

SUPREME COURT OF INDIA

Satya Jain

Vs.

Anis Ahmed Rushdie

C.A.No.8653 of 2012

(P.Sathasivam and Ranjan Gogoi JJ.)

08.05.2013

ORDER

RANJAN GOGOI, J.

1. Civil Appeal No. 8653 of 2012 and other connected appeals were allowed by this Court by judgment and order dated 3.12.2012. The decree passed by the Appellate Bench of the High Court of Delhi in RFA (OS) No. 11/1984 was set aside and the suit for specific performance filed by the plaintiffs 1 (since deceased), 2 and 3 was decreed in the following terms :-

“30....We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As No material, whatsoever is available to enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances.

31. All the appeals shall accordingly stand allowed in terms of our above conclusions and directions.”

2. I.A. Nos. 3-5, 12-13, 14-15 and D.No. 37212 of 2013 have been filed seeking impleadment/clarification/modification/ correction of the judgment dated 3.12.2012, in the circumstances noted below.

3. I.A. Nos. 3-5 have been filed by one Amit Jain, Rahul Jain and Smt. Aruna Jain contending that during the pendency of the Civil Appeal before this Court, out of total suit property measuring 5373 Sq. Yds., two parcels measuring 1500 Sq. Yds., in all, were sold by Ms. Sameen Rushdie Momen (respondent No.1 in Civil Appeal No. 8653/2012 and Respondent 1B in Civil Appeals No. 8675-76 of 2012) in favour of the applicants. On the said basis, the applicants seek impleadment and clarification of the judgment dated 3.12.2012 to mean that the successor-in-interest of the original defendant (late Anis Ahmed Rushdie) i.e. Ms. Sameen Rushdie Momen, has been left with the right of ownership in respect of only 3873 Sq. Yds. of the property situated at No. 4, Flag Staff Road, Civil Lines, Delhi.

4. I.A. Nos. 12-13 have been filed by Narender Jain and Arvind Jain (original plaintiffs No.2 & 3) seeking the following reliefs:-

“(a) modify/clarify/correct Paragraphs 29 and 30 of the judgment and order dated 3.12.2012 as mentioned in the present application;

(b) correct the typographical errors in the judgment and order dated 3.12.2012 as mentioned in Paragraph 8 of this application;

(c) pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.”

5. In the aforesaid I.As. the applicants have, inter alia, stated that Ms. Sameen Rushdie Momen who is the legal heir/ successor-in-interest of the deceased sole defendant Anis Ahmed Rushdie (by virtue of a Will dated 9.1.1984 executed by Anis Ahmed Rushdie and accepted by the other legal heirs) had executed a irrevocable General Power of Attorney dated 4.11.2010 with consideration in favour of one Fine Properties Private Limited disposing of all her rights, shares and interest etc. in the suit property “as on whereon basis” subject to the following salient terms:-

“1. That, the FIRST-PARTY agrees to absolutely grant to the SECOND-PARTY all his rights, shares, interest, liens, registrations clear-titles, etc. in the un- encumbered plot/property/ house bearing no. 4, Flag Staff Road, Delhi-110054 alongwith: unauthorized Occupant/ User (i.e. late Sh. BHIKU RAM JAIN): and another unauthorized-Occupant/ User (i.e. legal-heirs of late Mr. I.M. Lal): and portion of the property in possession of the FIRST-PARTY.

And the SECOND PARTY has accepted to be the Attorney for the purchase acquisition and possessing of the entire-property, for the total CONSIDERATION of Rs.4,50,00,000/- (Rupees Four-Crores and Fifty Lacs) only through this presently executed and registered G.P.A.

Sufficiency of the above CONSIDERATION for signing and executing of this G.P.A. is hereby acknowledged (payments and receipts) by both Parties.

(vii) Para 6 of the said General Power of Attorney reads under:-

6. That, the SECOND-PARTY shall pursue and bear the entire charge, costs, expenses, fees, etc. regarding the following:-

- R.F.A. (OS) No. 11 of 1984;
- Special Leave Petition (S.L.P.) or equivalent, etc. before the Supreme Court of India), if subsequently filed thereafter;

Effective from the date of execution and registration of this G.P.A.

(vii) Para 8 of the said General Power of Attorney reads as under :-

8. That, on handing over the payment of: full- CONSIDERATION to the FIRST-PARTY, by the SECOND-PARTY, the FIRST-PARTY ceases to exercise any rights, interests, liens, titles, etc. (what-so-ever) in the said plot/property/house; and the Attorney for the same shall absolutely stand in favour of the SECOND-PARTY (in all respects what-so-ever).’

(viii) Para 12 of the said General Power of Attorney reads as under :-

12. That, the CONSIDERATION-amounts shall not be returned/refunded, by the FIRST-PARTY to the SECOND-PARTY.

Also, the amount paid, incurred, etc. and expenses, cost etc. and incidentals thereto towards the Registration (eg. Stamp Duty, etc.) by the SECOND-PARTY shall also not be returned/refunded/reimbursed).”

6. In the light of the aforesaid facts, the applicants state that directions contained in judgment dated 3.12.2012 requiring the legal heirs of the deceased sole defendant, i.e., Respondents 1A to 1D (in Civil Appeal No. 8675-76 of 2012) to execute the

sale deed in favour of the plaintiffs, at the market price of the suit property as on the date of the judgment, would require appropriate modification inasmuch as the defendant- respondents are not entitled to the said reliefs having already parted with the suit property.

7. The applicants further/alternatively contend that in view of the several decisions of this Court referred to in paragraph 5 of the I.A., the judgment of the Court directing execution of the sale deed by the defendant- respondents in favour of the plaintiffs at the market price as on the date of the said judgment i.e. 3.12.2012 would also require appropriate modification.

8. In addition to the above, correction of certain typographical errors specifically mentioned in paragraph 8 of the I.A. have been prayed for by the applicants.

9. I.A. Nos. 14-15 of 2013 have also been filed by plaintiffs 2 and 3, i.e., Narender Jain and Arvind Jain seeking to bring to the notice of the Court that Fine Properties Private Limited has filed an I.A. before the learned Trial Judge of the High Court seeking certain orders in respect of the execution of the sale deed in terms of the judgment of this Court dated 3.12.2012. The applicants contend that notice has been issued in the aforesaid I.A. by the learned Trial Judge of the High Court without any justifiable basis and the same needs to be appropriately interfered with by this Court. In any event, the proceedings in the aforesaid I.A. are required to be stayed till a decision is rendered by this Court in the present I.As.

10. In addition to the above, I.A. D.No.37212 of 2013 has been filed by one Chopra Marketing Private Limited seeking impleadment in C.A. No. 8653 of 2012 on the basis that an agreement to sell the suit property was executed by and between the applicant and persons claiming to be the Attorneys of the defendant-respondents pursuant whereto the applicant had parted with a sum of Rs. 2 crores as advance payment. According to the applicant it had subsequently come to its knowledge that rights in the suit property had already been created in favour of the Fine Properties Private Limited as well as the applicants in I.A. 3-5 for which reason a FIR dated 8.12.2012 has been filed by the applicant before the Jurisdictional Police Station, i.e., Economic Offences Wing, Delhi.

11. We have heard the learned counsels for the parties.

12. An application for modification/clarification of a final order passed by this Court is not contemplated by the provisions of the Supreme Court Rules, 1966 which specifically provides the remedy of review and also lays down the procedure

governing the consideration of a review application by this Court. In fact, filing of such applications for modification has been deprecated by this Court in Delhi Administration Vs. Gurdip Singh Uban & Ors. [(2000) 7 SCC 296] and A.P. SRTC & Ors. Vs. Abdul Kareem [(2007) 2 SCC 466]. It is in the above backdrop that we must proceed to examine the prayers made in the I.As. filed.

13. Insofar as I.A. Nos.3-5 are concerned, suffice it will be to note that the facts stated therein, on the basis of which the prayer for modification/clarification has been made, were not before the Court at the time when the judgment dated 3.12.2012 was rendered. In I.A. Nos.14-15 and I.A. D.No. 37212 of 2013 the reliefs sought are based on facts and events which have occurred subsequent to the order of this Court. Not only on the basis of the principles of law laid down by this Court in Gurdip Singh Uban and Abdul Kareem (supra), even otherwise, the said I.As. would not be maintainable and the prayers made therein cannot be granted. The applicants seek to reopen concluded issues and alteration of the consequential directions which have attained finality. Such a course of action is not permissible and at best the parties may be left with the option of seeking such remedies as may be open in law to vindicate any perceived right or claim. We, therefore, dispose of the I.A. Nos.3-5, 14-15 and D.No. 37212 of 2013 in the above terms.

14. Insofar as I.A. Nos.12-13 of 2013 are concerned, Shri Shanti Bhushan, learned senior counsel for the applicants has submitted that an application seeking review of this Court's judgment dated 3.12.2012, to the extent prayed for in the I.As., has been filed. That apart, Shri Bhushan has drawn our attention to some typographical errors in the judgment dated 3.12.2012. We, therefore, deem it proper to consider the aforesaid I.As. on a slightly different footing.

15. Insofar as typographical errors and the suggested corrections mentioned in para 8 of the I.As. are concerned, we have examined the contents of the relevant paragraphs of the judgment dated 3.12.2012. On such consideration, we find that the errors pointed out by the applicants in para 8, indeed, have occurred. Consequently, we correct the said errors in the following terms.

(i) Para 2 of the judgment dated 3.12.2012 be read as follows : "2. The appellants, Narendra Jain (original Plaintiff No.2), and Arvind Jain (original Plaintiff No. 3) also claim to be the Legal heirs and representatives of the original plaintiff No. 1 who had along with Narendra Jain and Arvind Jain instituted suit No. 994/1977 in the High Court of Delhi seeking a decree of specific performance in respect of an agreement dated 22.12.1970 executed by and between original plaintiff No.1 (Bhikhu Ram Jain) and the original

defendants Anis Ahmed Rushdie in respect of a property described as Bungalow No.4, Flag Staff Road, Civil Lines, Delhi (hereinafter referred to as the 'suit property'). The plaintiff Nos. 2 and 3 are the sons of the original plaintiff No.1. The suit was decreed by the learned trial judge. The decree having been reversed by a Division Bench of the High Court the present appeals have been filed by the original plaintiff No.2, Narendra Jain and Arvind Jain (original Plaintiff No.3) and the other appellants who claim to be vested with a right to sue on the basis of the claims made by the original plaintiffs in the suit. It is, however, made clear at the very outset that though all such persons claiming a right to sue through the deceased plaintiffs 1 and 3 are being referred to hereinafter as the plaintiffs and an adjudication of the causes/claims espoused is being made herein the said exercise does not, in any way, recognize any right in any such impleaded 'plaintiffs' which Question(s) are left open for decision if and when so raised."

ii) In paragraph 4 of the judgment dated 3.12.2012 the date of the filing of the suit mentioned as 3.11.1997 be read as 3.11.1977.

(iii) In paragraph 6 of the judgment dated 3.12.2012 the date 22.12.1977 be read as 22.12.1970.

(iv) Paragraph 8 of the judgment dated 3.12.2012 be replaced by following paragraph :-

"8. Aggrieved by the aforesaid judgment and decree passed by the learned trial Judge, the original defendant had filed an appeal which was allowed by the impugned judgment dated 31.10.2011. During the proceedings of the appeal before the High Court the original plaintiff 1 as well as the original defendant had died. As already noticed, while the original plaintiff No.2 and original plaintiff No.3 continue to remain on record as appellants, the remaining appellants claim to be the legal heirs/representatives of the deceased plaintiff No.1. In so far as the original defendant in the suit is concerned the legal representatives of the said defendant are on record having been so impleaded."

16. This will bring the Court to a consideration of the prayer for clarification/modification of the direction for execution of the sale deed by the defendants in favour of the plaintiffs at the market price as on 3.12.2012. The first ground on which such modification has been sought is that during the pendency of the appeals all rights in the suit property have been transferred by the defendant-

respondents to one Fine Properties Private Limited for valuable consideration and therefore, the said defendant-respondents are not entitled to any relief much less the relief of the market value of the property. Additionally, it has been contended that instead of the defendant-respondents it is the Registrar of the Delhi High Court who should be directed to execute the sale deed in favour of the plaintiffs.

17. We have already observed that the facts surrounding the alleged transfer of the suit property or the rights over the said property by the defendant-respondents to Fine Properties Private Limited were not before the Court at the time of hearing of the appeals in question or even at the time when the judgment dated 3.12.2012 was rendered. Though the aforesaid facts along with the supporting documents were filed by way of an additional paper book no specific order of the Court was sought or granted to the appellants to rely on the said documents. In such circumstances, the aforesaid facts now sought to be brought on record cannot be a legitimate basis for any modification of our judgment even if the I.As. in question are construed to be applications for review of our judgment dated 3.12.2012.

18. The aforesaid prayer for modification is based on the additional ground that the same is contrary to the several decisions of this Court reference to which has been made in para 5 of the I.A. We do not consider the abovestated ground to be a justifiable or sufficient cause to alter our direction(s) for execution of the sale deed at the market price inasmuch as the said direction was passed by us in the peculiar facts and circumstances of the present case enumerated below.

19. In paragraph 10 of the judgment dated 3.12.2012, the statement made on behalf of the appellants (Plaintiffs) that they are ready and willing to offer an amount of Rs.6 crores for the property as against the sum of Rs.3.75 lakhs as mentioned in agreement dated 22.12.1970 has been specifically recorded. It is the aforesaid “offer” made on behalf of the appellants/plaintiffs that had led to the direction in question inasmuch as no material was available to Court to find out as to whether the offered amount of Rs.6 crores was, in any way, indicative of the market value of the property. It is in such a situation that the direction to execute the sale deed at the market price and the request to the learned Trial Judge to determine the same came to be recorded in the judgment dated 3.12.2012. It is, therefore, clear that we did not intend to lay down any law of general application while issuing the direction for execution of the sale deed at the market price as on the date of the judgment i.e. 3.12.2012.

20. The exercise by the learned Trial Judge in terms of our judgment dated 3.12.2012 is yet to be made. The aforesaid determination, naturally, will be made

by the learned single Judge only after affording an opportunity to all the affected parties and after taking into account all relevant facts and circumstances. Furthermore, any party aggrieved by such determination will be entitled to avail of such remedies that may be open in law to such a party. In view of the above, we do not deem it to be necessary to cause any variation or modification in the aforesaid direction contained in our judgment dated 3.12.2012.

21. Accordingly, I.A. Nos. 12-13 of 2013 shall stand disposed of in the above terms.