

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.01.2023

+ FAO(OS) 163/2017

ANJALLI BANSALL

..... Appellant

versus

ATUL BANSAL & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Sukumar Pattjoshi, Senior Advocate
with Ms Geeta Mehrotra, Advocate.

For the Respondents : Mr Ajay Digpaul, Mr Kamal Digpaul and
Ms. Swati Kwatra, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGMENT

VIBHU BAKHRU, J

1. Ms. Anjali Bansall (hereafter '**the appellant**') has filed the present intra-court appeal impugning an order dated 03.03.2017 (hereafter '**the impugned order**') passed by the learned Single Judge, whereby the appellant's application (being IA 12912/2015) under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereafter '**the CPC**') seeking dismissal of the suit, being C.S (OS) No. 3966/2014 captioned '*Atul Bansal and Anr. v. Anjali Bansall*', was rejected.

2. The learned Single Judge had observed that respondent no.2 was claiming his share in the immovable property through his mother who

had died intestate and therefore, the said claim could not be rejected without trial on the basis that certain documents indicated that Commodore J.M.L. Bansal had disinherited respondent no.2.

3. The respondents had filed the above-mentioned suit, [being CS(OS) 3966/2014], *inter alia*, claiming rights in the basement and the ground floor of the built-up property bearing No. 26, Navjivan Vihar, New Delhi (hereafter '**the property**'). The basement and ground floor of the property along with "*1/3rd share in stilts area/car parking space for two genset in stilts (after leaving space for two car parking for the owner/occupants of the third floor and also the area utilized for common facilities viz. stairs, passage etc.)*"; "*use of common areas, facilities and services*"; and "*32.5% undivided, indivisible and impartible ownership rights in the plot of land measuring 250 Sq. Yds.*" is hereafter referred to as '**the suit property**'. The respondents are claiming equal shares in the suit property and seek a decree of partition of the said property. The respondents also pray that the Gift Deed dated 27.02.2014, executed by their late father, Commodore J.M.L. Bansal, be declared as null and void. The appellant claims that on the basis of the documents produced by the respondents (plaintiffs) and the averments made in the plaint, it is established that the respondents have no right in the suit property.

4. In view of the above, the principal controversy that needs to be addressed is whether the respondents have any cause of action for seeking the relief as sought, on the basis of the averments made in the plaint.

Facts

5. Since the controversy involved relates to whether the plaint discloses any cause of action, it would be necessary to confine the consideration of the present appeal on the facts as asserted by the respondents in their plaint. The said facts are briefly stated hereunder:

5.1 The parties are siblings. Respondent nos. 1 and 2 are the sons of Late Commodore J.M.L Bansal and Late Smt. Shanta Bansal. And, the appellant is their daughter. Commodore J.M.L Bansal expired on 17.04.2014 at the age of eighty-six years. The respondents claim that at the time of his demise, he was suffering from Alzheimer's Disease and Dementia. Smt. Shanta Bansal, mother of the parties also expired soon after, on 26.05.2014, at the age of eighty-three years.

5.2 On 14.06.2007, Commodore J.M.L Bansal executed a Will. In terms of his Will, his entire assets would devolve to his wife Smt. Shanta Bansal, in the event that he pre-deceased her. Thus, according to the respondents, Smt. Shanta Bansal became the absolute owner of the assets of Commodore J.M.L Bansal at the time of his demise.

5.3 Commodore J.M.L Bansal had acquired a plot of land (Plot No.26, Navjivan Vihar, New Delhi) on a leasehold basis in terms of a perpetual sub-lease dated 17.03.1972.

5.4 During the years of 1973-74, Commodore J.M.L Bansal constructed a two-storey residential house comprising of an independent ground-floor unit and a first-floor unit, along with a single

room with an attached bathroom on the second floor. On 02.03.2000, the property was converted from leasehold to freehold

5.5 Admittedly, Commodore J.M.L Bansal gifted the entire terrace and roof rights above the first floor to the appellant by a Gift Deed dated 21.06.2001. Thereafter, in and around the years 2003-04, the appellant constructed the second floor of the property from her own funds.

5.6 On 06.05.2011, Commodore J.M.L. Bansal gifted the entire first floor of the property to respondent no.1 (plaintiff no.1). Thus, according to the respondents (plaintiffs), respondent no.1 and the appellant (defendant) became the owners of the first and the second floor of the property, respectively. Commodore J.M.L. Bansal continued to remain the owner of the ground floor.

5.7 Sometime in the year 2010, the said owners (Late Commodore J.M.L. Bansal, respondent no.1 and the appellant) decided that the property would be handed over to builders for re-construction and would be developed into four independent units, along with a basement. The builder would re-develop the property at its own cost and would be entitled to the third-floor unit along with roof rights and an undivided share in the land as a consideration for constructing the property.

5.8 The appellant, Commodore J.M.L. Bansal, respondent no.1 (plaintiff no.1) and one M/s Lalaji Propmart (a partnership firm engaged in the business of developing real estate - hereafter '**the builder**'), entered into an agreement (Collaboration Agreement) dated 09.05.2011 for developing the property. The Collaboration Agreement referred to

Commodore J.M.L. Bansal, the appellant and respondent no.1 as 'owner no.1', 'owner no.2', and 'owner no.3' respectively. The Collaboration Agreement recorded that the ground floor and the first floor of the property had been constructed by Commodore J.M.L. Bansal at his own cost and the second floor was constructed by the appellant at her own cost. In terms of the Collaboration Agreement, the builder agreed to demolish the existing structure on the property and re-construct the building comprising of basement, stilt, ground floor, first floor, second floor and third floor with a terrace, at its costs and expenses, after getting the building plans sanctioned from the concerned authorities. The builder would be entitled to the '*malba*' realized from demolition of the existing structure as well. In addition to constructing the building, the builder agreed to pay a sum of ₹30,00,000/- to the owners (the appellant, Commodore J.M.L. Bansal and respondent no.1). In terms of the Collaboration Agreement, the parties also agreed on the allocation of the re-developed property as under:

“ALLOCATION OF THE OWNER NO.1

- a) ENTIRE SECOND FLOOR
- b) 1/3rd SHARE IN STILTS AREA / CAR PARKING/ SPACE FOR GENSET IN STILTS (AFTER LEAVING SPACE FOR TWO CAR PARKING FOR THE OWNER/OCCUPANTS OF THIRD FLOOR AND ALSO THE AREA UTILIZED FOR COMMON FACILITIES VIZ. STAIRS, PASSAGE ETC.)
- c) USE OF COMMON AREAS, FACILITIES AND SERVICES

- d) 22.5% UNDIVIDED, INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE PLOT OF LAND MESURING 250 SQ. YDS.

ALLOCATION OF THE OWNER NO.2

- a) ENTIRE BASEMENT (600 to 700 SQ. FT. APPROX)
- b) ENTIRE GROUND FLOOR
- c) 1/3rd SHARE IN STILTS AREA/ CAR PARKING SPACE FOR TWO GENSET IN STILTS (AFTER LEAVING SPACE FOR TWO CAR PARKING FOR THE OWNER/OCCUPANTS OF THIRD FLOOR AND ALSO THE AREA UTILIZED FOR COMMON FACILITIES VIZ. STAIRS, PASSAGE ETC.)
- d) USE OF COMMON AREAS, FACILITIES AND SERVICES
- e) 32.5% UNDIVIDED, INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE PLOT OF LAND MEASURING 250 SQ. YDS.

ALLOCATION OF THE OWNER NO. 3

- a) ENTIRE FIRST FLOOR
- b) 1/3rd SHARE IN STILTS AREA/ CAR PARKING SPACE FOR TWO GENSET IN STILTS (AFTER LEAVING SPACE FOR TWO CAR PARKING FOR THE OWNER/OCCUPANTS OF THIRD FLOOR AND ALSO THE AREA UTILIZED FOR COMMON FACILITIES VIZ. STAIRS, PASSAGE ETC.)

- c) USE OF COMMON AREAS, FACILITIES AND SERVICES
- d) 22.5% UNDIVIDED INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE PLOT OF LAND MEASURING 250 SQ. YDS

That in lieu of the Builder developing the property using its infra-structural facilities and at its own cost paying the aforesaid amount to the owner No.1, the Builder shall be entitled to the exclusive ownership usage and possessory and all other rights in respect of the remaining portions of the newly constructed building viz.:

BUILDER'S ALLOCATION

- a) ENTIRE THIRD FLOOR
- b) ENTIRE TERRACE OVER AND ABOVE THE ENTIRE THIRD FLOOR
- c) SPACE IN THE STILTS AREAS FOR PARKING OF TWO CARS ONLY BY THE OWNERS/OCCUPANTS OF THE THIRD FLOOR (AS PER CAR PARKING PLAN ATTCHED)
- d) USE OF COMMON AREAS, FACILITIES AND SERVICES
- e) 22.5% UNDIVIDED INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE PLOT OF LAND MEASURING 250 SQ.YDS

That the builder shall have the exclusive ownership and usage rights of the Entire Terrace over and above the Entire Third Floor of the said property, including rights of further construction

hereon. However, in the event of such construction, the builder shall re-build the overhead water tanks and other facilities so provided on the terrace (of the same size and same location) on the newly built top terrace at its own cost and expenses and shall also ensure that during the course of construction no damage is caused to the existing structure of the building and the normal water supply is maintained. In such an event the land Right will be shared proportionately between the 3rd floor & 4th floor.

That the builder will install a lift of Schindler Make, of 6 (six) person capacity with ARD (Automatic rescue devise) in the said building for the exclusive use of the owners/occupants of the Ground, first, Second and third floors. The maintenance cost of the Lift as well as proportionate cost of electricity for its use will be shared proportionately by the owners/ occupants of the said building. However if the owners / occupants of any floor (s) do not pay or neglect to pay the proportionate maintenance cost or proportionate electricity cost of running the lift, in such event, only the remaining owners /occupants of the said building will have the exclusive right to use the lift. However, on payment of proportionate maintenance cost and proportionate electricity cost of running the lift by such defaulting owner (s)/ occupant (s) shall make their entitlement to use such facility.”

5.9 After re-construction of the property, the builder took over the third floor of the property. The respondents state that thereafter, Commodore J.M.L Bansal and the appellant occupied the suit property (basement and the ground floor of the property). The second floor of the property was rented out. The respondents claim that respondent no.1

took delivery of his unit (first floor of the property as re-developed by the builder) in December 2012.

Reasons & Conclusion

6. There are several allegations raised in the plaint. The same would be discussed later. However, as far as the property is concerned, the facts as noted above are admitted. It is not disputed that Commodore J.M.L. Bansal had acquired the property out of his own funds. It is also not disputed that he had executed the Gift Deed dated 21.06.2001. It is not disputed that in terms of the said Gift Deed, the appellant acquired the ownership of the portion of the property, which is described as under:

“Entire terrace/roof rights of first floor and above, consisting of One Room and toilet with open area of terrace and fitting and fixture attached thereto alongwith rights of using common passage, stair cases etc., undivided, indivisible proportionate land beneath the same on the said property in favour of Donee.”

7. It is not disputed that the then owners of the property (Commodore J.M.L. Bansal, the appellant and respondent no.1) entered into a Collaboration Agreement with the builder. Pursuant to the said Collaboration Agreement, the built-up property was demolished, and re-built, again. The appellant acquired the suit property in terms of the allocation as set out in the Collaboration Agreement.

8. Notwithstanding the above, the respondents seek to question the title of the appellant to the suit property (basement and the ground floor)

by claiming that after execution of the Collaboration Agreement, Commodore J.M.L. Bansal changed his mind and did not execute the exchange deed. The relevant averment made in the plaint in this regard, reads as under:

“10. That as per this Collaboration Agreement there was an intention to exchange the ownership of the Ground floor and Basement with the Second Floor as between Commodore J.M.L. Bansal and the Defendant. However, subsequently Commodore J.M.L. Bansal changed his mind and the same was not carried through and the Exchange Deed never executed.”

9. Thus, according to the respondents, it was necessary for Commodore J.M.L. Bansal to enter into an exchange deed with the appellant whereby the appellant would acquire rights in the suit property (Ground Floor and the Basement) and Commodore Bansal would acquire rights to the residential unit on the Second Floor of the property. It is contended by Mr. Digpaul, learned counsel appearing for the respondents, that such an exchange deed was necessary by virtue of the provisions of Section 118 of the Transfer of Property Act, 1882.

10. The said contention that the allocation made in the Collaboration Agreement was not effective as an exchange deed was not executed, is without any substance. It is clear that by virtue of the registered Gift Deed dated 21.06.2001, the appellant acquired not only the terrace and the roof rights, but also acquired an undivided and indivisible portion of the land beneath the built-up property. In terms of the Collaboration Agreement, the building constructed on the property was demolished. At that stage, all that remained with the parties was the undivided share

in the land and the rights as flowed from the Collaboration Agreement. A new building was constructed by the builder on the property, in terms of the Collaboration Agreement. Admittedly, in terms of the Collaboration Agreement, the suit property was allocated to the appellant. The appellant had permitted demolition of her residential unit (the second floor) on the basis of the Collaboration Agreement, which expressly provided for allocation of built-up space after re-construction. There was no occasion for any exchange deed to be executed as after the demolition of the building, none of the owners of the property owned any unit which could be a subject matter of any exchange. The suit property was constructed afresh and no other person other than the appellant had any rights to the suit property, as constructed. The assumption that after the re-construction of the building, the ground floor would necessarily belong to Commodore J.M.L Bansal, is without any basis and more importantly, contrary to the admitted documents.

11. The impugned order proceeds on the basis that the suit cannot be thrown out on the basis that the father of the parties had disinherited respondent no.2. The learned Single Judge had reasoned that this was because respondent no.2 was claiming his rights through his mother, who had inherited the estate of Commodore J.M.L. Bansal. However, the learned Single Judge had completely ignored the fact that insofar as the suit property is concerned, the same was not a part of the estate of Commodore J.M.L. Bansal at the time of his demise. This is established by the documents filed by the respondents (appellants) as well as the averments made in the plaint. Therefore, the question of any of the other

parties claiming any right in the suit property on the basis of inheritance, does not arise.

12. Mr. Pattjoshi, learned Senior Counsel appearing for the appellant, was correct in his contention that the respondents could claim no right, title and interest in the suit property in view of the averments made in the plaint and the documents produced along with the plaint.

13. Having stated the above, it is relevant to note that the relief sought in the suit is not confined to the partition of the suit property. The reliefs sought in the plaint are as under:

- “(a) Pass preliminary decree for partition to be followed by final decree in respect of the Basement and Ground floor along with proportionate ownerships and easement right of the property bearing No.26 Navjiwan Vihar, New Delhi as shown in the site plan.
- (b) Cancel the Gift Deed dated 27.02.2014 and declare it as null and void.
- (c) Pass a decree for permanent injunction in favour of the Plaintiffs and against the defendant thereby restraining her from selling, mortgaging, parting with possession and or creating any encumbrances as regard to the suit property, being the Ground Floor and Basement at No. 26 measuring 250 sq yards at Navjiwan Vihar, New Delhi as shown in the site plan.
- (d) Pass a decree for permanent injunction in favour of the Plaintiffs and against the defendant thereby restraining her from selling, mortgaging, parting with possession and or creating any encumbrances as regard to the Second Floor of the property bearing No. 26 measuring 250 sq

yards at Navjiwan Vihar, New Delhi as shown in the site plan.

- (e) Pass a decree of Rs. 2,95,000/- along with interest at the rate of 18% till the realization in favour of Plaintiff No. 1 and against the Defendant.”

14. It is apparent from the above that prayers (a) and (c) relate to the suit property. Plainly, no such relief can flow from the facts as admitted in the plaint and the documents filed along with the same. However, in addition to the relief sought in respect of the suit property, the respondents are also seeking cancellation of the Gift Deed dated 27.02.2014; a decree of injunction in respect of the second floor of the property; and a decree for a sum of ₹2,95,000/- along with interest. It is pleaded in the plaint that Commodore J.M.L. Bansal had also executed a Gift Deed dated 27.02.2014, gifting the suit property to the appellant.

15. The respondents claim that the Gift Deed dated 27.02.2014 was executed by Commodore J.M.L. Bansal less than two months before his demise. His mental and physical condition was such that he was not of “*disposing mind*”. The respondents alleged that the appellant had taken advantage of Commodore J.M.L. Bansal’s rapidly deteriorating health and had got him into executing the said document, which contradicted his expressed wishes.

16. The respondents also seek an injunction in respect of the second floor of the property on the ground that the sale of the second floor of the property would jeopardize their legal rights in the suit property.

Since, the respondents do not have any legal right in the suit property, there is no question of the same being jeopardized. However, in terms of the Collaboration Agreement, the second floor was allocated to Commodore J.M.L. Bansal. The respondents also claim that his estate was inherited by their mother who had died intestate and therefore, each of the parties would have an equal share in the estate of their mother.

17. The respondents also claim a sum of ₹2,95,000/-, which comprises of ₹1,00,000/- as airfare and ₹1,95,000/- paid by respondent no.1 to the tenant inducted on the first floor built on the property. The respondents allege that the said tenant was inducted by the appellant on the first floor of the property, which belongs to respondent no.1 and he is, thus, entitled to the expenses incurred for evicting the said tenant.

18. It is not necessary to go into the merits of the aforesaid claims. However, it is clear that, as far as the said reliefs – prayers (b), (d) and (e) made in the plaint, as set out hereinbefore – are concerned, the suit cannot be rejected on the ground that it does not disclose a cause of action.

19. The appeal is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

PURUSHAINDR KUMAR KAURAV, J

JANUARY 10, 2023
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