

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

+ **FAO(OS) 503/2008**

% Reserved on: 11th March, 2010

Decided on: 8th April, 2010

D.C.ANAND & ORS Appellants
Through: Mr. Sushil Dutt Salwan, Advocate

versus

SATISH CHAND ANAND Respondent
Through: Mr. Sandeep Agarwal with
Mr. S.V.Mehta, Advocates

Coram:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA**

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

MUKTA GUPTA, J.

1. The present appeal impugns the order dated 24th September, 2008
passed in CS (OS) No.2607/1990 disposing of the Respondent's application

being IA No.4005/2007 under Order XXXIX Rule 4 of the CPC seeking modification of the status quo order dated 22nd August, 1990 by excluding the Mulund land from the aforesaid order.

2. Before proceeding with the appeal the facts which are relevant to the determination of the issue before us are that the afore-mentioned suit was instituted by five daughters of late Shri Dharam Chand Anand and late Smt. Chanan Kanta Anand against their four brothers and one sister, for partition and injunction, inter alia claiming their share to the extent of 1/10th in the intestate properties of their parents.

3. During the course of proceedings in the civil suit, CS (OS) No. 2607/1990, the Plaintiffs one by one settled the matter with the Defendants No.1, 2 and 3/Appellants herein vide applications being IA Nos.4441/1997, 4699/1997 and 8861/1999. The stand of Defendant No.5 in the suit was in line with the stand of the Appellants herein. On 19th February, 2003 the Defendant No.4/ the Respondent herein, that is, Satish Chand Anand filed an application being IA No.2572/2003 under Order XXIII Rule 1A and Order 1 Rule 10 read with Section 151 CPC inter alia praying for transposing him as a co-Plaintiff which was allowed vide order dated 10th November, 2004 and the Defendant No.4 /Respondent herein was transposed as a Plaintiff in the suit. Thereafter, on 23rd February, 2005 the Respondent herein filed an application
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being IA No.1653/2005 under Order XII Rule 6 CPC seeking a decree on admissions made by the Appellants herein regarding the Mulund land. This application is still pending disposal in the civil suit. The Appellants herein also filed an application under Order 7 Rule 11 read with Order XII Rule 6 CPC seeking rejection of the plaint being IA No.8841/2005 which is also pending disposal. The Appellants had also filed an application seeking modification of the interim order dated 22nd August, 1990 being IA No.9423/2001 wherein it sought exclusion of the Mulund land from the effect of the interim order of status quo being applicable thereon, which is also pending. On 3rd April, 2007, the Respondent filed the present application being IA No.4005/2007 under Order XXXIX Rule 4 seeking modification of the status quo order dated 22nd August, 1990 so as to exclude the Mulund land from the said order. The learned Single Judge after hearing the parties at length vide its order dated 24th September, 2008 directed that the Mulund land stands excluded from the ex parte status quo order dated 22nd August, 1990, however, the ex-parte status quo order was to continue in respect of other properties which are the subject matter of the suit. This order dated 24th September, 2008 is the order impugned before us.

4. Learned counsel for the Appellants has contended that the Respondent herein transposed himself as the plaintiff in the civil suit and by its application

being I.A. No. 2572/2003 under Order XXIII Rule 1A and Order 1 Rule 10 read with Section 151 CPC has got himself transposed as the Plaintiff without any amendment in the plaint, which application has been allowed. According to the learned counsel, thus the Respondent herein is bound by the pleadings in the plaint. The Appellants have relied on the following pleadings in C.S. (OS) No. 2607/1990:-

“Para 6 of the original plaint:- That in the same manner, late Shri Dharam Chand Anand was owner and possessed of the following properties:

- (i) Property bearing No. 1 Aurobindo Marg, New Delhi.
- (ii) 25,000 shares in Gabriel India Ltd.
- (iii) 20,000 shares in Asia Investment.
- (iv) Jewellery, silver, gold, cash.
- (v) Share in HUF property in Kidar Cottage, Shimla including the moveable assets lying therein.
- (vi) Land bearing survey No. 304 and 305 Lal Bahadur Shastri Marg, MuLand, Bombay.**
- (vii) Provident Fund of Rs.70,000/-
- (viii) His interest and share in D.C Anand and Sons.

However, Plaintiffs are not aware of other properties, assets which may have been possessed and left by him and the Plaintiffs call up defendants no. 1 to 4 disclose full particulars of all the property and assets left by him.

Para 6 of the Amended plaint:-

“That in the same manner, late Shir Dharam Chand Anand was owner and possessed of the following properties:

- (i) Property bearing No. 1 Aurobindo Marg, New Delhi.
- (ii) 25,000 shares in Gabriel India Ltd.
- (iii) 20,000 shares in Asia Investment.
- (iv) Jewellery, silver, gold, cash.
- (v) Share in HUF property in Kidar Cottage, Shimla including the moveable assets lying therein.
- (vi) Land bearing survey No. 304 and 305 Lal Bahadur Shastri Marg, Muland, Bombay.**
- (vii) Provident Fund of Rs.70,000/-
- (viii) His interest and share in D.C Anand and Sons. However, Plaintiffs are not aware of other properties, assets which may have been possessed and left by him and the Plaintiffs call up defendants no. 1 to 4 disclose full particulars of all the property and assets left by him.”

Para 6 of IA 2572/2003 filed by Respondent for transposition:-

“That the defendant No.4/applicant is filing the application only for the limited purpose of being transposed as a Plaintiff along with Plaintiff No.1 Mrs. Nirmal Sethi so that even if the Plaintiff No.1 withdraws from the said suit, the same could be pursued by the present applicant/defendant No.4.”

Para 2 of the reply of Respondent to I.A. 8841/2005 filed by D- 1 to 3 under order VII Rule 11, CPC:-

“It is submitted that the Plaintiff had earlier also filed an application under Order 7 Rule 11 CPC being I.A. No. 1021/1993. However, the Plaintiff had given up the objection raised in the said application by not pressing the same. Though, no formal order was passed in the said application being I.A. No. 1021/1993, but in all respect, the said application is deemed to be decided as the objection raised by the defendant nos. 1 to 3 were never pressed and the defendant nos. 1 to 3 acknowledging the claims of the Plaintiff has settled with them, and the same are duly recorded and decreed

by this Hon'ble Court. Therefore, since the present Plaintiff had adopted the plaint filed by the erstwhile Plaintiffs without any modification/amendment, the objections now raised by the defendants 1 to 3 by way of the present application are not maintainable. The defendants no. 1 to 3 cannot and ought not be permitted to raise the same objections, which the said defendants had already given up."

Para 4 of the rejoinder by the transposed Plaintiff/Respondent herein to the reply of Appellants in I.A. 1653/2005:-

"In respect to the contents of para 4, it is submitted that the Plaintiff had adopted the plaint filed by the erstwhile Plaintiff. It is wrong and denied that the present proceedings have become nonest, after transposition of defendant No.4 as Plaintiff. It is wrong to state that the case is different than what was pleaded earlier. The contents of para 4 of the application are reiterated."

5. It is contended by learned counsel for the Appellants that their father Shri Dharam Chand Anand retired from the partnership firm M/s Anand Automobiles and died in February, 1984. By way of a settlement deed dated 23rd July, 1984 the parties settled the shares which were to devolve amongst the heirs of late Shri Dharam Chand Anand. That the equity shares and control of M/s Asia Automotive Limited as well as the land at Mulund, Bombay was given to the Respondent as a part of a larger family settlement for which the Respondent No. 4 had also signed the disclaimer following the family settlement arrangement, that neither he nor his wife nor children were

left with any interest in the estate of late Shri Dharam Chand Anand as well as “D.C. Anand and Sons, HUF” and that is why the firm M/s Anand Automobiles and the rest of the estate of their late parents devolved on the Appellants.

6. It is further contended on behalf of the Appellants that the son of the Respondent filed a Civil Suit No. 1253/2006 wherein in paragraph 12 it is averred that the properties and assets though ostensibly in the name of company/partnership/trust belong to Anand family, the nucleus, of which has been late Shri Dharam Chand Anand and/or his HUF (bigger HUF), which stand has been duly adopted by the Respondent herein in the said plaint. The list of properties mentioned along with the said plaint also include M/s Anand Automobiles and the Mulund Land. In the said suit, the Respondent vide order dated 14th July, 2006 has stated that he does not wish to file a written statement to the said suit and the suit be decreed in terms of the prayer clause. Thus, the Respondent cannot probate and approbate at the same time.

7. On the other hand learned counsel for the Respondent relies on the following pleadings in CS (OS) No. 2607/1990:-

Para 6(vi) of the common written statement filed by Appellants:-

“With regard to sub para (vi), it is wrong and denied that Late Shri Dharam Chand Anand was the owner of Land bearing Survey No. 304 and 305 Lal Bahadur Shastri Marg, Mulund, Bombay. The said Land was purchased by and is owned and held by M/s Anand Automobiles as asset of partnership firm. It is stated that Late Shri Dharam Chand Anand had resigned from the said partnership firm and received his share in the partnership firm. Accordingly, Late Shri Dharam Chand Anand had no share or interest in the Land either in his personal capacity or as a partner having resigned from the said firm. It is further stated that in 1984, the defendant No. 4 also resigned from M/s Anand Automobiles and as part of settlement, he received the aforesaid partnership property in part consideration of his retiring from the partnership firm of M/s Anand Automobiles.”

Paras 8 and 9 of the preliminary objections of the common amended written statement of the defendants No.1 to 3:

Para 8:-

“That the Plaintiffs have claimed the Land bearing Survey No. 304 and 305 at Lal Bahadur Shastri Marg, Mulund, Bombay as belonging to Late Shri Dharam Chand Anand, whereas the said property was and has always been owned by Anand Automobiles, a partnership firm in which Late Shri Dharam Chand Anand was a partner till 1970, whereafter he resigned from the partnership and settled his partnership account with the firm during his lifetime. Even the defendant No. 4, who has turned hostile to the cause of defendants No. 1 to 3 on the erroneous assumption that he may also be able to extract some money and assets out of this frivolous and untenable suit, has averred in his written statement that the above Land never belonged to Late Shri Dharam Chand Anand but was the property and asset of M/s Anand Automobiles.

Para 9:-

The defendant No. 4 had retired from the partnership firm M/s Anand Automobiles and had relinquished and declared that he had no interest in the Lands, assets and properties of M/s Anand Automobiles including the Lands and buildings at 1,

Sri Aurobindo Marg, New Delhi. The defendant No. 4 had received the Equity Shares and control of M/s Asia Automotive Ltd as well as the Land at Mulund, Bombay. The defendants No. 1 to 3 had similarly given up all shares and interest in M/s Asia Automotive Ltd and the Land at Mulund, Bombay. The defendant No. 4 had also signed the disclaimers following the family settlement/arrangement that neither he nor his wife and children were left with any interest in the estate of Late Shri Dharam Chand Anand and Late Smt. Chanan Kanta Anand as well as in D.C. Anand and Sons HUF.

Para 6(vi) of the common amended written statement of the Appellants:-

“With regard to sub para (vi), it is wrong and denied that Late Shri Dharam Chand Anand was the owner of Land bearing Survey No. 304 and 305 Lal Bahadur Shastri Marg, Mulund, Bombay. The said Land was purchased by and is owned and held by M/s Anand Automobiles as asset of partnership firm. It is stated that Late Shri Dharam Chand Anand had resigned from the said partnership firm and received his share in the partnership firm. Accordingly, Late Shri Dharam Chand Anand had no share or interest in the Land either in his personal capacity or as a partner having resigned from the said firm. It is further stated that in 1984, the defendant No. 4 also resigned from M/s Anand Automobiles and as part of settlement of his interest in the partnership firm Anand Automobiles and also of his other interest in the estates of Late Shri Dharam Chand Anand and Late Smt C.K. Anand, he received the Land at Mulund, Bombay in part consideration of his retiring from the partnership firm of M/s Anand Automobiles and relinquishing his interest in estates of Late Shri Dharam Chand Anand and Late Smt C.K. Anand as detailed in preliminary Objection No. 9.”

Preliminary objection of Respondent in the written statement:-

“...As such in 1984, the defendant was also made to retire from M/s Anand Automobiles in the circumstances mentioned

hereinafter. On such retirement of this defendant, this defendant was allotted the said Mulund Land in lieu of his share in the profits and other credits receivable from M/s Anand Automobiles in consideration of this defendant retiring from the said partnership firm of M/s Anand Automobiles”

Para 16(o) of IA No.4441/97 filed jointly by Plaintiffs no. 3 and 4 and Appellants and Defendant No. 5:-

“The Plaintiffs No. 3 and 4 and defendant No. 5 admit that property bearing Survey No. 304 and 305, Lal Bahadur Shastri Marg, Mulund Bombay, admeasuring 15049.80 sq. meters equal to approximately 18,000 sq. yards was purchased/owned and held by M/s Anand Automobiles as asset of the partnership firm and on the resignation of Shri Dharam Chand Anand from the said partnership after having received his share in the partnership, went to the share of defendant No. 4 as part of the settlement of the aforesaid partnership property in part consideration of the said defendant No. 4 retiring from the partnership firm of M/s Anand Automobiles.”

These paras are also part of compromise applications filed jointly by the erstwhile Plaintiffs and the Appellants, i.e. IAs No.4699/97, 8861/99 and 7583/04.

Paras 9 & 10 of IA No.9423/2001 filed by Appellants for modification of status quo order:

Para 9:-

“That it is also the case of defendants No. 1 to 3 that vide deed of retirement dated 9th August, 1984, defendant No. 4 retired from the partnership firm M/s Anand Automobiles and took his share from the said partnership firm as specified in the Retirement Deed. One such share was the Land including temporary structure situated at Mulund at Bombay-Agra road admeasuring 15049.8 sq. meter being part of Survey No. 304 and 305.....”

Para 10:-

“That from the aforesaid facts and circumstances, it is absolutely evident that Plaintiff No.1 cannot have any interest,

right or title in the said Mulund Land. There is no cogent justification for including the said property in the alleged assets of late Sh.D.C.Anand or Smt.C.K.Anand wife of late Sh. D.C. Anand. Hence inclusion of the said property at the threshold by the Plaintiffs was totally misconceived and erroneous.”

Para 4 of IA No.1653/2005 filed by the transposed Plaintiff/Respondent herein under Order 12 Rule 6, CPC:-

“That this Hon’ble Court vide order dated 10.11.2004 was pleased to allow the said application of the applicant, resulting in transposing the applicant as the Plaintiff, in the present suit. Thus, the present applicant has adopted the plaint filed by the erstwhile Plaintiffs, with a slight modification, viz. that the present applicant has admitted the fact that the property known as Mulund Land Bombay, was the property of M/s Anand Automobiles, a partnership firm and was not forming part of estate of late Sh. D.C.Anand.”

Para 15 of the reply of the Appellants to the aforesaid IANo.1653/2005:-

“That the Plaintiff, on his retirement from the partnership firm, viz. M/s Anand Automobiles, was allotted asset and the said properties of the said firm to the exclusion of other partners. One such property was Land including some temporary structures, situated at Mulund on Mumbai Agra Road, Mumbai admeasuring 18000 sq.yds. (15049 sq.mtrs.) being part of survey No.304 and 305. The property was valued at Rs.4,17,088/-. As part of the retirement deed and settlement duly accepted and signed by Satish C.Anand and acted upon it was duly recorded that the continuing partners of M/s Anand Automobiles have taken over the Land, hereditaments and premises situated at 1, Sri Aurobindo Marg, New Delhi together with buildings and structure standing thereon and that Satish C.Anand has no right, title and interest of any nature, whatsoever, therein. It is submitted that every part of the family settlement and retirement deed was duly accepted and acted upon by all parties concerned and pursuant thereto all

accounts were squared up and finalized between the parties and their respective groups. All transfer of equity shares of the respective groups have taken place and duly recorded in the records. The Plaintiff has taken over the Mulund property admeasuring 18000 sq.yards and is taking a frivolous plea regarding transfer in his name. It was and is his responsibility. Defendants have signed all documents which they were called upon to do in this respect.”

8. According to the learned counsel for the Appellant the Mulund land was given to the Respondent as a part of the larger family settlement, whereafter the Respondent is left with no claim in any of the family properties left by their late parents whereas the claim of the Respondent is that the Mulund land fell to his share in terms of dissolution of the partnership of M/s Anand Automobiles and not as part of larger family settlement. According to the learned counsel for the Appellants, since the Respondent in the pending civil suit is claiming his 1/10th share in the property of their late parents as a plaintiff and the Mulund land was also a part of the larger family estate the status quo order qua Mulund land vacated by the learned Single Judge should also continue during the pendency of the civil suit. Per contra, the learned counsel for Respondent contends that if it is held in the civil suit that the Mulund land was given to the Respondent as a part of larger family settlement and not as a settlement of the partnership of M/s Anand Automobiles, he

would not get any relief in the civil suit, however, he will not be divested of the Mulund land given to him as his share.

9. The learned Single Judge on the basis of the pleadings of the parties decided that not only there are admissions but the Appellants have also filed an application being IA No.9323/2005 where they have sought exclusion of the Mulund land from the status quo order and the said IA is still pending. The learned Single Judge held that the parties are ad idem in respect of status of the Mulund land, which is that the same was wrongly included by the original Plaintiff in the list of immovable properties left by Shri Dharam Chand Anand and that the said land had fallen to the share of the Respondent herein, when he retired from the partnership firm, M/s Anand Automobiles.

10. We would at this stage, not like to deal with the admissions of the parties, lest it prejudices the case of either of the parties at the stage of trial, as an application being IA No.1653/2005 under Order XII Rule 6 CPC filed by the Respondent herein, seeking a decree on admission made by the Appellants regarding the Mulund land is pending. However, suffice it is to say that there is sufficient material to hold that there was some arrangement between the parties which the Appellants herein are terming as a larger family arrangement with regard to the entire estate of late Shri Dharam Chand Anand and his wife Smt. Chanan Kanta Anand whereas the Respondent terms it as a dissolution of

the partnership firm in the name of M/s Anand Automobiles only and thus claims the said Mulund land to have vested in him by virtue of dissolution of the partnership firm. Be that as it may whether the Mulund land given to the Respondent was a larger family settlement or a part of smaller settlement arrived at with regard to the partnership firm M/s Anand Automobiles only, the Respondent is entitled to retain it. Vide order dated 20th January, 2005 the learned Single Judge has already framed the relevant issue, that is, as to whether the inheritance to the estate of late Shri Dharam Chand Anand and late Smt. Chanan Kanta Anand stood settled by way of a family settlement. It may be pointed out that this issue was framed after the Respondent herein was transposed as the Plaintiff in the suit. Thus it has to be left to be determined in the suit as to whether the Mulund land given to the Respondent was a part of a larger family settlement of the assets of Shri Dharam Chand Anand and late Smt. Chanan Kanta Anand or a smaller partnership settlement of M/s Anand Automobiles.

11. Presently, before us is an order in an application under Order XXXIX Rule 4 modifying the status quo order dated 22nd August, 1990 qua the Mulund Land. It is well settled that the purpose of temporary injunction pendente lite is to preserve the suit property. In the present case this particular portion of the property, that is, the Mulund Land has fallen to the share of the

Respondent, whether by larger family arrangement or the partnership settlement. We find force in the contention of the learned counsel for the Respondent that in case the Appellants succeed, that is, the plaint of the Respondent is dismissed, then the Respondent will not be entitled to claim any further share in the estate of his late parents but what has already fallen to his share would continue with him. For this reason, we find no purpose in continuing the ex-parte status quo order dated 22nd August, 1990 qua the Mulund land.

12. In view of the facts stated above we find no merit in the appeal. Hence the same is dismissed.

(MUKTA GUPTA)
JUDGE

(MADAN B.LOKUR)
ACTING CHIEF JUSTICE

APRIL 08, 2010
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