

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

% Date of decision : 06.01.2012

+ **FAO (OS) No. 5 of 2012**

RISHI PAL SINGH Appellant

Through: Mr. Ankit Khetarpal, Advocate.

Versus

HARINDER PAL SINGH & ORS. Respondents

Through: Mr. Anshu Mahajan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

SANJAY KISHAN KAUL, J.

Caveat No.17/2012

Learned counsel for the Caveators has entered appearance and, thus, the Caveat stands discharged.

CM Nos.274-275/2012 (Exemptions)

Allowed subject to just exceptions. It is, however, noted that despite the lapse of almost six months, no certified copy of the impugned order has been filed, though the same was required to be filed as per law.

FAO (OS) No.5/2012; CM No.276/2012 (for condonation of delay of 1 day in filing the appeal) & CM No.277/2012 (for condonation of delay of 76 days in refiling the appeal)

1. The present appeal is one more endeavour by the appellant to cause continued harassment to the wife and children of his deceased brother.

2. The dispute pertains to property bearing No.T-14, Green Park Extension, New Delhi, plot measuring 322 sq.yds. which was owned by late Shri Padam Singh. The claimants are two sons, the appellant and respondent No.1, and the wife and children of third pre-deceased brother of the appellant and respondent No.1, being respondent Nos.2(i) to (iv). It is the say of the appellant that the property was purchased by late Shri Padam Singh after having sold the ancestral property located at Chandni Chowk, Delhi. The appellant claims that their mother late Shrimati Chandrakala Devi during the lifetime of their father filed a suit for declaration, being Suit No.163/1980, qua the suit property which was disposed of by the consent of the parties vide a judgement and decree dated 22.10.1980. The appellant, however, claims ignorance of the proceedings of that suit as records are stated to have been weeded out but from the execution proceedings it is alleged that the consent of the parties is available on record. It is his claim that in terms of order dated 24.1.1983, the parties came into possession of their exclusive portion. The appellant claims that in terms of this division he came into occupation of the back portion of both the ground floor and the first floor while his deceased brother was given the front portion of the first floor and respondent No.1 the front portion of the ground floor while his mother became entitled to the second floor barsati portion. Interestingly the owner of the property, being their father, was not a party to these proceedings qua the said alleged division. Disputes are stated to have, however, arisen after the demise of their parents as the wife of the deceased brother claimed exclusive right of the barsati floor which was in occupation of their mother on the basis of a Will. At the behest of the wife of the deceased brother, a wall is stated to have been

constructed in the first floor to divide the portion which denied access to the appellant to his portion from the front side but as the construction was illegal, on a complaint of the appellant the wall was removed.

3. The appellant claims to have filed a suit for partition of the barsati floor in the year 2007 before the learned Civil Judge but since the respondents disputed the family arrangement alleged to be in existence as per their written statement of the compromise by which the parties were stated to have been put in their separate portion vide order dated 24.1.1983, the appellant withdrew the suit and filed a suit for partition on the Original Side of this Court, being CS (OS) No.1441/2008. The appellant claims 1/3rd share in the suit property and the cause of action paragraph clearly states that in view of the written statement of the respondents in Suit No.504/2007, the earlier arrangement being pleaded as null and void and without jurisdiction, a fresh partition of the entire suit property was liable to be made.
4. The appellant along with the suit for partition filed an application for interim relief under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code') and sought an order to maintain status quo of the suit property.
5. The suit was contested by the respondents who filed their written statement and also moved an application for vacation of interim order. Respondent No.2(i) who was the widow of the deceased brother of the appellant stated that she was in possession of the front portion of the first floor and the whole of second floor and wanted to let out a portion of the first floor since she needed the rental income to meet her day to day expenditure. This prayer as per the impugned order was opposed by the appellant primarily on

the ground that the front portion of the first floor shown in pink colour was in his possession but on account of the wall, erected by respondents between the blue portion and pink portion, the appellant was being compelled to access their portion on the first floor through spiral staircase in the rear of the suit property.

6. The impugned order records that there is no dispute about the possession of the second floor being with respondent No.2(i). On a perusal of the plan the learned single Judge found that letting out of either the second floor or the front portion of the first floor was not going to make any change in the use and enjoyment of the portion occupied by the appellant of the first floor of the suit property as even the site plan alleged to have been filed in the suit for declaration in the year 1983 showed the possession of the first floor portion with respondent No.2(i).
7. The controversy over the construction of the wall was also examined and it was opined that the same was reconstructed pursuant to permission granted by the Court in a writ petition against which a Special Leave Petition was dismissed by the Supreme Court. Respondent No.2(i) was stated to have identified two tenants who proposed to take portion occupied by respondent No.2(i) on a monthly rent of ₹22,000.00 and filed their affidavits wherein they have stated that they were aware of the pendency of the suit and the issues involved and undertook to vacate the premises proposed to be taken on rent, without claiming any right, title or interest therein, within such time as may be fixed by the Court. It is in view thereof that the permission was granted to respondent No.2(i) to let out the portion of her possession. A further direction was issued that the respondents will maintain

status quo with respect to the title and possession of the portions occupied by them except to the extent permitted by the Court.

8. We must notice at the threshold that the impugned order was passed on 26.7.2011 and the appeal has been listed before us for the first time on 6.1.2012. We note that as per the practice of this Court any appeal filed in the forenoon is listed the very next day. The delay of almost six (6) months has been largely occasioned on account of inordinate delay of 76 days in refiling and the continued endeavour of the appellant to file and refile the same without clearing all objections. It appears that this was a deliberate attempt to keep the appeal pending in the Registry as the appellant very well knew that there were identified tenants who were going to occupy the portion of the property in possession of respondent No.2(i). We are informed by learned counsel for the respondents that the tenants are already in occupation.
9. Learned counsel for the respondents, who is on caveat, has made a grievance that the appellant has failed to file a number of relevant documents along with the appeal including the plaint and the written statement. The proceedings relating to the demolition and construction of wall have also not been filed. We find merit in this plea. Learned counsel for the respondent has handed over a compilation of these relevant pleadings/documents in Court.
10. The first fact which emerges from them is the circumstances under which the wall was demolished. In this behalf the order sheet of WP (C) No.9039/2008 filed by respondent No.2(i) herein impleading the MCD as well as the appellant as a party has been perused. The fact which emerges is that the appellant is employed with the MCD and he/his wife is alleged to have made a complaint to the MCD qua the erection of the wall and the MCD took action

to demolish the wall resulting in the WP (C) No.9039/2008 being filed seeking a direction against the respondents therein from interfering in the re-erection of the partition wall on the first floor of the suit property. This demolition is stated to have caused grave prejudice to respondent No.2(i) as there was an existing tenant who vacated that portion as the privacy was lost due to demolition of the wall. Respondent No.2(i) had also approached the MCD to also re-erect the partition wall.

11. The documents show that the concerned building department of the MCD had opined that the wife of the appellant had sought information under the RTI Act qua the wall in question and as per noting of the relevant department dated 23.6.2005 after inspection of the site and comparing the existing building with the sanction plan, it was found that there was no violation of the sanction plan except one toilet in the rear set back at the ground floor and one toilet below staircase at the ground floor in the rear set back with which respondent No.2(i) is not concerned. Regarding erection of wall on the first floor it was observed that the same was an internal change and as per bye laws no permission is required for the same. In the writ proceedings status report was filed to the same effect. The officials of the MCD were found at fault and even departmental action was envisaged against the officials of MCD who had demolished the internal wall on 19.6.2007 and that is why major penalty proceedings against the delinquent officer were initiated while dismissing another Junior Engineer who had been engaged on contractual basis. Thus, the demolition of the wall was an illegal action which was carried out at the behest/complaint of the appellant/his wife, the appellant himself being an official of the MCD. The writ petition was disposed of by the learned single

Judge on 3.3.2009. The plea of the appellant was found to be without substance and respondent No.2(i) herein was permitted to re-erect the partition wall. The appellant challenged this order in LPA No.139/2009 which was dismissed on 20.7.2009 and Special Leave to Appeal (Civil) No.35194/2009 against that order was dismissed in *limine* on 21.11.2011 so far as the issue of the construction of the wall was concerned.

12. A perusal of the copy of the application filed by respondent No.2(i) under Order 39 Rule 4 of the said Code (IA No.10344/2010) shows that the said respondent pleaded that her husband had passed away when he was only 53 years of age and the daughters were 19 years and 9 years while the son was 17 years of age. The said respondent had brought up the children on rental income. Respondent No.1 herein who is more than 75 years of age was also supporting respondent No.2(i) and were aggrieved by the order dated 29.7.2008 directing the respondents not to create any third party interest. The grave harassment caused by the demolition of the wall was pointed out which was stated to be in existence as a temporary wall till the year 2002 when it was replaced by a pucca/internal partition wall. The appellant is alleged to have used his influence as an employee of the MCD to get the internal wall demolished on 19.6.2007 when the front portion of the first floor was in the occupation of the tenant Shrimati Shashi Singh. The said Shrimati Shashi Singh was not even permitted to put a curtain in her portion and maintain minimum privacy with the result that she left the tenanted premises. It is after the filing of the writ petition that respondent No.2(i) re-constructed the wall.
13. It has also been pointed out that the appellant was unable to get an injunction in CS (OS) No.504/2007 filed before the learned Civil

Judge whereafter he withdrew the suit. Respondent No.2 wanted leave to let out the premises.

14. We have heard learned counsels for the parties for better part of 40 minutes. Learned counsel for the appellant, other than stating that he will file the documents now could not explain as to why he has failed to annex all the documents with the appeal though he claims that there was a mention of the earlier proceedings. In our considered view that would not suffice as the relevant pleadings and documents ought to have been annexed with the appeal. They would have shown the conduct of the appellant. The appellant did not even care to file a copy of the plaint, the written statement, application for vacation of stay, etc. We, thus, are of the view that the appellant deliberately kept away the relevant material from this Court and the appeal suffers from the vice of concealment of material documents.
15. On examination of the controversy we also find that the endeavour of the appellant to earlier harass respondent No.2(i) by getting the internal partition wall demolished when there was an existing tenant is quite apparent from the proceedings of the writ petition filed by respondent No.2(i). It is obvious that an illegal action was taken by the MCD officials who were punished. Such illegal action was taken on a complaint of the appellant who was an official of the MCD and, thus, obviously he has tried to misuse his position. Fortunately for respondent No.2(i) a direction was passed in the writ petition to re-construct the partition wall and the appellants challenged the said order right till the Supreme Court but lost.
16. The endeavour of the appellant to obtain interim orders by filing Civil Suit post demolition of the wall was only with the objective

of keeping the position as it is of the demolished wall. The appellant having failed to achieve his objective withdrew the suit and filed the present suit for partition.

17. Learned counsel for the appellant made contradictory pleas before us by first seeking to rely on the factum of there being earlier partition while in the plaint, the appellant himself claims a partition afresh by metes and bounds. All that the learned single Judge has permitted is that till the issue of partition and the share of the parties and the division is determined, respondent No.2(i) should be able to use the portion in her occupation including to let out to earn sufficient income for herself and the family as in the past. This has been conditional after obtaining undertakings from the proposed tenants that they would not claim any special rights and would vacate the premises as directed by the Court. We are also unable to appreciate the plea of learned counsel for the appellant that the amount of ₹22,000.00 should be deposited in Court or be shared between all the parties. The appellant is enjoying the portion in his possession and is seeking to get a share of the rent of the portion in possession of respondent No.2(i). The earlier tenant of respondent No.2(i) vacated on account of illegal action of MCD at behest of the appellant.
18. Even if the portions in occupation of respective parties is analyzed from an overall perspective it would be seen that the appellant claims possession of half of the ground floor and the first floor consisting of a two room set on each of the floors. Respondent No.1 has one drawing room, two bedrooms, kitchen and toilet on the front portion of the ground floor while a similar portion of the first floor is with respondent No.2(i) along with two rooms and a kitchen on the second floor barsati. Thus, it is not as if respondent

No.2(i) is enjoying a disproportionately larger portion in occupation as compared to the appellant's.

19. We find that the endeavour of the appellant is to somehow pressurize respondent No.2(i) and her family and also respondent No.1 wanting an end to the litigation as pleaded in the application for vacation of the stay. We, thus, find that the appeal is clearly misconceived, devoid of any merits, suffers from concealment of material documents and has been brought before us almost six (6) months after passing of the impugned order by keeping it pending in the Registry on one pretext or the other.
20. The appeal and the applications are dismissed with costs of ₹50,000.00.

SANJAY KISHAN KAUL, J.

JANUARY 06, 2012
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RAJIV SHAKDHER, J.