

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

% Date of decision: 13th November, 2018.

+ **FAO(OS) 167/2018, CM Nos. 47076/2018 & 47077/2018**
BALJINDER SINGH

..... Appellant

Through: **Mr. Raman Gandhi, Mr. Ravnee Singh**
and Ms. Harsha Sharma, Advs.

versus

SADHU SINGH & ORS

..... Respondents

Through:

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM No. 47077/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

FAO(OS) 165/2018

1. The present appeal has been filed by the appellant challenging the order of the learned Single Judge in IA No. 12530/2017 in CS(OS) 583/2017 dated January 10, 2018, whereby the learned Single Judge has dismissed the said IA praying for ad interim ex parte injunction.

2. That facts as noted from the record are that the appellant, who is the plaintiff in the aforesaid suit, claims that the suit property

being 2113/164 Tri Nagar, Delhi belonged to his grandmother late Smt. Sant Kaur. The grandmother executed a Will in his favour on February 22, 1996 whereby she bequeathed the entire property in his favour. There is no dispute that Smt. Sant Kaur passed away on August 13, 1996.

3. Prior to the filing of the Suit by the appellant herein, a Suit being CS (OS) 303/2008 was filed by the respondent Nos.9 to 12 before this Court stating that the late Smt. Sant Kaur had died intestate and that the said respondents are entitled to 1/4th share each in the suit property.

4. On July 16, 2013 a preliminary decree was passed by this Court in CS (OS) 303/2008, noting that the defendants therein, namely, father and uncles of the plaintiff did not choose to cross-examine the witness of the plaintiffs therein. A final decree of partition was passed on December 18, 2015.

5. The aforesaid decree is pending execution in this Court and the appellant herein had filed objections being EA(OS) 587/2016 under Order 21 Rule 58 read with Section 151 CPC against the execution of the said decree. On February 08, 2017 the executing Court dismissed the objections noting that the appellant claims to be the grandson of Late Smt. Sant Kaur and his claim allegedly flow

from the Will dated February 22, 1996. This Court noted that though late Smt. Sant Kaur died in 1996, no probate petition or any other proceedings have been initiated by the plaintiff based on the Will. It was concluded that there was a delay of more than two decades. Against the dismissal of the objections, the appellant preferred an appeal being FAO(OS) 11/2017 before a Coordinate Bench of this Court. The Court dismissed the appeal on March 08, 2017. It may be stated here that the appellant had preferred, additional objections before the executing Court which have also been dismissed.

6. The case of the appellant on the maintainability of the suit being CS(OS) 583/2017 was by relying on Order 21 Rule 58 Sub clause (5) CPC inasmuch as where a Court has refused to entertain objections, the appellant is within his right to file a Suit.

7. Be that as it may, the application for ad interim injunction filed by the appellant was dismissed by the learned Single Judge by holding as under:

“8. One of the elementary principles while seeking interim relief is that the application seeking interim injunction should not suffer from delay or laches. There is untold delay in this case. The grandmother Smt.Sant Kaur died on 13.8.1996. The plaintiff claims that as per

the Will of grandmother of 22.2.1996 the entire property was bequeathed to him and he had become the owner. Admittedly, the plaintiff is in occupation only of the second floor of the suit property whereas rest of the property is in occupation of other relatives/sons and grandsons of late Smt.Sant Kaur. It is quite clear that the plaintiff has been grossly negligent in pursuing his case. He cannot wake up after 20 years and claim that he has a right to the full property and that proceedings which have been initiated by his father and uncles be kept in abeyance, at this stage. I may also note that father of the plaintiff is alive and is arrayed as defendant No.1 to the present suit. He has not entered appearance and is not supporting the case of the plaintiff.

9. Order 21 Rule 58 (2) CPC reads as follows:-

“2. All the questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.”

10. I may also note that under Order 21 Rule 58 (2) CPC all questions which arise between the parties to a proceeding relating to right, title and interest in the

property attached are to be adjudicated upon by the court dealing with claim or objections suit.”

8. It is contended by Mr. Raman Gandhi, learned counsel appearing for the appellant that if the injunction is not granted, the Suit filed by the appellant shall become infructuous. According to him, the Will executed by late Smt. Sant Kaur on February 22, 1996 conclusively proves that the property in question has been bequeathed in favour of the appellant.

9. The issue which falls for consideration in this appeal is whether the rejection of the application being IA No.12530/2017 for ad interim injunction by the Ld. Single Judge is justified.

10. We have already reproduced the relevant paras vide which the learned Single Judge has dismissed the application. From the perusal of the same, we find that the learned Single Judge has not exercised the discretion in favour of the appellant herein for granting ad interim injunction on the ground of delay and laches. In other words, the appellant is seeking an injunction on the basis of a Will alleged to have been executed by late Smt. Sant Kaur on February 22, 1996, whereby it is alleged that the entire property has been bequeathed in his favour, which was almost 22 years back.

11. It is also noted by the learned Single Judge that the plaintiff is in occupation of only second floor of the property where as the rest of the property is in occupation of other relatives / sons and grandsons of late Smt. Sant Kaur. Meaningfully read that the appellant had not pursued his case for so many years and also had not lay a claim with regard to the rest of the property despite the Will. The learned Single Judge has also noted that the father of the appellant, who is the son of late Smt. Sant Kaur is alive and is not supporting the case of the appellant. Noting the relevant considerations which weighed with the learned Single Judge for not exercising the discretion in favour of the appellant with which we concur, we do not see any merit in the appeal, the same is dismissed.

CM No. 47076/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 13, 2018/aky