband cannot be dispossessed by the defendant and that any rights that the defendants may have in the suit property as per Will propounded by them would be the subject matter of the pending probate case. The learned Single Judge had arrived at the said conclusion in view of the fact that the defendant No.1 in her written statement had not disputed the fact that the plaintiff is the legally wedded wife of late H.P.S. Chawla. The learned Single Judge was also of the view that the fact that late H.P.S. Chawla before leaving for America had handed over the keys of the suit property to the defendant No.2 in November, 2013 would not necessarily mean that the defendants have been in possession as the legal heirs or as beneficiaries of the alleged Will and that the possession in law retained by late H.P.S. Chawla and through him by his wife/the plaintiff. Thus, it was held that the plaintiff having been deprived of her legal possession is entitled under Section 6 of the Act to recover the possession of the suit property and for restoration of status quo ante.

12. We have given our thoughtful consideration to the controversy involved.

13. It is no doubt true that the plaintiff is the legally wedded wife of late H.P.S. Chawla and the said fact has not been denied by the defendant No.1 in her written statement. However, the fact remains that the plaintiff is a citizen of the United States of America. It is also not in dispute that she was not in actual physical possession of the suit property either before or after the

demise of H.P.S. Chawla but she claims legal possession of the suit property on the basis of her status as a legally wedded wife of late H.P.S.Chawla.

14. On the other hand, the defendant No.1 claims to be the life partner of late H.P.S. Chawla and thus was in possession of the suit property along with late H.P.S. Chawla till November, 2013 when both of them left for USA together for his treatment. The specific case of the defendant No.1 is that after the demise of H.P.S. Chawla on 04.03.2014 in USA, she had flown from USA to India on 12.04.2014 and took over the possession of the suit property being one of the administrators of the Will executed by late H.P.S. Chawla. Admittedly, the plaintiff arrived in India only on 15.04.2014 and even according to her, she could not enter the suit property because she was obstructed by the defendants.

15. As noticed above, the Plaintiff claims constructive and legal possession of the suit property on the basis of her status as the legally wedded wife of late H.P.S. Chawla and being the only surviving Class-I legal heir. Though the plea that the Plaintiff is the legally wedded wife of late H.P.S. Chawla has been admitted in the written statement of Defendant No.1, the claim of constructive and legal possession has been categorically denied by the Defendant No.1. On the other hand, Defendant No.1 claimed physical possession of the suit property till November, 2013 having stayed along with late H.P.S. Chawla. On the basis of the Will stated to have been executed by late H.P.S. Chawla appointing her as one of the executors of Will, Defendant No.1 also claims legal possession with effect from 04.03.2014, i.e. on the demise of H.P.S. Chawla. We have already taken note of the plea of the Plaintiff in her application under Order XII Rule 6 of

CPC that the Defendant No.1 had arrived in India on 12.04.2014 and took over the possession of the suit property by the time the Plaintiff reached India on 15.04.2014.

16. It is relevant to note that the legal possession claimed by the Plaintiff on the basis of her status as legally wedded wife of late H.P.S. Chawla has been disputed by the Defendant No.1 in the light of the alleged Will executed by H.P.S. Chawla which came into force with effect from 04.03.2014. The contention of the Plaintiff that the Will cannot be relied upon unless and until the probate is granted has also been refuted by the Defendant No.1 in view of Sections 211, 213 read with Section 57 of the Indian Succession Act, 1925 and it is contended that the Will executed by late H.P.S. Chawla does not require any probate. Therefore, according to the Defendant No.1, the plaintiff cannot claim the legal possession with effect from 04.03.2014. So far as constructive possession is concerned, the contention was that no such presumption can be drawn in view of the fact that the Plaintiff is a citizen of USA and there is nothing on record to support her plea that she lived in the suit house off and on along with her husband. The further contention is that after the demise of H.P.S. Chawla on 04.03.2014, the Plaintiff cannot claim the status of the suit property as her matrimonial home in the light of the Will executed by H.P.S. Chawla appointing the Defendant No.1 as one of the executors of the Will.

17. In the facts and circumstances of the case, we are of the view that the various issues involved in the suit can be adjudicated only after full-fledged trial and it is not a matter of granting a decree on the basis of the only admission that the plaintiff is the legally wedded wife of late H.P.S. Chawla.

Be it noted that the Plaintiff is not claiming either actual physical possession or dispossession. The claim that she was in constructive possession of the suit property being her matrimonial home as well as her claim for legal possession being the Class-I legal heir of late H.P.S. Chawla has been categorically denied by the Defendant No.1 on various grounds. The plea of the Plaintiff that she had deployed security guards on 08.04.2014 at the suit property and that the Defendant No.1 had forcibly trespassed into the property by pushing aside the guards and by intimidating the servants who were looking after the property in the absence of the Plaintiff and her husband H.P.S. Chawla is also a disputed question of fact. Thus, it cannot be said that there is an admission regarding 'dispossession' of the Plaintiff which is one of the essential ingredients of Section 6 of the Specific Relief Act. The reliance placed upon ***Sadashiv Shyama Sawant (dead) through LRs & Ors. v. Anita Anant Sawant, (2010) 3 SCC 385*** by the learned counsel for the Respondent/Plaintiff to substantiate his contention that the possession of the Plaintiff is legal possession and it is sufficient for grant of decree under Section 6 of the Specific Relief Act, is misplaced and has no relevance to the peculiar facts and circumstances of the present case.

18. For the aforesaid reasons, we are of the view that no conclusion can be arrived at as to the legal or constructive possession of the Plaintiff merely on the basis of the admission of the Defendant No.1 in her written statement that the Plaintiff is the legally wedded wife of late H.P.S. Chawla. According to us, it is a matter of trial and no decree can be granted under Order XII Rule 6 of CPC.

19. The order under appeal passed by the learned Single Judge is, therefore, set aside and the appeal is accordingly allowed. The matter will be listed before the learned Single Judge on 9th May, 2016 as per Roster for further proceedings.

CHIEF JUSTICE

JAYANT NATH, J.

MARCH 09, 2016

pmc

