

Unreportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO (OS) Nos.241, 242 and 243/2008

% Date of Decision: July 23, 2008

Mrs. Radha Agarwal nee Bansal	. . . Appellant in FAO(OS) No.241/08
Shri Sanjay Bansal	. . . Appellant in FAO(OS) No.242/08
Smt.Seema Bansal	. . . Appellant in FAO(OS) No.243/08

through : Mr.R. Venkataramani, Senior Advcate
with Mr.Wajeeh Shafiq

VERSUS

Smt. Chitra Garg & Others	. . . Respondents
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through : Mr. Arun Mohan, Senior Advocate.
with Mr.Ashval Vadera for
respondent No.1

CORAM :-

**THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. These appeals came up for preliminary hearing on 19.5.2008 when notice was directed to be issued to the respondents returnable on 21.7.2008. It was also observed that the notice would indicate that the appeals may be disposed of at the admission stage. The Court also stayed further proceedings in the suit. On 21.7.2008,

learned counsel for the appellant requested for one day's accommodation as Mr. R. Venkataramani, learned senior counsel who had to argue the matter on behalf of the appellants, was busy in the Supreme Court. The matter was accordingly taken up on 22.7.2008 when Mr. Venkataramani appeared for the appellants and made his submissions. Mr. Arun Mohan, learned senior counsel appearing for the respondent No.1., also advanced his arguments. However, as need to peruse the suit record was felt, the matter was adjourned for today. Nobody appears on behalf of the appellants today even when the matter was passed over once and is called out the second time. In any case, as we had heard the counsel for the parties yesterday, i.e. on 22.7.2008, and the suit record is also available, we proceed with the order in these appeals.

2. The respondent No.1 is the contesting party, who is the plaintiff in Suit No. 2565/1993. This suit filed by the plaintiff is for recovery of possession of residential house No. R-96, Greater Kailash-I, New Delhi as well as for mesne profits. In this suit, the plaintiff had arrayed two persons as defendants, namely Shri Surinder Kumar Bansal as defendant No.1 (since deceased) {hereinafter referred to as the 'defendant No.1.'} as well as Smt. Seema Bansal as defendant No.2, who is the wife of defendant No.1 {for the sake of convenience, she is

referred as 'defendant No.2' hereafter}. The suit proceeded on the averments that both these defendants are in illegal occupation of the suit premises. The manner in which they came to be in possession etc., as per the averments made in the plaint, need not be stated as that is not required. Suffice it to mention that the premises were initially let out in the year 1971 by Col. Harjeet Singh, the original owner of the suit premises, to 'Mr. Pires's Private School' through its Proprietor Mr. Alan St. John Pires. As per the averments in the plaint, the defendant No.2 was Head Mistress/Principal of the said school. The plaintiff is the successor-in-interest who has purchased the suit property from Col. Harjeet Singh.

3. In the written statement filed by the defendants, it is *inter alia* alleged that the defendant No.2 was in possession of the suit premises and defendant No.1 had nothing to do with the suit premises and was, therefore, unnecessarily impleaded as a party. On this basis, he even filed an application, i.e. IA No. 7942/1998 praying that his name be deleted from the array of parties. During the pendency of these proceedings, the defendant No.1 also died on 13.4.2003 and the application for bringing the LRs of defendant No.1 was moved by the plaintiff. Notice in those applications was issued to the LRs of the defendant No.1 and they were brought on record. It is this IA No.

7942/1998 preferred by the defendant No.1 which is allowed by the learned Single Judge vide order dated 7.5.2008 after recording the statement of counsel for the plaintiff that he does not oppose the said application. The precise order passed in this behalf reads as under :-

“IA No. 7942/1998 in CS (OS) No. 2565/1993

Learned counsel for the plaintiff does not oppose the application. The application is allowed. The name of Defendant no. 1 is struck off from the array of parties, therefore, all LRs of Defendant no.1 also stand struck off from the array of parties.

In view of striking of the names of the Defendant no.1 and all LRs of Defendant no.1 from the array of parties, Defendant No.2 shall be the sold Defendant. Accordingly, amended memo of parties be filed.”

4. Since the name of the defendant No.1 was directed to be deleted, as a consequence, the Court also passed the order striking off the LRs of defendant No.1 from the array of parties. Challenging this order, the defendant N.2 as well as LRs of defendant No.1 have preferred these appeals.

5. In the first blush, there is hardly any argument which can be raised by the appellants, inasmuch as it was the application of the defendant No.1 himself to the effect that he was unnecessarily impleaded as a party and has nothing to do with the subject matter of the suit and the learned Single Judge has done nothing but to accept the plea of defendant No.1 after the counsel for the plaintiff also gave

his consent. Notwithstanding the above position, Mr. Venkataramani, learned senior counsel appearing for the appellants, submitted that once the LRs of the defendant No.1 were brought on record, they had right to contest the suit. He also submitted that after moving the aforesaid IA, the defendant No.1 along with defendant No.2 had filed application for amendment of the written statement in the year 2001 (IA No. 1472/2001) along with the proposed amended written statement. Submission is that taking such a step to seek amendment in the written statement by defendant No.1 would clearly indicate that he did not want to pursue IA No. 7942/1998 and, therefore, no such orders should have been passed in the application by the learned Single Judge.

6. We could have been persuaded by such a submission of learned counsel for the appellant, but for the fact that even in the amendment sought by the defendants in IA No. 1472/2001, stand of defendant No.1 remains the same. We may point out in this respect the following averments made in the proposed written statement :-

“(ii) Her rights are unassailable in terms of the Lease Deed dated 27.9.1974 and could not have been challenged by the present suit.

The defendant No.1, Shri S.K. Bansal, has nothing to do with the said property held by Defendant No.2.

xx xx xx

26. Para 26 of the plaint is absolutely wrong, incorrect and denied. It is denied that the Plaintiff has become entitled to take over possession. It is denied that defendant No.2 is in illegal possession of the suit property, as alleged in the para under reply. The defendant No.1 who is the husband of the defendant No.2 has nothing to do with the suit property and the plaintiff is not entitled to claim possession of the suit property from the defendant No.2 on the basis of the alleged Sale Deeds.

By way of clarification it is submitted that

The physical possession right from inception was with Defendant No.2 continuously and without interruption.

51. Para 51 of the plaint is absolutely wrong, incorrect and denied and as the defendant No.1 has been wrongly impleaded as party defendants, therefore the suit is liable to be dismissed for misjoinder of parties.”

7. It is clear from the above that even if this amendment is allowed, the stand of defendant No.1 remains unaltered, namely, he had nothing to do with the suit property. We may also point out that in the entire written statement, the case set up by the defendant No.2 is that she is in possession of the suit property and has become owner thereof by adverse possession. We may also point out at this stage that the statements of both the defendants were recorded under Order X Rule 1 of the Code of Civil Procedure, 1908. In these statements also, the defendant No.1 categorically mentioned that he had nothing to do with the premises in question and even the defendant No.2 has again categorically stated in her statement that she had become owner by adverse possession and further that main claim

is only on adverse possession. This would also indicate that it is only defendant No.2 who is claiming her right over the suit property.

8. It is strange, in these circumstances, when application was filed by the defendant No.1 himself for his deletion, which course of action is accepted by the plaintiff also and order is passed on that basis, which can be treated as a consent order, still these appeals are preferred by the appellants challenging that order.

9. Mr. Venkataramani referred to the judgment of the Supreme Court in the case of *Bal Kishan v. Om Prakash & Anr.*, (1986) 4 SCC 155 to contend that the LRs of the defendant No.1 would have right to contest the suit in the manner they want and, thus, the submission was that they would not be bound by the aforesaid application which was preferred by the defendant No.1 during his lifetime, but was not decided in his lifetime. He also referred to the judgment of the Madras High Court in the case of *Registrar, Manonmaniam Sundaranar University v. Suhura Beevi Educational Trust & Ors.*, AIR 1995 Madras 42 in respect of this very submission.

10. This contention of learned counsel for the appellant is clearly misconceived. It is trite that the LRs, who are brought on record, will be bound by the defence which was taken by the original defendant. It is only a particular defence, which was not taken by the

original defendant in his personal capacity and is available to his LR's, to that extent they may raise their defence. Therefore, these judgments would be of no avail to the appellants having regard to the facts and circumstances of this case.

11. Mr. Arun Mohan, learned counsel for the respondent No.1, submitted that as further proceedings in this case were stayed by a Division Bench of this Court on 19.5.2008 at the instance of LR's of the defendant No.1, in case the suit for mesne profits is decreed, for the period after the stay was granted, the said LR's would also be liable, as held by the Supreme Court in the case of *Karnataka Rare Earth v. The Senior Geologist*, (2004) 2 SCC 783. It would be open to the plaintiff to make such a submission before the learned Single Judge in the suit, which can be appropriately dealt with by the learned Single Judge.

12. With these observations, these appeals, which are devoid of any merits, are dismissed with costs quantified at Rs.20,000/- to be paid to the Delhi High Court Leave Services Committee.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)

JUDGE

July 23, 2008
nsk