

S No.2661/16/15

Nitin Tayal v. Virender kr. Goyal & Ors.

25.04.2018

Present : Sh. Mridul Jain, ld. counsel for plaintiff.

Sh. Raj Kumar Sharma, ld. counsel for defendants

No.1 to 9.

It appears that parties have filed authorities.

Put up at 4.00 PM for orders.

(Sanatan Prasad)

Additional District Judge-01

(East)/KKD/Delhi / 25.04.18

at 4.00 PM

Present : None.

Vide this application, the plaintiff has sought passing of judgment on admission on the grounds that it is admitted case of both the parties that suit property was purchased by late Smt. Angoori Devi, i.e. maternal grand mother of plaintiff; That plaintiff is claiming 1/8th share in the suit property, on the ground that after death of Smt. Angoori Devi and his husband Sh. Anand Prakash, property is to be divided into four shares between Sh. Virender Kumar Goyal, Sh. Surinder Kumar Goyal, LRs of Smt. Veena Bagri and Smt. Krishan Tayal, i.e. mother of the plaintiff. Smt. Krishna Tayal already expired, therefore, the entitlement of the plaintiff, as well as, his father would come to half of the share of the late

Smt. Krishna Tayal, i.e. 1/8th to the plaintiff and 1/8th to his father.

It is pleaded that the defendants No.1 to 9 have contended, in their purported defence, that a relinquishment deed was executed by above said all four co-shareers in favour of Sh. Anand Prakash and the same was signed by Sh. Virender Kumar Goyal, Sh. Surinder Kumar Goyal and Smt. Veena (Aggarwal) Bagri, further, Smt. Krishna Tayal executed a special power of attorney in favour of Smt. Veena and on its strength, Smt. Veena signed the alleged relinquishment deed on behalf of herself and Smt. Krishna Tayal as well, but, the alleged SPA has not been filed on record by the defendants for the reason that no such SPA was ever executed by Smt. Krishna Tayal and in favour of Smt. Veena, infact.

The further contention, raised in the application is that defendants cannot bring any evidence to prove the content / terms of document due to prohibition envisaged under section 91-92 of Indian Evidence Act, 1872 regarding the content of alleged special power of attorney and therefore, the alleged relinquishment deed is ineffective qua the relinquishment of share as regards late Smt. Krishna Tayal, allegedly, relinquished by Smt. Veena on the strength of the SPA.

Ld. counsel for the plaintiff has pressed in service a decision of our High Court in the case of **Sunrise Construction v. Miss Veena Wahi**, reported as (2009) 6 ILR Del 38, CS (OS) No.154 of 2008, DOD 12.05.2009 and more particularly

paragraph 33 of the decision, reading as under :-

“...If the plaintiff has made its claim founded upon a documented transaction and the execution of the document is admitted, one of the fundamental concern of a court while considering whether a case for passing of a decree under Order 12 Rule 6 CPC is made out or not, is that the defendant is given ample opportunity to prove the pleaded defence. However, in a case where defence itself is unstateable and / or is barred under some law, it is a case of “no defence” and in my view it is not necessary to drag the suit. The court can proceed to decide the matter on its merits. After all, the purpose of holding a trial is only to enable the parties to lead evidence in support of their stated case. A party cannot spring a surprise upon the opposite party at the stage of trial. His case, whether as a plaintiff or as a defendant has to be clearly stated in his pleading. He cannot set up a new case at the stage of trial, which is not even pleaded by him....”; And his submission is that conducting trial in this regard would be an unnecessary, drag on the precious time of the court.

The defendants have filed reply to the application, pleading therein the above facts, as defence, which are acrimoniously, disputed by the present application and infact said to be non-existent, thus, forming basis for the application. The defendants have also relied on four authorities reported as 2010 (4) SCC 491, titled as **Life Insurance Corporation of India & Anr. v. Ram Pal Singh Bisen**, reported as 2017 (241)

DLT 746, titled as **Daljit Singh & Anr. v. Hari Steel & General Industries Ltd.**, reported as 2014 (1) AD (Delhi) 156, titled as **Ajay Batra and ors. v. Mr. Y P Batra & Ors.**, reported as 2015 (VI) SLT 516, titled as **S.M. Asif v. Virender Kumar Bajaj**; And their contention is that the issue raised under the present application do not show any clear, cogent and unambiguous admission made on the part of the defendants, entitling the plaintiff for judgment on admission.

I have carefully, considered the submissions and it appears that the authorities relied on by Sh. Jain is not helpful in the case of present pleadings and there is no clear and categorical admission made by the defendants, entitling the plaintiff for judgment on admission under the present application, infact, the case of the plaintiff is not covered under the provisions of Order 12 Rule 6 CPC, rather, it may be covered under the provisions of Order 11 and more particularly Rule 12 CPC, if at all. The application has no merits, and, is therefore dismissed.

Put up on 10.07.2018 for RPE. Advance copies of the affidavits of PWs be supplied against receipt and atleast 15 days before the next date of hearing.

(Sanatan Prasad)
Additional District Judge-01
(East)/KKD/Delhi / 25.04.18