

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved On:08.09.2009
Pronounced on: 30.10.2009

+ CS (OS) 1033/2003

ESTATE OF MEERA MALHOTRA Plaintiff

Through : Mr. S.C.Anand, Advocate for the plaintiff.

Vs.

Vijay Dixit & Ors.defendants

Through : Mr. Rajat Aneja, Advocate for defendant No.5.
Mr. Amitabh Marwah, Advocate for defendant
No.12.
Mr. Ravi Sikri, Advocate for defendant No.16.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

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1. The plaintiff in the suit claims to be the "Estate of Ms. Meera Malhotra" who died on 11.11.1999. It is contended that probate proceedings in respect of her estate are pending on the file of the District Judge, Delhi and that in those proceedings, an application for appointment of a Curator was filed, for litigation on behalf of her Estate, in the subject property which was disposed of

by order dated 25-9-2002, allowing Ms. Indu Bala Malhotra, Smt. Rita Anand, S/Shri Deepak and Anil Malhotra, to file the present suit. The said four individuals are the children of late Inderjit Lal Malhotra.

2. The suit claims partition and possession of 1/4th share of the estate of late Ms. Malhotra, in respect of the freehold rights of F-5, East of Kailash, New Delhi ("the suit property"). That property was owned by late Charanjit Lal Malhotra, (hereafter "Charanjit Lal") father of Ms. Meera Malhotra, and of Bikramjit Lal Malhotra, Ranjit Lal Malhotra, and late Inderjit Lal Malhotra. The plaintiffs (suing on behalf of estate of Ms. Malhotra) are the children of another son of the said Charanjit Lal. The suit averments are that the first defendant had entered into an agreement, after the death of Charanjit Lal Malhotra, for purchase of the suit property, with some of the heirs of the said Charanjit Lal. According to the plaintiff, Charanjit Lal used to own some landed property in Kilokri Village, near Friends colony, which was acquired by the government. A rehabilitation scheme had been framed, enabling landowners (whose properties were acquired) to alternative plots. The said Charanjit Lal, was thus, allotted the suit property, with leasehold rights, through a registered lease deed, dated 28-12-1972. The plaint describes an alleged will, which says the plaintiff, entitled the late Ms. Meera Malhotra, to equal share (1/4th) in respect of the said suit property.

3. The suit alleges that after death of Charanjit Lal, the Delhi Development Authority mutated the suit property in favour of his three sons, and

daughter, Ms. Meera Malhotra, who were prevailed upon, on 1-12-1995 in respect of the suit property, to agreeing to sell it. Later, alleges the plaintiff, the said legal heirs, including Ms. Meera Malhotra, signed an agreement dated 28-6-1996, but without realizing its true import. It is alleged that the said agreement was procured by the first defendant, fraudulently, and by practising deceit on the sellers, who were not in truth agreeable to its terms, as it was for inadequate consideration, and also entered into with in violation of several provisions of law.

4. The suit thereafter describes various legal proceedings, including the probate petition, and three other suits, on the file of the Additional District and Civil Judges. It is alleged that the Delhi Development Authority (“DDA”) illegally and without any justification cancelled the leasehold rights in respect of the suit property, on 13-2-2002. The plaintiff says that the said cancellation is null and void.

5. On the strength of these allegations, which have been described in minute detail, in 194 paragraphs, 78 “grounds” with 17 reliefs sought in the prayer clause, in a plaint running into 70 pages, the suit seeks eviction of Defendant Nos. 11, 12, 15 and 16; cancellation of the DDA order dated 13-3-2002, cancellation of the agreements to sell entered by legal heirs of Charanjit Lal, in favour of the first defendant, and partition of 1/4th share of Ms. Meera Malhotra.

6. The fifth defendant, by his application IA No. 3686/2009, points out that the suit suffers from multifariousness, since Ms. Indu Bala and other heirs of

Inderjit Lal Malhotra, on the basis of their being beneficiaries of a will (of Ms. Malhotra) have filed several other proceedings. It is alleged that in any event, once the legal heirs of late Charanjit Lal parted with their rights, in respect of the suit property, to the first defendant, through agreements, entered into in 1995 and 1996, the plaintiffs, as heirs of one of them, cannot claim any interest, as the original beneficiaries ceased to be interested in the property. The said heirs, including Inderjit Lal Malhotra, and Ms. Malhotra, were divested of their rights; the plaintiffs cannot now say that the property can be partitioned.

7. The fifth defendant applicant also contends that the DDA has initiated eviction proceedings under the Public Premises (Eviction of Unauthorized Tenants) Act and, consequently, the court does not have jurisdiction to decide the issue of cancellation. The applicant also contends that the plaintiffs filed three different suits, (Nos. 26, 27 and 330 before the Civil Judge, Tis Hazari, for direction to DDA to convert the suit property, and restrain the other defendants. It is submitted that an initial motion for dismissal of those suits, or their rejection was dismissed by the court. Upon revision, by the applicant, this court, in its order dated 16-10-2008 (in CRP Nos. 114, 119 and 120 of 2006) set aside the orders of the trial court, and dismissed the suit. The Applicant urges that this court should take the same view, particularly since the relief of partition, (assuming it to be maintainable) can be agitated in another suit, filed by the same so-called heirs of Ms. Meera Malhotra, i.e Ms. Indu Bala Malhotra, Smt. Rita Anand, S/Shri Deepak and Anil Malhotra.

8. The plaintiffs do not reply to the application, or deny its averments. Their counsel did not dispute the order of the court in the civil revisions, filed by the fifth defendant, in civil revision proceedings. The court had heard counsel, at length, and also considered the other suit instituted by Ms. Indu Bala Malhotra and other heirs of Inderjeet Lal Malhotra.

9. It is immediately apparent from the above narrative that the plaintiffs claim to be legal heirs of Ms. Meera Malhotra, daughter of Charanjit Lal. They are the children of the said Meera Malhotra's brother. Concededly, the said two heirs had parted with possession of the suit property, to the first defendant. During their life time, they did not agitate any grievance in respect of the agreements entered into by them, with the first defendant, or about the inadequacy of the consideration received. The suit, and documents filed along with it, also show that possession of the said property had been handed over to the first defendant. In these circumstances, the court is of opinion that the present proceeding, (notwithstanding the leave granted for its institution by the District Court, on an assumption that the estate of Ms. Meera Malhotra has to be safeguarded) is a gross abuse of the process of court.

10. The individuals claiming through Ms. Meera Malhotra, i.e Ms. Indu Bala Malhotra, Smt. Rita Anand, S/Shri Deepak and Anil Malhotra, have also filed another suit, for identical relief in respect of the suit property, claiming as heirs of Inderjeet Malhotra. Partition, cancellation of agreements to sell, and cancellation of the DDA's statutory order, re-entering the property, have been

claimed as reliefs. The averments are identical with the present suit. That suit (No. 1033/2002) was also instituted prior in point of time, and no application for leave to file the present suit, by the same plaintiffs, in their capacity as heirs of Ms. Meera Malhotra, was either sought or granted.

11. It is apparent also, that the plaintiffs are agitating about the correctness and legality of agreements arrived at by their ostensible predecessor who, during her lifetime, did not feel that they were tainted, or illegal. She died in November, 1999, three years after the agreements were entered into, and after receiving the amounts, for that purpose. The plaintiffs here no doubt are agitating their rights in respect of the property, as legatees, yet they did not include this averments in their previous suit. Furthermore, importantly, the right to seek cancellation, arose immediately after the agreement of 1996 was entered into; the limitation for filing a cancellation (of instrument) suit is three years; concededly, that period expired, before the present suit was filed.

12. In *T. Arivandandam v. T.V. Satyapal* (1977 (4) 467), the Supreme Court held that:

"The trial court must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter 11) and must be triggered against them."

13. Apart from the question of limitation, the Court is also of the opinion that the present suit cannot also be maintained, because the plaintiffs had approached the Court earlier, in Suit No. 1310/2002, in respect of the same reliefs, claiming similar rights in regard to the suit property. They did not disclose their interest, as heirs of Ms. Meera Malhotra, for a similar – if not identical relief. Nor did they seek leave to file a separate suit, to agitate those rights, at a later stage, as mandated by Order 2, Rule 2, CPC. The present suit therefore, is clearly barred in law.

14. In view of the above discussion, it is held that the present suit is not maintainable, for multifariousness, not seeking leave of court, before instituting it, and excluding the present claim in the previous suit, as also on the ground that it is time barred. It is therefore, liable to be, and is rejected under Order 7, Rule 11 (d), CPC. The plaint (in the suit) and all pending applications are accordingly rejected as not maintainable. In the circumstances, the plaintiff shall bear the costs, quantified at Rs. 50,000/-.

**S. RAVINDRA BHAT
(JUDGE)**

OCTOBER 30, 2009