

27.08.2019

Present: None for the plaintiff.

Shivam Gaur, grandson of defendant Murti Devi.

1. There is an application under Order VII Rule 11 read with section 151, CPC, filed on 21.05.2010 by Sh. Mukesh Kumar (son of defendant no. 2 late Jai Prakash), pending disposal. Arguments already heard. Record perused.

2. This is a suit for partition and permanent injunction in respect of a property in Khasra no. 304, Pandit Mohalla, Village Kondli, Delhi, which plaintiffs aver to be ancestral property.

3. Plaintiffs' case is as follows: Sri Chand and Raghubir were real brothers and co-owners of the ancestral property. Sri Chand had a son by the name of Jodha Ram and Raghubir had a son by the name of Ramnath. Jodha Ram passed in 1992 leaving behind defendant no. 1 (O. P. Sharma, Advocate). Ram Nath expired on 13.11.1990 leaving behind elder son Jai Prakash and younger son Ved Prakash and two daughters. Ved Prakash is defendant no. 3. The legal heirs of late Jai Prakash are impleaded as defendants no. 2A to 2E. The two daughters of late Ram Nath are the plaintiffs herein. After the demise of Ramnath's wife on 28.02.1993 the defendants, except defendant no. 1 took possession of the suit property which is an HUF property. After Ramnath's demise, Jai Prakash became the *karta* of the HUF being the eldest. Plaintiffs' request for partition of the

ancestral/HUF property was turned down. On these averments, plaintiffs filed the present suit.

4. Averments in the written statement are not being taken note of for the reason that an application under Order VII Rule 11, CPC is to be decided solely from the point of view of averments in the plaint and the documents annexed therewith.

5. Now to the application under consideration. It is stated that Jodha Ram has already sold out the land measuring 381 sq. yards to Jai Prakash during his lifetime for a lawful consideration; that mutation of the land left behind by late Ramnath has already been done in favour of his sons Ved Prakash and Jai Prakash; that land is governed by Delhi Land Reforms Act; that plaintiffs have no right, title or interest in the agricultural land of late Ramnath; that Jodha Ram had already sold out the property to Jai Prakash; that Jai Prakash has raised substantial construction over the land purchased by him; that legal heirs of Jai Prakash have relinquished their right, title and interest in the suit property measuring 381 sq. yards in favour of Mukesh Kumar and Pankaj Kumar both sons of late Jai Prakash; that there is no HUF in existence as alleged in the plaint; that plaintiffs' suit is hopelessly time barred as Jodha Ram sold out the property in 1988 to Jai Prakash and legal heirs of Jai Prakash have been in possession ever since then; that the suit is without any cause of action; that Delhi Land Reforms Act bars the jurisdiction of this Court; and that the suit property valued at Rs. 3.5 lacs in the plaint is undervalued and its actual value is Rs. 50 lacs and that the plaintiffs have not affixed proper Court fees.

6. Having heard the submissions and perused the record, this Court is of

the view that the application under consideration cannot be allowed. The plaintiffs in their plaint nowhere state that the suit land already stands sold out. They do not state that it was sold out way back in 1988. The plaintiffs do not state that presently Mukesh and Pankaj are the owners of the suit land. The plaintiffs do not state that the suit land already stands mutated in the name of somebody else. Plaintiffs do not state that they (plaintiffs) have no right, title or interest in the suit property. These are actually defences that are being raised by defendant(s). For the application under Order VII Rule 11, CPC such defences are not at all tenable.

7. Further, the plaintiffs nowhere state that legal heirs of Jai Prakash have relinquished their right, title and interest in the suit property in favour of somebody else. The plaintiffs also do not state that there is no HUF in existence. These are again defences that are being raised by defendant(s). For the application under Order VII Rule 11, CPC such defences are not at all tenable.

8. The next ground is that plaintiffs' suit is time barred. Whether the suit is time barred or not has to be decided purely and purely from the averments in the plaint for the purposes of Order VII Rule 11, CPC. Given the averments in the plaint, I do not think that the plaint can be rejected being time barred.

9. Further, the Delhi Land Reforms Act, 1954 has no application to the case at hand. The plaintiffs do not state that the suit property is an agricultural land being used for agriculture, horticulture, animal husbandry purposes etc. On the contrary, in the application under consideration itself, it is stated that substantial construction has been raised over the land. Thus,

there can be no question of application of the provisions of Delhi Land Reforms Act, 1954. In the case of **Harpal Singh Vs. Ashok Kumar** (2018) 11 SCC 113, it has been held that the bar of civil Court jurisdiction under section 185, Delhi Land Reforms Act does not apply where the land is not being used for agriculture, horticulture, animal husbandry purposes etc. Thus, even as per the case of the defendant(s) the land has construction over it and thus there can be no question of application of Delhi Land Reforms Act. In this regard, judgments reported as **Nilima Gupta Vs. Yogesh Saroha**, 156 (2009) DLT 129, **Kartar Singh Vs. Ram Anuj Pandey**, 2014 SCC OnLine Del 2758 and **Anand J. Datwani Vs. Geeta Bhagat Datwani & Ors.**, 2013 SCC OnLine Del 1706 can also be referred to.

10. Lastly it was contended that the valuation of the suit property at Rs. 3.5 lacs is erroneous and its actual value is Rs. 50 lacs. This is actually a defence of the defendant(s) which cannot be considered under Order VII Rule 11, CPC. An application under Order VII Rule 11, CPC is to be decided on plea of demurrer accepting the averments in the plaint to be correct. For this, defence of the defendant(s) is not at all to be considered.

11. The aforesaid application under Order VII Rule 11 read with section 151, CPC of Sh. Mukesh Kumar (son of defendant no. 2 late Jai Prakash) is dismissed.

12. List on 23.09.2019 for further proceedings as per law.

(MURARI PRASAD SINGH)
Addl. District Judge-03(East)
Karkardooma Courts-27.08.2019