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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16th December, 2019

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CM (M) 1014/2018

KUSUM SINGHAL

..... Petitioner

Through: Mr. Ashish Aggarwal, Mr. Chakit Singhal, Ms. Shefali Kishor, Mr. Sandeep Gupta and Ms. Shruti Gupta, Advocates. (M: 9810077771 & 9818613613)

versus

BALWANT RAI & ORS.

..... Respondents

Through: Mr. N. S. Dalal and Ms. T. Banerjee, Advs. for R-1 to 3. (M: 9811155424)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition arises out of the impugned order dated 28th May, 2018, by which the Petitioner's/Plaintiff's (*hereinafter*, "*Plaintiff*") application under Order XII Rule 6 CPC was dismissed by the Id. Trial Court.

2. The brief background is that the Plaintiff has filed a suit for partition, possession, rendition of accounts and permanent and mandatory injunction against Respondent Nos.1-6/Defendants (*hereinafter*, "*Defendants*"), in respect of the following properties (*hereinafter*, "*joint family properties*"):

"a. plot measuring 400 Sq. yds. Out of Khasra no.398 (0-8)

& 399 (0-12) situated at Sainik Enclave, Village Masudabad,

Tehsil Najafgarh, Delhi;

b. two shop admeasuring about 50 Sq. yds. Each At

*Main
bazaar, Jind (Haryana);
c. moveable and immoveable properties in Delhi and
Jind,
Haryana, of Shri Brahm Raj, the details of which are
in specific
knowledge and defendant No.1.”*

3. The Plaintiff is one of the daughters of Late Shri Brahm Raj, who had the following legal heirs:

i. Kusum Singhal	Plaintiff	Daughter
ii. Balwant Rai	Defendant No.1	Son
iii. Sudesh Arya	Defendant No.2	Son
iv. Satyabandhu Arya	Defendant No.3	Son
v. Kamla Garg	Defendant No.4	Daughter
vi. Santosh Singla	Defendant No.5	Daughter
vii. Usha Gupta	Defendant No.6	Daughter

4. The case of the Plaintiff is that the Plaintiff, along with Defendant Nos. 3 to 5, executed a Power of Attorney (*hereinafter, “PoA”*) on 12th November, 2007, in favour of Defendant No.1 – Shri Balwant Rai, authorising him to manage the joint family properties, for and on their behalf. Defendant No.1 sold a portion of the joint family properties, of which partition was being sought. According to the Plaintiff the property was sold without her permission. Various allegations were raised in the plaint. The reliefs sought in the suit are as under:

“(a) pass a decree of mandatory injunction in favour of the Plaintiff and against the defendant No.1 thereby directing defendant No.1 to disclose and provide complete details of the properties, moveable and immoveable, left by Shri Brahm Raj after his death;

(b) pass a preliminary decree of partition thereby defining the share of the parties to the present suit and

declaring that the Plaintiff is entitled to one seventh share in the following properties:

a. plot measuring 400 Sq. yds. out of Khasra no.398 (0-8) & 399 (0-12) situated at Sainik Enclave, Village Masudabad, Tehsil Najafgarh, Delhi;

b. two shop admeasuring about 50 Sq. yds. each at Main bazaar, Jind (Haryana);

c. moveable and immoveable properties in Delhi and Jind, Haryana, of Shri Brahm Raj, the details of which are in specific knowledge and defendant No.1.

(c) appoint a Local Commissioner/ Receiver with the directions to physically partition the suit property by metes and bounds between the parties in accordance with law;

(d) pass a final decree in terms of the report of the Local Commissioner and put the parties in possession of the portion fallen in their respective shares;

(e) pass a decree of rendition of accounts in favour of the Plaintiff and against the defendant No.1 thereby directing defendant No.1 to render true and correct accounts of the said properties and provide the details of the benefits received by way of rent, licence fees and other profits of any nature whatsoever received by him from the said properties since death of Shri Brahm Raj on 14.08.2007 and to hand over and transfer one-seventh share of the benefit so received to and in favour of the Plaintiff and a Local Commissioner be appointed to go into the accounts and a decree be passed for the amount found payable to the respective parties;

(f) pass a decree of permanent injunction in favour of the Plaintiff and against defendants Nos.1 to 3 thereby restraining said defendants Nos.1 to 3, their successors, legal heirs, attorneys, representatives,

assignees, and/or nominees from selling, alienating, transferring, parting with possession and/ or creating third party interest in the following joint family properties :

a. plot measuring 400 Sq. yds. Out of Khasra no.398 (0-8) & 399 (0-12) situated at Sainik Enclave, Village Masudabad, Tehsil Najafgarh, Delhi;

b. two shop admeasuring about 50 Sq. yds. Each At Main bazaar, Jind (Haryana);

c. moveable and immoveable properties in Delhi and Jind, Haryana, of Shri Brahm Raj, the details of which are in specific knowledge and defendant No. 1.

(g) Award costs of suit in favour of plaintiff and against defendants;

(h) pass any other order or such further orders as this court may deem fit and proper in the interest of justice.”

5. The stand in the written statement filed by Defendant Nos.1 to 3 i.e. the three sons, was that the Plaintiff has 1/7th share in the plot measuring 400 Sq. Yards at Khasra No.398 (0-8) & 399 (0-12), situated at Sainik Enclave, Village Masudabad, Tehsil Najafgarh, Delhi (*hereinafter, “plot”*). It was also stated in the written statement that pursuant to the PoA dated 12th November, 2007, the property was transferred to Respondent No.7 - Shri Satish Kumar. The said Defendants, however, took the stand that the said sale had taken place with the consent of the Plaintiff.

6. On the basis of the averments made in the written statement, an application under Order XII Rule 6 CPC was filed by the Plaintiff, seeking a decree on admissions. Vide the impugned order dated 28th May, 2018, the

said application has been dismissed.

7. On behalf of the Plaintiff, it is submitted that the admissions in the written statement are clear. Defendant Nos. 1 to 3 have admitted to the 1/7th share of the Plaintiff in the plot. The existence of the sale documents have also been admitted. However, the said sale is stated to not be valid in law, inasmuch as it is purportedly based on a GPA, agreement to sell, possession letter, receipt, affidavit etc., all of which are alleged to be unregistered documents executed on 4th February, 2011.

8. Ld. counsel submits that these documents, which are the basis of the sale to the third party, as pleaded by Defendant Nos.1 to 3, being unregistered, no transfer of title could have legally taken place in favour of the purchaser. In any event, as per the Defendants' own case, since the sale consideration was paid in cash, the sale is invalid. The factum of the Plaintiff's 1/7th share being admitted and the documents relied upon by Defendant Nos. 1 to 3 being contrary to law, it is argued that the present suit is liable to be decreed under Order XII Rule 6 CPC. Reliance is placed on the judgments in *Sunil Jain v. Zamiruddin*, 240 (2017) DLT 599 and *Prem Prakash Gupta v. Sanjay Aggarwal*, 248 (2018) DLT 126.

9. On the other hand, it is submitted on behalf of Defendant Nos.1 to 3, that the Plaintiff had initially filed a criminal complaint making various allegations in respect of the PoA dated 12th November, 2007. Now, the Plaintiff has chosen not to challenge the said PoA. Ld. counsel submits that the sale took place with the consent of the Plaintiff and the question whether any title vests in the new purchaser ought to be decided after the parties have led evidence. It is also argued that the fact that the sale had taken place with the consent of the Plaintiff is also to be established by trial. In any event, it

is submitted that Defendant No.1 is willing to pay the Plaintiff 1/7th of the sale consideration, as per the agreement to sell.

10. Heard counsel for the parties. A perusal of the pleadings on record shows that Late Shri Brahm Raj had seven legal heirs i.e., three sons and four daughters. All the said parties are impleaded in the present suit. The execution of the PoA dated 12th November, 2007 is not in dispute. The reliefs being sought are for partition of the joint family properties. However, from the submissions made today, parties admit that the only property in respect of which disputes are outstanding is the plot measuring 400 Sq. Yards at Khasra No.398 (0-8) & 399 (0-12), situated at Sainik Enclave, Village Masudabad, Tehsil Najafgarh, Delhi. The said plot was sold on the strength of the PoA dated 12th November, 2007. Thus, the Plaintiff sought an injunction, rendition of accounts etc. in the suit.

11. In their written statement, Defendant Nos.1 to 3 clearly took the stand that the Plaintiff is entitled to 1/7th share in the plot, which is clear from a reading of paragraphs 5 & 7. The said paragraphs are extracted herein below:

“5. That the contents of para No.5 of the plaint are wrong and hence strongly denied. It is submitted that only the aforesaid plot is the property of joint hindu family over which the answering defendants very fairly admit that the plaintiff has 1/7th share. However, as regard the other properties as mentioned in para 3, it is submitted that the plaintiff has no right, title or interest whatsoever and any submission of the plaintiff to that effect is strongly disputed and categorically denied.

...

7. That the contents of para No.7 of the plaint are wrong and thus strongly denied. It is submitted that the

only assurance given by the Defendant No.1 to the plaintiff was that the Defendant No.1 shall provide 1/7th share of the sale consideration of the aforesaid plot to the plaintiff to which the plaintiff had specifically agreed. The Defendant No.1 stands by his words and had offered the same to the plaintiff and even today is ready to hand over the 1/7th share of the sale consideration for the aforesaid plot.”

12. Further, as recorded in paragraph 12 of the written statement, the only case of Defendant Nos.1 to 3 is that the sale has been effected to a third party, upon receipt of Rs.10.50 lakhs as consideration. This is clear from paragraph 12, which reads as under:

“12. That the contents of para No. 12 of the plaint are wrong and thus strongly denied. It is submitted that on the basis of GPA dated 12.11.2007 executed by the plaintiff in favour of Defendant No.1, the Defendant No.1 had started searching for the buyer after a discussion with the plaintiff. The Defendant No.1 on the basis of the aforesaid GPA dated 12.11.2007 transferred and sold the aforesaid plot to one Shri Satish Kumar, S/o Shri Chand Ram, R/o H. No. 36, Vill Nangli Sakrawati, Najafgarh, New Delhi - 110043 on 04.02.2011 for a sale consideration of Rs. 10,50,000/- (Rupees Ten Lakh and Fifty Thousand Only), by execution of relevant documents. It is specifically denied that the Defendant No.1 ever sold the aforesaid plot without informing or intimating the plaintiff. It is further reiterated that there is no other joint family property other than the aforesaid plot over which the plaintiff has any right. Therefore, it is wrong to say that the Defendant No.1 sold off some of the properties of joint Hindu family or has transferred the funds received from the sale thereof to his own account or has ever utilized the funds received for his own use and benefit without rendering any accounts thereof to the plaintiff. It is submitted that the plaintiff time and

again had inquired to which she was duly informed of the said fact before and after execution of the aforesaid sale.”

A perusal of the above paragraph also shows that the case of Defendant Nos. 1 to 3 is that the said sale took place with the consent of the Plaintiff.

13. Finally, in paragraph 14 of the written statement, Defendant Nos. 1 to 3 also took a stand that they are willing to offer the share of the Plaintiff even today. The said paragraph is set out herein below:

“14. That the contents of para No. 14 of the plaint are wrong and thus strongly denied. It is submitted that the plaintiff was very much aware of the said deal / transaction with the aforesaid buyer even before and after the execution of documents. The plaintiff through out the deal was keeping a close watch over the deal and also took active participation through her in laws. The plaintiff is basically concocting a wrong story in order to gain sympathies of this Hon'ble Court and to get an order by concealment of the facts. The intentions of the Defendant No.1 from the day one is very clear and he was always ready to offer 1/7th share of the sale consideration of the plot to the plaintiff and is ready and willing to offer the said share even today. However, it was the plaintiff only who time and again did not receive the said amount and has now concocted a wrong story as stated in the plaint. It is submitted that the reasons for the execution of the aforesaid GPA dated 12.11.2007 has already been provided in the said document which are not repeated for the sake of brevity. However, in any case the Defendant No.1 at no point of time had transgressed his authority as an attorney by virtue of the aforesaid sale.”

14. As per the above paragraph, Defendant No.1 is ready and willing to offer 1/7th share to the Plaintiff. Insofar as the other Defendants are concerned, i.e. the sisters, almost the entire plaint is admitted by them. Thus,

they are not contesting the matter. Respondent No.7 is stated to have further sold a portion of the plot to one Shri Karan Singh, who has passed away and his legal heirs are Respondent Nos.8 to 11 in the petition.

15. Insofar as the agreement to sell, GPA, possession letter, affidavit and receipt are concerned, all of them are dated 4th February, 2011. Copies of the same have been placed on record. They are not registered documents. The sale consideration has been admitted as having been received in cash by Defendant Nos.1 to 3, the receipt of which has been placed on record. It is argued that the sale was effected on the basis of the said documents and on the strength of the PoA dated 12th November, 2007.

16. The first important stand in the written statement is the share of the Plaintiff, which is admitted to be 1/7th of the plot. Even taking the PoA dated 12th November, 2007 as revoked as on 22nd February, 2011, the documents of sale relied upon by Defendant Nos. 1 to 3 are dated 4th February, 2011 i.e., prior to the revocation of the PoA. A perusal of the alleged sale documents shows that the same are unregistered and the payment has been made in cash. There is no averment in the written statement that a proportionate share of the consideration was ever paid to the Plaintiff. Clearly, since the agreement to sell was accompanied by a handing over of possession to the purchaser i.e., Respondent No.7, the same requires registration in accordance with law. This position has been reiterated repeatedly in several judgments, including the two judgments cited by the Id. counsel for the Plaintiff i.e., *Sunil Jain (supra)* and *Prem Prakash Gupta (supra)*.

17. In *Sunil Jain (supra)*, the Court also considers the question of Section 53A of the Transfer of Property Act, 1882 and the payment of consideration

in cash, which would render the sale illegal. The relevant observations of the Court are as under:

“11.(i) A reading of the aforesaid paras of the first appellate court showed that the documentation executed in favour of Sh. Hakikat Ali dated 9.12.2003 was proved by the appellant/Sh. Sunil Jain as Ex.Ow1/10 to Ex.Ow1/14. This documentation was held by the court below to be illegal and had no effect for various reasons.

(ii) The first reason is that the documents dated 9.12.2003 including therein the agreement to sell were for seeking rights on the basis of the doctrine of part performance contained in Section 53A of the Transfer of Property Act. By Act 48 of 2001 the provision of Section 53A of the Transfer of Property Act was amended w.e.f 24.9.2001, and also by introduction of Article 23A in the Stamp Act, 1899 as applicable to Delhi, and as a result of which amendment no agreement to sell in the nature of part performance could give valid rights unless the agreement to sell was duly stamped and registered. Admittedly, the agreement to sell was not registered. Therefore the appellant cannot seek validity of the documents dated 9.12.2003 allegedly executed by the respondent/deed holder in favour of Sh. Hakikat Ali.

(iii) Another reason for the documents not being valid and as held by the first appellate court is that the documents are not proved to have been duly executed inasmuch as neither Sh. Hakikat Ali was examined and nor the attesting witnesses to the documents dated 9.12.2003 were examined. Obviously the appellant could not have proved due execution of the documents dated 9.12.2003 as those documents were not executed in his presence.

(iv) Also the documents being notarized, the notary public could have been summoned to show the factum with respect to due notarization at a particular serial

number of the register of notary but this was also not proved inasmuch as there was no entry of the number of the register of the notary mentioned anywhere in the documentation Ex.OW1/10 to Ex.OW1/14.

(v) The next reason given by the first appellate court is that signatures of Sh. Hakikat Ali could have been proved if an expert witness was examined to show that the signatures on the documents are of Sh. Hakikat Ali, but no expert was examined.

12. In my opinion, the aforesaid reasoning of the first appellate court is faultless and I completely agree with the same that documentation dated 9.12.2003 allegedly executed by the respondent/decreed holder in favour of Sh. Hakikat Ali are not valid documents. It may also be noted that counsel for the respondent/decreed holder states that the original perpetual subject lease executed by the DDA in favour of the respondent/decreed holder is still with the respondent/decreed holder and which has not only been brought to this Court today but also was shown to the first appellate court and that in case the respondent/decreed holder had transferred title to Sh. Hakikat Ali then this original perpetual lease deed would have been given to Sh. Hakikat Ali because if title is transferred then the original title documents are handed over to the transferee. I may note that the case of the appellant was that original perpetual lease deed executed by the DDA in favour of the respondent/decreed holder was with him but no such original lease deed was filed, and surely the same could not have been filed because the original of this lease deed has always been and continues to be with the respondent/decreed holder as stated above.

13. To the above discussion I would like to add an additional reason for holding as non-genuine the documents executed by the respondent/decreed holder in favor of Sh. Hakikat Ali and this additional reason is that there is no consideration which is paid by Sh. Hakikat Ali to the respondent/decreed holder by cheque.

Whenever a document is forged/fabricated it is very easy to state therein that payment of price is in cash. If payment was by cheque then its encashment would have shown the transaction to be genuine but admittedly there is no payment by a bank instrument made to the respondent/decreed holder and thus clearly the documentation said to be executed by the respondent/decreed holder in favor of Sh. Hakikat Ali are forged and fabricated documents.”

18. In **Prem Prakash** (*supra*) a Id. Single Judge of this Court has held that if there is no issue which requires trial, a decree can be passed straightaway and untenable pleas or false pleas should not be allowed to delay the court in passing effective orders. The Court observed:

“9. This Court in Lakshmikant Shreekant (HUF) Vs. M.N. Dastur & Company Pvt. Ltd. 1998 (44) DRJ 502 held that an issue need not be framed on a point of law which is perfectly clear and that the Court is required to apply its mind and understand the facts before framing the issue and that if a plea is mala fide or preposterous or vexatious, and can be disposed of without going into the facts, or is contrary to law or the settled legal position, the Court will not be justified in adopting a hands off policy and allow the game of the defendant to have its sway. In **Zulfiqar Ali Khan Vs. Straw Products Limited** 87 (2000) DLT 76 also, it was observed that a litigant often takes all sorts of false or legally untenable pleas and legal process should not be allowed to be exercised by such persons and only such pleas which give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory, unnecessary or mala fide, based on false or untenable pleas.”

19. In the above background, no further trial would be required to adjudicate the question as to whether the sale documents conferred a valid or

plausible defence to Defendant Nos. 1 to 3. Since the share of the Plaintiff is admitted and the documents allegedly confirming the sale to Respondent No.7 are not in accordance with law, a decree of partition is liable to be passed in favour of the Plaintiff. Accordingly, it is held that the Plaintiff is entitled to 1/7th share in the plot.

20. The only question which now arises is whether the Plaintiff would be entitled to monetary compensation in lieu of the fact that 1/7th share in the plot has been declared to be owned by the Plaintiff. The court cannot lose sight of the fact that the subsequent purchaser is in possession of the plot, thus, partition through metes and bounds is clearly not possible in the present suit. The Plaintiff herself has valued the assets @ Rs.70 lakhs in paragraph 28(i) of the plaint.

21. Taking the valuation given by the Plaintiff, the share of the Plaintiff comes to Rs.10 lakhs. Accordingly, it is held that in lieu of the 1/7th share of the Plaintiff, a sum of Rs.10 lakhs would be payable to the Plaintiff, along with interest @ 6% per annum, from the date of the filing of the suit i.e., 26th March, 2011 till date. If the amount so calculated is paid to the Plaintiff within two months from today, no further interest would be payable, failing which the Plaintiff would be free to execute the decree in accordance with law.

22. At this stage, Mr. Dalal, ld. counsel, submits that his client is willing to resolve all the disputes between the parties as they are brothers and sisters and criminal complaints have also been filed by the Plaintiff against the brothers. For this purpose, the parties are free to approach the mediation centre.

23. The petition and all pending applications are disposed of in the above terms. Decree sheet be drawn up by the Id. Trial Court. Copy of this order be sent to ADJ-04/SW, Dwarka Courts, New Delhi in Suit No.16378/2018 titled *Kusum Singhal v. Balwant Rai & Ors.*

PRATHIBA M. SINGH
JUDGE

DECEMBER 16, 2019

dk/T

corrected & released on 23rd December, 2019

