

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

+ CM(M) No. 497/2014 & CM Nos.8762-63/2014

% **5th November , 2014**

ASHWANI SHARMA & ORS. Petitioners
Through: Mr. Pramod Ahuja, Advocate.

VERSUS

SMT. KANTA SHARMA & ORS. Respondents
Through: Mr. Akshay Makhija CGSC with Ms.
Sanjugupta Moktan and Ms. Mahima
Bahl, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Counsel for the petitioners when asked to argue the present petition, kept on repeatedly asking for an adjournment and refused to argue the matter on the ground that he does not have the impugned order and certain documents. In my opinion, the request for adjournment is totally unjustified because this case had come up for the first time on 20.5.2014 and on which date it was renotified for today. When counsel for the petitioners was pointed out this fact, he makes a very unfortunate observation that he was ready on 20.5.2014, but it is the predecessor court which did not hear him
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and therefore he is entitled to the adjournment. I do not understand these types of submissions of counsels which in fact amount to in my opinion an endeavour to overreach the Court.

2. This present petition is filed against the impugned order of the first appellate court dated 2.12.2013 which notes that the present petitioners, the appellants in the first appeal, repeatedly failed to argue the first appeal and unnecessarily took a number of adjournments. The first appellate court therefore ultimately referring to all the other earlier orders dismissed the first appeal for non-prosecution vide the impugned order on 2.12.2013.

3. The first appeal was filed by the present petitioners impugning the interim order of the trial court dated 1.8.2011 by which the trial court had dismissed the injunction application filed by the petitioners/plaintiffs, and who are the legal heirs of one Sh. Keshwa Nand Sharma (K.N.Sharma). Petitioners/plaintiffs claimed rights in the suit property bearing no A-132, Defence Colony, New Delhi by seeking to get a judgment and decree dated 21.8.1969 (38 years before the filing of the suit) set aside by means of the subject/present suit. By the judgment and decree dated 21.8.1969, the brother of Sh. Keshwa Nand Sharma one Lt. Col. Ram Prakash Sharma, was declared to be the owner of the suit property. Lt. Col. Ram Prakash Sharma

was declared to be the owner because it was held that the suit property in fact belonged to Lt. Col. Ram Prakash Sharma. Lt. Col. Ram Prakash Sharma thereafter got the mutation of the suit property in his name and in fact L&DO had executed a lease deed of the suit property in favour of Lt. Col. Ram Prakash Sharma decades back. The trial court has in the following paras given some of the relevant facts of the suit and which in my opinion disentitle the present petitioners/plaintiffs to an interim injunction as also declined by the trial court, and which paras are paras 11,12,13, 15, 22 and 24 of the order dated 01.8.2011 of the trial court, and the trial court accordingly concluded thereafter in paras 32 to 35 that the petitioners/plaintiffs had no right to claim injunction and which paras read as under:-

“11. It is further case of the defendant no.1 to 3 that Sh. Diwan Chand Sharma had applied for allotment of the said plot at the instance of Lt. Col. Ram Prakash Sharma as he was posted outside Delhi. Lt.Col. Ram Prakash Sharma had made the entire payment in respect of the said plot and raised the construction thereon from his own funds. Sh. Diwan Chand Sharma had executed a Will dated 02.06.1969, wherein he had categorically stated that the said plot was owned by Lt. Col. Ram Prakash Sharma in his benami name and the suit property was constructed by the funds of Lt. Col. Ram Prakash Sharma. Lt. Col. Ram Prakash Sharma had filed a suit for declaration against Sh. Diwan Chand Sharma seeking a decree of declaration

declaring him the owner of the suit property. The said suit bearing suit no.298/1969 titled as 'Sh. Ram Prakash Sharma vs Sh. Diwan Chand Sharma' was decreed on 21.08.1969 by the Court of Sh. Gyanander Singh, Sub Judge, 1st Class, Delhi and Lt.Col. Ram Prakash Sharma was declared the owner of the suit property. Sh. K.N. Sharma/ father of the plaintiffs had knowledge of all these facts and he had never raised any objection during his lifetime.

12. According to the defendant no. 1 to 3, the suit property was transferred in the records of the office of the L & DO, Nirman Bhawan, New Delhi in the name of Lt. Col. Ram Prakash Sharma on the basis of the decree dated 21.08.1969 vide letter dated 26.05.1970 and thereafter, a lease deed in respect of the suit property was executed in favour of Lt. Col. Ram Prakash Sharma. Sh. Diwan Chand Sharma expired in the year 1978 in Pune where he was residing with Lt. Col. Ram Prakash Sharma.

13. It is stated that Lt. Col. Ram Prakash Sharma was an Army Officer and due to retire in the year 1980 had filed an eviction petition against the tenant in respect of two rooms on the ground floor of the suit property. It is stated that an eviction order was passed against the said tenant and the possession of the tenanted premises was delivered to Lt. Col. Ram Prakash Sharma in the year 1980. It is stated that the plaintiff no. 3/ Smt. Promila Sharma was residing with Smt. Lajwanti Sharma wife of Sh. Diwan Chand Sharma in the suit property in the year 1980 and the plaintiffs as well as their father had knowledge of all these facts. Sh. K.N. Sharma had given an affidavit dated 06.03.1980 wherein he had admitted that Lt. Col. Ram Prakash Sharma was the exclusive owner of the suit property, and Sh. K.N. Sharma or his legal heirs had no interest in the suit property. Lt. Col. Ram Prakash Sharma expired on 25.01.2000 and thereafter, the suit property was mutated in the name of his wife Smt. Kanta Sharma/the defendant no. 1 by the L & DO vide letter dated 24.08.2000 and thereafter, the suit property was converted from leasehold to freehold, and a conveyance deed dated 14.09.2000 was executed in favour of the defendant no. 1.

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15. In the written statement, the defendant no. 4/L&DO has stated that a plot of land measuring 217 sq. yds. bearing no. A Defence Colony, New Delhi was allotted to Hony. Lt. Diwan Chand and a lease deed was executed in his favour on 13.05.1957 after recovery of Government due. The suit property was mutated in the name of Lt. Col. Ram Prakash Sharma on the basis of order dated 21.08.1969. A fresh lease deed was executed on 26.03.1977. Lt.Col. Sh. Ram Prakash Sharma expired on 25.01.2000 and the suit property was mutated in the name of the defendant no. 1 on the basis of Will of Lt. Col. Sh. Ram Prakash Sharma vide letter dated 24.08.2000 and the suit property was converted into freehold from leasehold vide conversion application dated 09.03.2000 and thereafter, a conveyance deed was executed on 14.09.2000.

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22. Ld. Counsel for the defendant no.1 to 3 argued that the plaintiffs have no right, title or interest in the suit property. He argued that the defendant no. 1 is the owner of the suit property and she has the right to deal with the suit property. He argued that the suit property was purchased in the name of Sh. Diwan Chand Sharma as benami property, and funds thereof were made available by Lt.Col. Ram Prakash Sharma. He argued that Lt. Col. Ram Prakash Sharma had constructed the suit property from his funds and therefore, Sh. Diwan Chand Sharma had suffered the decree dated 21.08.1969. He argued that even if the case of the plaintiffs is accepted that Sh. Diwan Chand Sharma was the owner of the suit property, even then he had every right to transfer and/or bequeath the suit property or suffer the decree dated 21.08.1969. He argued that the plaintiffs have not pressed their case as pleaded in the plaint that the suit property was allotted against the verification of claims in respect of ancestral properties in Pakistan. He argued that there is nothing on record that Sh. Diwan Chand Sharma had any ancestral property in Pakistan or the suit property was allotted against the verified claims.

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24. Ld. Counsel for the defendant no.1 to 3 argued that the title of Lt.Col. Ram Prakash Sharma had perfected during the lifetime of Sh.Diwan Chand Sharma. He argued that the suit property was mutated in the name of Lt. Col. Ram Prakash Sharma in the year 1970 whereas Sh. Diwan Chand

Sharma had expired in the year 1978 and therefore, no NOC was required from legal heirs as no one had title in respect of the suit property except Sh. Diwan Chand Sharma. He argued that Sh. K.N. Sharma has never challenged the decree dated 21.08.1969 or agitated any right in respect of the suit property since 1978 till 1997. He argued that the plaintiffs have nowhere stated in their plaint that the suit property was constructed or purchased from the funds of Sh. K.N. Sharma or he had contributed any amount in that respect. He argued that the plaintiffs cannot maintain the suit for declaration simpliciter without seeking consequential relief of partition or possession of the suit property. He argued that there is no presumption of joint property in the law. He argued that the suit is barred by limitation as the plaintiffs had the knowledge of declaratory decree since the lifetime of Sh. Diwan Chand Sharma and Sh. K.N. Sharma. He argued that the decree dated 21.08.1969 is binding on the parties to the suit and therefore, the plaintiffs have no right, title or interest in the suit property and the application under Order 39 Rule 1 and 2 of the Code is liable to be dismissed.

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32. It is the admitted case of the plaintiffs that their father Sh. K.N. Sharma had expired in the year 1997. The plaintiffs have stated in para no. 5 of the plaint that Sh. Diwan Chand Sharma had informed Sh. K.N. Sharma that Lt. Col. Ram Prakash Sharma had obtained his signatures on the blank papers under the pretext of submitting the said documents with the House Tax Department for reduction of house tax of the suit property.

33. It is, therefore, evident that Sh. K.N. Sharma had the knowledge that Sh. Diwan Chand Sharma was the owner of the suit property but neither Sh. Diwan Chand Sharma nor Sh. K.N. Sharma had raised any objection with regard to the mutation of the suit property in the name of Lt. Col. Ram Prakash Sharma.

34. Sh. K.N. Sharma had never challenged the ownership rights of Lt. Col. Ram Prakash Sharma since the death of Sh. Diwan Chand Sharma in 1978 to 1997.

35. In so far as case of the plaintiffs that they were not aware of the fact that the suit property was transferred in the name of

Lt. Col. Sh. Ram Prakash Sharma and that a declaratory decree dated 21.08.1969 was passed and further, the suit property was transferred in the name of the defendant no.1 and further, they acquired the knowledge of the said facts on 26.06.2007 is concerned, it can be stated that it is the admitted case of the plaintiffs that the plaintiff no. 3 had stayed in the suit property with her grand parents, namely, Sh. Diwan Chand Sharma and Smt. Lajwanti Sharma till 1978. The property was mutated in the name of Lt. Col. Ram Prakash Sharma in 1970, therefore, it cannot be believed that the plaintiffs or their father Sh. K.N. Sharma were not aware about the ownership of the suit property in the name of Lt. Col. Ram Prakash Sharma."

(underlining added)

4. Obviously, the trial court in view of the aforesaid facts was fully justified in dismissing the injunction application and in fact in my opinion, since the petitioners/plaintiffs had no *prima facie* case on merits, therefore, they were repeatedly taking adjournments in the first appellate court and the first appellate court was thus forced to dismiss the first appeal on account of non prosecution because the petitioners/plaintiffs failed to repeatedly argue the first appeal.

5. It is quite clear that the suit was *prima facie* in fact totally lacking in substance and was an abuse of the process of the law, especially since Sh. Keshwa Nand Sharma in his life time had never challenged the title of his brother Lt. Col. Ram Prakash Sharma in the suit property. The petitioners/plaintiffs simply by claiming to have derived knowledge on the

basis of RTI query in the year 2007 could not create a false cause of action for filing of the suit and for filing the interim injunction application.

6. In view of the above, there is no reason for this Court to exercise its extraordinary and discretionary jurisdiction under Article 227 of the Constitution of India.

7. Dismissed.

NOVEMBER 05, 2014
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VALMIKI J. MEHTA, J.