

Sameer Singh vs Arvind Singh And Ors on 21 January, 2019

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(05) 21/2019

SAMEER SINGH

..... Plaintiff

Through: Mr. Samar Bansal, Ms. Devahuti
Pathak and Mr. Manan Shishodia,
Adv.

Versus

ARVIND SINGH AND ORS.

..... Defendants

Through: Mr. Udayan Jain, Mr. Sonal Jain and
Mr. Kuldeep Singh, Adv. for D-1.
Mr. Anjan Chakraborty, Adv. for D-2.
Ms. Diya Kapur, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER

% 21.01.2019 Caveat Nos.52/2019, 53/2019 & 54/2019

1. The counsels for the caveators/defendants No.1,2 & 3 have put their appearance.
2. The caveats stand discharged.

IA No.784/2019 (u/S 149 CPC)

3. The counsel for the plaintiff undertakes that the deficiency in court fees would be made up within ten days.

4. If the court fees is not paid, list the suit for orders.

5. The application is disposed of.

IA No.783/2019 (for exemption)

6. Allowed, subject to just exceptions.

7. The application is disposed of.

CS(OS) 21/2019 & IA No.782/2019 (u/O XXXIX R-1&2 CPC)

8. The plaintiff has sued for declaration that the registered Gift Deed dated 10th June, 1998 purporting to be executed by his mother in favour of the defendant No.2 Asha Singh with respect to property No.C-170, Defence Colony, New Delhi is a forgery within the meaning of Article 56 of the Schedule to the Limitation Act, 1963, inasmuch as the same does not bear the signatures of the mother of the plaintiff.
9. The suit, as would be obvious, has been instituted after 20 years from the date of registration of the Gift Deed.
10. The plaintiff, in the suit, besides the defendant No.2 in whose favour the Gift Deed has been executed, has also impleaded defendant No.1 on the plea of the defendant No.1 being in conspiracy with the defendant No.2 and the defendant No.2, in response to the legal notice preceding the suit, having given verbatim the same reply as the defendant No.1.
11. The plaintiff admits that the defendant No.2 has since executed a Sale Deed of the property in favour of the defendant No.4 SBW Udyog Ltd. The defendant No.3 is the sister of the plaintiff and who is stated to be not having any interest adverse to the plaintiff.
12. The plaintiff also admits of having before institution of the suit filed a complaint of conspiracy against the two defendants.
13. The property qua which title is claimed in the suit by declaring the Gift Deed a forgery, admittedly vested in the defendant No.2 and not in defendant No.1.
14. In the said facts, the defendant No.1 Arvind Singh is not found to be either a necessary or proper party to the suit and is deleted from the array of defendants.
15. The Court Master to, in today's date, make an endorsement on the memorandum of parties, of deletion of the defendant No.1 from the array of defendants.
16. The case of the plaintiff is, (i) that the maternal grandfather of the plaintiff always made the mother of the plaintiff believe that the maternal grandfather was himself the owner of the property and the mother of the plaintiff had no title to the same; (ii) that though the mother of the plaintiff died on 15th March, 1999 but the father of the plaintiff (who is still alive) as well as the plaintiff and the defendant No.3 also continued to entertain the same belief and it is only now on demise of the maternal grandfather on 16th September, 2017 that the plaintiff, when made a claim for a share in his estate, was informed of the Gift Deed aforesaid and on perusal of which the plaintiff finds the signatures thereon of his mother to have been forged.
17. The mother of the plaintiff is stated to have left a Will and whereunder the plaintiff claims. The said Will does not include the subject property. The explanation of the counsel for the plaintiff is that the subject property did not find mention in the Will of the mother, and neither the plaintiff nor

his sister defendant no.3 nor their father after the demise of the mother claimed the said property because all of them remained under the belief that the property did not belong to them and belonged to the maternal grandfather.

18. The counsel for the plaintiff, on enquiry, as to how the suit claim is within time, has referred to Article 56 of the Schedule to the Limitation Act and to Ningawwa Vs. Byrappa Shiddappa Hireknrabar AIR 1968 SC 956 and Chhotanben Vs. Kiritbhai Jalkrushnabhai Thakkar (2018) 6 SCC 422.

19. Though the claim in the suit of the plaintiff, of the belief held by the mother to be on account of misrepresentation played on the mother and of the plaintiff, his sister and his father also continuing to hold the said belief for the last 20 years and the said belief having been shattered only now, appears to be farfetched but at this stage the suit cannot be dismissed in limine.

20. The counsels for the caveators/defendants, though appear but have not cited any case law to contend otherwise.

21. However in the facts aforesaid, the plaintiff is not found entitled to any interim relief restraining the defendant No.4, in whom the property now vests, from dealing with the same.

22. In the aforesaid scenario, I have given an opportunity to the counsel for the plaintiff to make any submissions required to be made with respect to exempting the suit property from applicability of principles of lis pendens, as the Court can do under the specific language of Section 52 of the Transfer of Property Act, 1882 and as per the dicta of the Supreme Court in Vinod Seth Vs. Devinder Bajaj (2010) 8 SCC 1.

23. The counsel for the plaintiff states that he leaves it to this Court.

24. Finding the facts to be farfetched as aforesaid, it is deemed appropriate to exempt the suit property from applicability of the principle of lis pendens as enshrined in Section 52 of the Act.

25. Issue summons of the suit to the defendants No.2 to 4.

26. Summons are accepted by the counsel for the defendants No.2&3.

27. The plaintiff to take steps for service of defendant No.4 by all modes including dasti and electronic returnable before the Joint Registrar on 11th March, 2019.

28. List for framing of issues, if any on 30th July, 2019.

29. The aforesaid observations would not close the right of the defendants to contend on the plea of limitation.

30. The counsel for the defendant No.3 states that the defendant No.3 is the elder sister of the plaintiff and is in knowledge of more facts than the plaintiff and the observations hereinabove may prejudice the defendant No.3.

31. The defendant No.3 would have such rights as are available to a defendant in a suit.

32. Issue notice, also of IA No.782/2019, limited to the extent of calling upon the defendant No.2 to deposit the proceeds of sale in favour of the defendant No.4 in this Court, returnable before the Joint Registrar on 11th March, 2019. List the said application also on 30th July, 2019.

RAJIV SAHAI ENDLAW, J.

JANUARY 21, 2019 'bs'..