

Nandita Pawar & Anr vs Daulat Ram Pawar & Ors on 18 November, 2020

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(OS) 350/2020 & I.A. 10623/2020

NANDITA PAWAR & ANR.

Through Mr. Yogendra Verma, Adv.

versus

DAULAT RAM PAWAR & ORS.

Through Mr. Amardeep Singh and Mr. Prashant Sharma, Adv. for D-1

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 17.11.2020 [Court hearing convened via video-conferencing on account of COVID-19] I.A. No. 10624/2020

1. Allowed, subject to just exceptions.

CS(OS) 350/2020 & I.A. 10623/2020

2. The plaintiffs are the daughters of defendant no. 4 i.e., one, Mr. Sunil Pawar. Defendant no. 5 is the son of defendant no. 4 and the brother of the plaintiffs.

2.1 Defendant nos. 1 and 2 are the grandfather and grandmother, respectively, of the plaintiffs. Defendant no. 3 is the uncle of the plaintiffs. 2.2 The plaintiffs have filed the present suit for partition, claiming a share in the suit property, which is, described as B-7, Extension 75, Safdarjung Enclave, Delhi-110079.

2.3 The record shows that the defendant no. 1 had approached the Deputy Commissioner, Delhi under the Delhi Maintenance and Welfare of Parents and Senior Citizens (DMWPSC) Act, 2007 seeking vacation of the suit property by defendant no. 4 (i.e. Mr. Sunil Pawar) and his family. 2.4 The order passed by the Deputy Commissioner was assailed by defendant no. 4/Mr. Sunil Pawar in a writ petition [i.e. W.P.(C) No.3413/2018] filed before this Court.

2.5 I am informed by Mr. Amandeep Singh, who appears on advance notice on behalf of defendant nos. 1 to 3, that the defendant no. 4/Mr. Sunil Pawar had sought issuance of notice, in the said writ petition, limited to seeking extension of time for vacating the suit property. 2.6 It needs to be

emphasised that defendant no. 4/Mr. Sunil Pawar, admittedly, at that point of time, along with his family, was residing on the first floor of the superstructure built on the suit property. 2.7 The record shows that on return of notice i.e. on 10.05.2018, counsel for the defendant no. 1/respondent in the said writ petition, agreed to grant defendant no. 4/Mr. Sunil Pawar and his family six months time to vacate the first floor of superstructure built on the suit property. 2.8 The counsel for defendant no. 4/Mr. Sunil Pawar, thus, in line with the affidavit filed with the Court stated that he shall vacate the portion of the superstructure in his occupation i.e. the first floor on or before 08.10.2018. The affidavit filed, in that behalf, to which I have made a reference above, is dated 08.05.2018.

2.9 The undertaking, as articulated in the said affidavit, was accepted by the Court.

3. The defendant no. 4/Mr. Sunil Pawar, however, did not rest there and carried the matter in appeal to the Supreme Court. Accordingly, the Special Leave Petition [SLP] bearing no. 25386/2018 was filed against this Court's order dated 10.05.2018.

3.1 The Supreme Court disposed of the SLP vide order dated 08.10.2018, and while doing so, extended the time (for vacating the first floor of the suit property and handing over the peaceful and vacant possession of the same) till 30.04.2019 having regard to the relationship between the parties.

3.2 In the said order, the Supreme Court made it clear that defendant no. 4/ Mr. Sunil Pawar will clear arrears of electricity charges and statutory dues and shall not create any third-party interest in the portion of the suit property in his possession.

3.3 Besides this, it was also made clear that the failure to hand over the vacant and peaceful possession would make defendant no. 4/Mr. Sunil Pawar liable for contempt of the order passed by the Supreme Court apart from the right of the opposing party to initiate the regular execution proceedings against him.

3.4 I am informed by Mr. Singh that a contempt petition has been filed since defendant no. 4/Mr. Sunil Pawar and his family have not vacated the first floor of the superstructure built on the suit property despite the timeline for the same expiring on 30.04.2019.

4. Therefore, to my mind, the plaintiffs have been clearly set up by defendant no. 4/Mr. Sunil Pawar to get over the order passed by this Court which was confirmed albeit with modification by the Supreme Court.

4.1 Mr. Yogendra Verma, who appears for the plaintiffs, says, even according to defendant no. 1, the suit property is an HUF property and, therefore, the plaintiffs have a share in the same. 4.2 According to Mr. Verma, defendant no. 1 did not disclose this fact in the earlier proceedings. In support this contention, Mr. Verma has, inter alia relied upon a copy of the document appended at pages 13 to 23 of the plaintiffs' document folder.

4.3 Mr. Verma says that, even according to the defendants, the suit property is an HUF property.

5. Mr. Amardeep Singh, who appears on behalf of the defendant nos. 1 to 3, on the other hand, says that there is no assertion as to when, if at all, the property was put in the joint family hotchpotch. 5.1 On being queried, Mr. Verma says that defendant no. 1 purchased the suit property out of the funds provided by his father. 5.2 A perusal of the assertions made, in this behalf, in the plaint, show that they lack specificity. There are no details as to how much money was secured by defendant no. 1 from his father for purchasing the property described as House No. 247-D, Arjun Nagar, New Delhi [in short "Arjun Nagar Property"].

5.3 This property, according to the plaintiffs, was bought by defendant no. 1 from the funds furnished by his father i.e. Late Babu Lal, which was, however, demolished by the DDA in 1975.

5.4 The suit property, according to the plaintiffs, was allotted, albeit, on a perpetual lease, in lieu of the Arjun Nagar property.

5.5 Mr. Verma says that the plaintiffs were not even born when the aforementioned transactions took place.

6. To my mind, since it is a suit for partition, in the pleadings, notwithstanding the age of the plaintiffs, there should have been a greater specificity qua this aspect of the matter. Clearly the plaintiffs are acting as proxies for defendant no. 4/Mr Sunil Pawar, that is, their father. If no one else, defendant no. 4/Mr Sunil Pawar would have these details. 6.1 Thus, for the aforesaid reasons, the relief sought in prayer clause (b) of the captioned application is rejected.

6.2 Furthermore, the matter is stood over for Mr. Singh to obtain instructions from defendant nos. 1 to 3 and, if necessary, file a reply to the captioned application, which, if filed, should be supported by an affidavit.

7. List the matter on 22.12.2020.

RAJIV SHAKDHER, J NOVEMBER 17, 2020 [Click here to check corrigendum, if any](#)