

\$~13

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(OS) 596/2016 & I.A.No.14840/2016

SMT JYOTI

..... Plaintiff

Through

Mr.Raman Kapur, Sr.Advocate with
Mr.S.S.Dahiya, Advocate.

versus

LOKESH & ORS

..... Defendants

Through

Ms. Smita Maan, Advocate for D-1
and D-2
Mr.Sumit Tomar, Advocate for D-3.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

%

03.05.2018

Present suit has been filed for declaration and cancellation of the Will. The prayer clause in the present plaint is reproduced hereinbelow:-

“i). Pass a decree in favour of plaintiff and against the defendant nos.1 & 2 by declaring the Will, bearing registration No.644, in book no.3, vol no.626 on page 138 to 140, dated 25.06.2013 null & void and cancellation thereof.

ii). Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant nos.1 & 2 thereby directing the Sub-Registrar IX, Delhi to cancel the Will, bearing registration No.644, in book no.3, vol no.626 on page 138 to 140, dated 25.06.2013 and deregister the same.

iii). Pass a decree in favour of the plaintiff and against defendant nos.1 & 2 to pay the mesne profit @ Rs.25,000/- per month from the date of institution of the present suit.

iv) Pass a decree in favour of the plaintiff by directing the defendant nos.1 & 2 to handover the peaceful possession of the

property/land in question to the plaintiff.

v) And/or pass any other order as the Hon'ble Court deem fit and proper."

The learned predecessor of this Court vide orders dated 30th November, 2016 and 10th January, 2017 has held that the issue as to who is entitled to the sale consideration under agreement to sell dated 20th December, 2012 executed between the plaintiff and the defendants will have to be adjudicated in CS(OS) No.1086/2013.

Learned senior counsel for the plaintiff states that the present suit has been filed in view of the observations made by a Coordinate Bench of this Court vide order dated 29th August, 2016 in CS(OS) No.1086/2013. He further states that a part of the present suit land is beyond the scope of CS(OS) No.1086/2013.

In the opinion of this Court, the orders dated 30th November, 2016 and 10th January, 2017 passed in the present suit are extremely relevant and the same are reproduced hereinbelow:-

Order dated 30th November, 2016

"IA No.14842/2016 (for exemption) & IA No.14841/2016 (under Order XI Rules 12&14 CPC) 1.

- 1. Allowed, subject to just exceptions.*
- 2. The applications are disposed of.*

CS(OS) 596/2016, IA No.14840/2016 (under Order XXXIX Rules 1&2 CPC)

- 3. The plaintiff has instituted this suit i) for declaration of a registered Will executed by the mother of the plaintiff as null and void on the ground that though the plaintiff also had a share in the property but the mother has executed the Will with respect to the entire property; ii) for cancellation of the said Will by directing the de-registration thereof; iii) for recovery of*

mesne profits; and, iv) for a direction to the defendants to hand over peaceful possession of the property to the plaintiff.

4. I have enquired from the counsel for the plaintiff as to how a suit for declaration of the Will as null and void and for cancellation thereof on the ground urged is maintainable. If the mother of the plaintiff was not entitled to make a Will with respect to the property for the reason of the property belonging to the plaintiff, mere making of the Will would not divest the plaintiff of the title if any in the property. The plaintiff, if has title to the property, has to agitate the same independently and without seeking declaration of the Will as null and void and cancellation thereof.

5. The counsel for the plaintiff states that he gives up the said reliefs.

6. The property for delivery of possession of which direction is claimed is agricultural land and I have enquired from the counsel for the plaintiff whether not the said land is governed by the provisions of the Delhi Land Reforms Act, 1954.

7. The counsel for the plaintiff confirms that the land is “certainly” governed by the provisions of the Delhi Land Reforms Act.

8. If that is so, then a suit for possession of agricultural land is to be filed before the Court of the Revenue Assistant and the jurisdiction of the Civil Court to maintain such a suit is barred by Section 185 of the Delhi Land Reforms Act.

9. The counsel for the plaintiff agrees with the aforesaid also.

10. In the light of the aforesaid, the filing of this suit before this Court is totally misconceived and the suit is liable to be dismissed at the threshold.

11. However I get an impression that the counsel for the plaintiff is not understanding the consequences. In the circumstances, it is deemed appropriate to adjourn this suit to tomorrow i.e. 1st December, 2016.

12. A copy of this order be handed over to the counsel for the

plaintiff today itself under signature of Court Master so that he can study the same and respond thereto.

13. List on 1st December, 2016.

Order dated 10th January, 2017

“1. This order is in continuation of the earlier orders dated 30th November, 2016 and 1st December, 2016.

2. The senior counsel for the plaintiff states i) that Bhagat Singh and Gajraj Singh were brothers and the land subject matter of this suit was their ancestral land with both being equal owners thereof; ii) that Smt. Murti Devi was married first to Bhagat Singh and from the said marriage one Vijay Pal, father of the defendants no.1&2 was born; iii) that upon demise of Bhagat Singh, Smt. Murti Devi married Gajraj Singh and from the said wedlock the plaintiff was born; iv) that upon the demise of Bhagat Singh in the year 1978 or so, in the revenue records of the said land, in his place, the name of Vijay Pal was substituted; v) that upon the demise of Gajraj Singh on 15th January, 1994, the name of Smt. Murti Devi was substituted; vi) that Smt. Murti Devi is claimed to have entered into an agreement to sell of the entire land in favour of defendant no.3 Birstol Dealcom. Pvt. Ltd.; vii) that defendant no.3 Birstol Dealcom. Pvt. Ltd. has instituted a suit being CS(OS) No.1086/2013 in this Court for specific performance of the said agreement to sell; viii) that upon the demise of Smt Murti Devi, the plaintiff applied for substitution as her sole legal representative under the Will dated 7th September, 2010 of Smt. Murti Devi and was so impleaded; ix) that subsequently defendants no.1&2 applied under Order I Rule 10 CPC setting up a Will dated 25th June, 2013 of Smt. Murti Devi in their favour; x) that vide order dated 29th August, 2016 in CS(OS) No.1086/2013, IA No.5001/2016 of the plaintiff challenging the validity of the Will dated 25th June, 2013 of Smt. Murti Devi was dismissed observing that the said disputes inter se between the plaintiff and defendants no.1&2 cannot be made subject matter of CS(OS) No.1086/2013; xi) hence this suit challenging the said Will.

3. *The senior counsel for the plaintiff on enquiry states that the defendant no.3 Birstol Dealcom. Pvt. Ltd. has been impleaded only as a proforma party and no relief is claimed against it.*

4. *The plaintiff in the present suit has not claimed any relief with respect to the Will dated 7th September, 2010 claimed by the plaintiff to be in her favour.*

5. *The senior counsel for the plaintiff on instructions states that the plaintiff gives up the claim under the document dated 7th September, 2010 set up by her as the Will of Smt. Murti Devi in her favour.*

6. *It has been enquired from the senior counsel for the plaintiff as to how the plaintiff can maintain a suit for recovery of possession when on the averments aforesaid of the plaintiff, the defendants no.1&2 would also have a share in the entire land even if the Will dated 25th January, 2013 set up by them was not to be believed.*

7. *The senior counsel for the plaintiff agrees that as per the plaintiff, the plaintiff and the defendants no.1&2 are the owners of the entire land. The senior counsel for the plaintiff further admits that the plaintiff cannot claim inheritance to the share of Bhagat Singh and can get only the share of Gajraj Singh.*

8. *Since as per the plaintiff also, the plaintiff as well as the defendants no.1&2 are co-owners of land, the plaintiff cannot maintain a suit for possession and has to sue for partition.*

9. *The senior counsel for the plaintiff also agrees and further states that in fact the land being open agricultural land, the possession thereof follows title.*

10. *Thus the relief claimed of possession in the suit is misconceived for this reason also and the counsel for the plaintiff under instructions withdraws the same.*

11. *That leaves the question of the document dated 25th June, 2013 set up by the defendants no.1&2 in CS(OS)*

No.1086/2013 as the validly executed last Will of Smt. Murti Devi.

12. The cause of action for the plaintiff to challenge the said document has arisen only because the defendants no.1&2 have set up the said Will in CS(OS) No.1086/2013.

13. Ordinarily the said question should be the subject matter of CS(OS) No.1086/2013 only inasmuch as if in CS(OS) No.1086/2013 a decree for specific performance is passed, it will have to be determined therein only as to who is entitled to convert title in the property and who is entitled to the sale consideration.

14. Entertaining a separate suit for the said purpose would lead to multiplicity.

15. I may record that I have also given an option to the senior counsel for the plaintiff to sue for partition and which relief again can lie before the revenue authorities but the senior counsel for the plaintiff has stated that the plaintiff is at the moment not interested in seeking partition and will seek partition if need arise upon dismissal of CS(OS) No.1086/2013 for specific performance.

16. I may in this regard record that it is not as if the plaintiff is not a party in CS(OS) No.1086/2013. The plaintiff continues to be a party in that suit.

17. Subject to orders of Hon'ble the Chief Justice, list before Hon'ble Justice S. Muralidhar on 19th January, 2017."

(emphasis supplied)

Keeping in view the aforesaid orders, the present suit is disposed of with liberty to the present plaintiff to raise all issues and defences as raised in the present suit in CS(OS) No.1086/2013 in accordance with law.

For the land not covered in CS(OS) No.1086/2013, the plaintiff is given liberty to file proceedings under the Delhi Land Reforms Act, 1954, as stipulated in the aforesaid orders in accordance with law. The rights and contentions of all parties in CS(OS) No.1086/2013 and in proceedings to be filed under Delhi Land Reforms Act, 1954 are left open.

With the aforesaid liberty and directions, present suit and pending application stand disposed of.

Registry is directed to issue to the plaintiff a certificate authorizing her to receive back from the Collector the full amount of the Court fee paid by her in the present suit.

MANMOHAN, J

MAY 03, 2018
KA