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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 15, 2010
Date of Order: February 24, 2010

+ CM(M) 1035/2008

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Surinder Kumar Chawla
Through: Mr. Y.P. Ahuja, Advocate

24.02.2010
...Petitioner

Versus

Sudesh Pal Chawla
Through: Mr. Mukul Sharma, Advocate

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By way of present petition, the petitioner has assailed an order dated 5th July, 2008 passed by learned trial court on an application under Section 151 CPC made by the respondent herein for producing additional documents.

2. The petitioner herein filed a suit for partition wherein he had stated that the respondent S.P. Chawla was owner only of 1/6th share and he was owner of 5/6th share in view of the fact that other legal heirs of his father had relinquished their shares in his favour. Following issues were framed by the trial court in the suit:

- "1. *Whether the plaintiff proves that the plaintiff and defendants are the heirs left behind by deceased Chunni Lal Chawla?*
2. *Who are the heirs left behind by late Chunni Lal Chawla?*
3. *What are the properties left by deceased Chunni Lal Chawla liable to be partitioned between the heirs of deceased Chunni Lal Chawla?*
4. *What is the share of the plaintiff, defendant and other heirs, if any, of late Chunni Lal Chawla in the properties left by him?*
5. *Whether the suit is properly valued for the purpose of jurisdiction and payment of Court fee?*

6. *Whether the defendant proves that the property left by deceased Chunni Lal Chawla has been partitioned between the heirs of late Chunni Lal Chawla pursuant to the oral partition between them?*
7. *To what relief, if any, plaintiff is entitled to?*
8. *What order and decree?"*

3. After plaintiff's evidence was over, defendant (respondent herein) made an application for filing additional documents and this application was allowed by the learned trial court vide order dated 12th March, 2004. A C.M. (Main) No. 819 of 2004 was preferred before this Court by the petitioner herein against the order of trial court allowing documents to be taken on record and this Court on 9th November, 2005 passed following order :

"Having heard counsel for the parties and having gone through the order under challenge as also having perused the documents sought to be filed and the issues framed, I am of the opinion that it was incumbent upon the trial court to satisfy itself as to which of the documents are necessary for the purpose of proving or advancing the issues already framed and further to justify as to how the admission of documents would advance the cause of justice. That having not been done, I set aside the order dated 12th March, 2004, and remand the matter to the trial court to re-adjudicate upon the application of the defendant in the light of what has been stated above."

4. The impugned order has been passed by the learned trial court on the same application after the above order of this court. The trial court again allowed filing of additional documents observing therein that since the earlier advocate of the respondent filed only a few documents and the respondent had engaged services of a new counsel who had opined that filing of these documents were very much necessary to prove the issue no.7 of family settlement, he was therefore allowing the documents as the documents would be helpful for defence of respondent and to bring out the factum of monetary supply and contribution made by defendant to his family. The trial court also observed that the defendant/ applicant had put strenuous efforts in obtaining these documents and he was having genuine reason in not filing the documents earlier since they seemed to be beyond the control of the defendant (respondent). Though the stage for filing the documents was over but the documents may also be helpful to the Court in just decision of the case. The allowing of the application would prevent multiplicity of proceedings between the parties and the documents will cause no prejudice to the plaintiff (petitioner herein). Therefore, he allowed these documents to be filed.

5. A perusal of list of documents filed by defendant (respondent) along with the application and which have been allowed to be filed would show that these are 36 documents. These documents are bank passbook of Suresh Pal Chawla, original pay slip, LIC premium receipts, defendant's wife passbook, statement showing deposit issued by the motor sale company, certificate issued by Shri C.L. Chawla, certificate issued by late Smt. Sheelawanti Chawla, house tax receipts, writing of Shri CL Chawla in Urdu and English translation, list of jewellery belonging to the mother of defendant and consumer registration showing LPG account.

6. The first two issues framed in the case are as to who were the legal heirs left behind by late Shri C.L. Chawla. None of the documents relate to these two issues neither the legal heirs left behind can be proved by these documents. The third issue is about the properties left behind by late Shri C.L. Chawla liable to be partitioned. None of the documents pertain to the property left behind by late Shri C.L. Chawla. Thus, these documents cannot be helpful in proving this issue. The fourth issue is as to what is the share of plaintiff, defendants and other heirs in the properties left behind by late Shri Chunnal Lal Chawla. Since Shri C.L. Chawla had died intestate, the issue of succession has to be decided on the basis of law of succession. None of the documents sought to be filed by defendant (respondent herein) is helpful in proving this issue. The fifth issue is about valuation of the property for the purpose of jurisdiction. It is not even the case of defendant that the documents are for this purpose. The sixth issue is regarding oral partition of the properties having taken place after demise of Shri C.L. Chawla. It is quite apparent that none of the document which defendant sought to file was relevant in proving this issue or any of the issues.

7. I consider that the trial court had not considered the relevancy of the documents despite the matter having been sent back to the trial court to consider the relevancy of these documents in proving the issues already been framed. The trial court again passed the order in a very casual and illegal manner without even considering as to which document was relevant for proving the issues and how it was relevant. The application seems to have been allowed on the ground that the documents were procured by the defendant (respondent herein) with great difficulty and the documents may be helpful in adjudicating the case. The court conducting the trial of the case must be clear in its vision and mind as to what are the issues to be proved and whether the documents sought to be introduced were in any manner relating to the issues or not. All documents, in the present case, sought to be filed by the respondent by way of this application were intended to show that the defendant started earning at a very young age and he was contributing for upbringing of the family. This was not even the issue before the trial court. The plea of defendant (respondent) had been that an oral partition had taken place between the parties. The factum of oral partition is altogether different from the factum of contribution.

8. I consider that once this Court gave directions to the trial court to consider the relevancy of the documents, the trial court was supposed to apply its mind and to consider the relevancy of each document sought to be introduced by the party at the stage after framing of issues and to see if the documents sought to be introduced were relevant or not. I find that the impugned order passed by learned trial court is a perverse order which does not deal with the issues and is liable to be set aside.

9. In the result, the petition is allowed and the impugned order dated 5th July, 2008 passed by the trial court is hereby set aside.

February 24, 2010
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SHIV NARAYAN DHINGRA J.