

\$~9

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

% Judgment delivered on: 28.08.2019

+ C.R.P. 276/2018

ROHITA SHARMA

..... Petitioner

versus

RAJKUMAR SHARMA & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Gobind Malhotra, Mr. Lovish Sharma &
Mr. Kartik Khanna, Advs.

For the Respondent : Mr. S.S. Tyagi, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 07.12.2018 whereby the suit filed by the petitioner has been dismissed while deciding an application under Order 22 Rule 3 CPC. The Trial Court has held that since the original plaintiff had ceased to be the owner of the suit property by virtue of a judgment, though he had filed an appeal, till the judgment was reversed, he was not entitled to maintain the suit.

2. Subject Suit was filed by Sh. Ram Avtar Sharma against the respondents, who are his son and daughter-in-law, claiming that they were permissive licensees and had been permitted to use a portion of

the property being his son and daughter-in-law in the subject premises. It is contended that the relations became strained on account of which he did not want to continue with the permissive license and accordingly the subject Suit for mandatory and permanent injunction was filed.

3. Shri Ram Avtar Sharma had claimed title to the suit property by virtue of certain transfer documents executed by one Sh. Rajesh Jhangra as attorney of Ms. Preeti Sharma. Ms. Preeti Sharma filed a Suit seeking cancellation of the documents. A decree was passed declaring the documents in favour of Shri Ram Avtar Sharma to be null and void. Shri Ram Avtar Sharma filed an appeal. In the appeal filed by Shri Ram Avtar Sharma respondent No.1 was impleaded as an appellant as he was living in a part of the property. Status quo has been passed by the Appellate Court.

4. In the present subject Suit since Shri Ram Avtar Sharma expired, an application under Order 22 Rule 3 CPC was filed by the petitioner claiming that there is a registered Will in her favour and she accordingly had the right to continue with the suit and to be substituted as a legal heir in place of Shri Ram Avtar Sharma.

5. The Trial Court while considering the application under Order 22 Rule 3 CPC held that since Shri Ram Avtar Sharma had lost the suit filed by Ms. Preeti Sharma and his documents had been declared null and void the suit itself was not maintainable.

6. Learned counsel for the petitioner submits that the Trial Court has noticed in the impugned order that an appeal has been preferred which is pending before the High Court and that there is an order directing the appellants to maintain status quo with regard to title, possession and construction and on deposit of mesne profits for use and occupation, the judgments impugned in the said appeal has been stayed.

7. Learned counsel submits that since the appeal challenging the judgment in the suit declaring the documents of the petitioner as null and void has been admitted and is pending, the Trial Court has erred in declaring the suit as non maintainable. He further submits that since the case of Shri Ram Avtar Sharma is that he had permitted the respondents to use the premises as permissive licensee, he alone had the right to seek their removal even though he may not be the owner of the property, Further that the respondents cannot challenge the title of Shri Ram Avtar Sharma to the property without first surrendering the portion in their occupation.

8. Learned counsel for the respondent has contended that since there is a status quo order passed in the appeal filed by Shri Ram Avtar Sharma challenging the cancellation of his documents, petitioner cannot maintain the subject suit or seek his eviction. He further submits that since Shri Ram Avtar Sharma has lost his title to the property, the subject suit is not maintainable. He further submits

that the Will itself is disputed.

9. I am unable to accept the contention of learned counsel for the respondent. The direction to maintain status quo passed in appeal filed by Shri Ram Avtar Sharma challenging the judgment declaring his documents as null and void implies that no third party rights would be created. Status quo would not certainly imply that inter-se family cannot make arrangement or that he cannot seek a mandatory or permanent injunction against the Respondent.

10. It is not the case of the petitioner that exclusive possession has been handed over or rights have been created in favour of the respondent. The plea in the Suit filed by Shri Ram Avtar Sharma was that respondent was permitted to only use the premises as a permissive licensee. There is no averment that exclusive possession has been given to the respondent to the exclusion of Shri Ram Avtar Sharma.

11. In that view of the matter the direction to maintain status quo in the other proceedings will not come in the way of the petitioners to maintain and proceed further with the Suit.

12. The second point urged by learned counsel for the respondent, that Shri Ram Avtar Sharma has lost his title to the subject property, is also not tenable in as much as the respondent No.1 himself has filed the appeal impugning the order whereby the documents have been

declared as null and void. He cannot be permitted to blow hot and cold.

13. It may further be seen that the case of Shri Ram Avtar Sharma is that he had permitted the respondents to use the premises. Respondents who claim their title through Sh. Ram Avtar Sharma cannot be permitted to deny the title of Sh. Ram Avtar Sharma or his successor in interest.

14. The challenge to the alleged Will of Ram Avtar Sharma would be decided in appropriate proceedings between the parties and in any case has not been taken as a ground on which the Trial Court has non-suited the petitioner.

15. The Trial Court has dismissed the suit on the ground of maintainability solely on the premise that the title documents of Ram Avtar Sharma have been declared to be null and void. As noticed above, same cannot be a ground to non-suit the petitioner or declare the suit to be non-maintainable.

16. Clearly the impugned order dated 07.12.2018 suffers from infirmities and cannot be sustained. In view of the above, the impugned order dated 07.12.2018 is set aside. The Suit is restored to its original number on the file of the Trial Court.

17. The petitioner claims to be substituted in place of Shri Ram Avtar Sharma on the basis of a Will. It is an admitted position that

apart from the petitioner (daughter-in-law of Shri Ram Avtar Sharma) and respondent No.1 (the son of Shri Ram Avtar Sharma) there is one son, Sh. Bhishu Sharma and two other daughters namely Smt. Anjana Sharma and Smt. Meenu Sharma. Since admittedly no probate has been taken of the alleged Will of Shri Ram Avtar Sharma, all the legal heirs of Shri Ram Avtar Sharma are liable to be made parties in the suit.

18. Accordingly, application under order 22 Rule 3 CPC is also restored to its original number.

19. The Trial Court shall issue notice to the legal heirs of Shri Ram Avtar Sharma apart from respondent No.1 for their proposed impleadment and dispose of the application in accordance with law.

20. List before the Trial Court for directions on 12.09.2019.

21. Petition is accordingly disposed of in the above terms

22. Order *dasti* under the signatures of the Court Master.

AUGUST 28, 2019
rk

SANJEEV SACHDEVA, J