

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

% *Order delivered on: July 15, 2013*

+ **CM(M) No.693/2013 & C.M.No.10454/2013**

SMT RAMA DEVI (D) THR LRS Petitioners
Through Mr.Rajinder Mathur, Adv.

versus

SHRI SRI BHAGWAN (DECEASED) THR LRS Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. This petition is arising out of the order dated 26th March, 2013 passed by the Civil Judge-15, Central, Tis Hazari Courts, Delhi who rejected the application filed by the petitioners/plaintiffs under Order VI, Rule 17 read with Section 151 CPC for amendment of the plaint. It was stated in the application that inadvertently, property No.592, Chirag Delhi, New Delhi was not incorporated in the plaint, though property No.603 and 603A, Chirag Delhi were included.

2. In fact, the petitioners filed the suit for partition and injunction against the respondent No.1 on 1st December, 1994. The suit was contested by respondent No.1 who filed the written statement. Issues were framed on 20th April, 1996. The petitioners led their evidence and closed the same on 1st September, 2002. Respondent No.1 examined two witnesses and thereafter, he was absent from the Court proceedings and on 4th September, 2003, respondent No.1 was proceeded *ex parte*. Later on, it was found that

respondent No.1 expired on 28th February, 2004. An application for substitution was allowed on 21st April, 2005 and the matter was put up for final arguments. The final arguments were also concluded on 22nd September, 2005. However, the matter was adjourned for pronouncing the order from time to time. The Court suo-moto under Order 1, Rule 10(2) CPC while referring to the evidence of PW-1 directed the petitioners to implead the LRs of Bala Pershad Sharma, i.e. eight daughters and five sons on 19th November, 2005. Hans Raj Sharma, newly added respondent No.3 filed written statement and contested the case. It was only on 8th August, 2012 the petitioners/plaintiffs filed the application under Order VI, Rule 17 CPC for amendment of the plaint to incorporate property No.592, Chirag Delhi, New Delhi. The application was contested by respondent No.3 and the same was rejected by the impugned order dated 26th March, 2013. Therefore, the present petition has been filed by the petitioners/plaintiffs.

3. After having considered the pleadings of the parties as well as the submissions of the learned counsel for the petitioner, I do not find any infirmity in the impugned order passed by the learned trial Court in the application under Order VI, Rule 17 CPC who has already given his findings that respondent/defendant No.3 was joined as a party in the year 1990. The sale deed pertaining to property No.592 was in the knowledge of the petitioners and other respondents in the year 1990 itself. The respondent No.3 was not made a party to the suit within a period of 12 years and as per the law of limitation, the present suit is barred against respondent No.3.

4. Learned counsel for the petitioners/plaintiffs has not disputed the fact that the sale deed in favour of respondent/defendant No.3 with regard to property No.592, Chirag Delhi, New Delhi was registered on 28th March,

1990 who is claiming himself as the absolute owner of the said property. It has also come on record that the petitioners and respondents had earlier filed a suit against respondent No.3 and his father in the year 1990, titled as *Shri Bhagwan vs. Bala Prasad* in which they did not prove the property No.592, Chirag Delhi, New Delhi to be an ancestral property.

5. In view of the above said facts and circumstances of the case, I am of the view that there is no legal error in the impugned order. Thus, the petition is dismissed.

C.M.No.10454/2013 (for stay)

Since the main petition has been dismissed, this application has become infructuous and the same is disposed of as such.

**(MANMOHAN SINGH)
JUDGE**

JULY 15, 2013