

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

+ C.M.(M) No.84 /2014 and C.M.No.1514/2014 (delay)

% 03rd December, 2014

SH. HARMEET SINGH Petitioner

Through: Petitioner in person.

VERSUS

SMT. ANSHU AGGARWAL & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner appears in person and seeks an adjournment. I refuse to grant adjournment because this is one of the extreme cases of abuse of the process of the law which this Court has seen and which will become clear from the factual details, which I am stating below. Also, this case has already come up on two occasions earlier, yet no notice till date is issued. Therefore, no adjournment as prayed for can be granted as prayed by the petitioner on the ground that his counsel is not well.

2. The present petition under Article 227 of the Constitution of India is filed by the petitioner/plaintiff impugning the judgment dated 30.03.2013 of

the first appellate court in MCA No.09/2012 by which the first appellate court has dismissed the first appeal against the order of the trial court dated 28.4.2012 dismissing the injunction application filed by the petitioner/plaintiff under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (CPC).

3. Let me at this stage reproduce the para nos. 10 to 15 of the impugned judgment dated 30.03.2013 of the first appellate court, and which paras show that as many as five earlier litigations were initiated by the petitioner/plaintiff with respect to the same suit property/subject matter either by himself or by his father, and in all of which cases the petitioner/plaintiff or his father was unsuccessful, but still the subject/present/sixth suit is filed in which the injunction application has been dismissed. Para nos. 10 to 15 of the impugned judgment read as under:-

“10. **Litigation-I:** In the year 1990, DS, father of the appellant, filed a suit for possession and mesne profit i.e. suit no.581/90 with respect to the suit property against the appellant herein/ the defendant therein. Vide judgment and decree dated 06.03.2000, the said suit was decreed in favour of DS and against the appellant herein. Perusal of the said judgment reveals that DS i.e. the plaintiff therein claimed himself to be the owner of the suit property and the appellant/ defendant therein disputed the said right and claimed himself to be the co-owner of the suit property on the ground that the suit property was purchased by DS i.e. the plaintiff therein from the funds received by him from the government agencies. Accordingly, the issue no.2 was framed i.e. “*Whether defendant is co-owner of the property as alleged by the defendant ? OPD.* The appellant/defendant therein failed to prove the said issue in his favour.

Accordingly, the said issue was decided against him. Being aggrieved by the said judgment and decree, the appellant herein preferred the first appeal being RCA no. 07/2000 and the same was dismissed on 11.07.2001. The appellant being aggrieved by the same, preferred the second appeal being RSA no.27/2002, which was also dismissed on 04.05.2006. Against the said order, the appellant preferred SLP (Civil) no. 9960/2006 before the Hon'ble Supreme Court and the same was also dismissed on 10.07.2006. As such, the said decree has attained finality as to the findings that DS was the owner of the suit property and the appellant had no right, title or interest including co-ownership rights in the suit property.

11. **Litigation-II:** The appellant herein also filed a suit no.1980/90 for partition against his father i.e. DS with respect to the suit property. In the said suit also, he raised the same plea of co-ownership of the suit property. The said suit was disposed of on 27.08.1998. Subsequently, he moved an application under Order 9 Rule 8 of CPC which was dismissed on 14.08.2006. Being aggrieved by the said order, the appellant preferred CM (M) 1570/2007 before the Hon'ble Delhi High Court and the same was dismissed with cost of Rs. 25,000/- on 17.05.2012.

12. **Litigation-III:** Son of the appellant also filed a suit for partition w.r.t. the suit property and the shop no. 646 and pleaded that the said properties were the ancestor properties being purchased by DS out of the claim received by him and claimed ownership rights in the same. The concerned court granted the interim injunction against DS and the respondent no. 5 herein. Being aggrieved by the same, they preferred the appeal i.e. FAO no.324/2006 and the Hon'ble Delhi High Court observed that being the son of the appellant, he was also bound by the judgment and decree dated 06.03.2000 and vacated the interim order. The said suit stands dismissed.

13. **Litigation-IV:** The appellant herein also filed the suit no.211/2009 for mandatory and permanent injunction and impleaded the respondent no. 5 as the defendant no. 3 therein and raised the same plea of co-ownership in the suit property. In the said suit also, the plaintiff moved the application u/order 39 Rule 1 and 2 of CPC on the same grounds and the said application was dismissed by the concerned court on 25.02.2010. Being aggrieved by the same, the appellant also preferred the appeal MCA no. 04/2010 and the same was dismissed on

15.01.2011 with cost. As pleaded, the appellant failed to deposit the cost. Therefore, the said suit stands dismissed for non prosecution.

14. **Litigation-V:** Despite all the aforementioned litigations, the appellant filed the present suit raising the same pleas.

15. Perusal of the trial court record reveals that in the entire plaint, the appellant has not mentioned the history of the litigation taken place between the parties as mentioned above. The explanation given by the appellant for non disclosure of the said facts is that since his father has expired which has given a fresh cause of action to him to file the said suit. Admittedly, the past litigations pertained to the suit property; vide judgment and decree dated 06.03.2000, the issue of co-ownership of the appellant had been decided against him; DS was held absolute owner of the suit property; and the appellant challenged the said judgment and decree upto apex court, but remained unsuccessful. As such, the said findings have become final. Once the right of the parties has been adjudicated and has attained finality, then the appellant has failed to show how the death of DS has given a fresh cause of action in his favour to file the said suit. Even otherwise, the appellant was duty bound to disclose the aforementioned material facts because the same relate to the suit property. However, the appellant concealed all the said facts without any plausible explanation. Similar plea for non disclosure of the facts was raised by the appellant in MCA no. 04.2010 also and was rejected. Despite that the appellant raised the same plea again in this appeal. Hence, it can be held that the appellant has deliberately suppressed the material facts and has not approached the court with clean hands.”

4. A reading of the aforesaid paras shows that since the year 1990, either the petitioner/plaintiff himself or his father have kept on unsuccessfully claiming rights in the suit property bearing no.2429, Tilak Street, Pahar Ganj, Delhi. In all these previous legal proceedings, it has been held that neither the petitioner/plaintiff nor his father had a right in the suit property.

5. In fact filing of the subsequent suits after the first suit being decided on merits were clearly barred by the principle of *res judicata*, because once a person claims rights and it is held that he does not have those rights, such a judgment binds not only that party but also all the other persons who are not parties to the earlier suit but claiming through the party in the earlier suit. Parties to a suit include the legal heirs of a party, such as the petitioner/son.

6. Leave aside allowing of the application under Order XXXIX Rules 1 & 2 CPC, it is necessary that the trial court should forthwith examine and dismiss if so required by law, with exemplary terms, the subject suit itself in view of the para nos. 10 to 15 of the impugned judgment of the first appellate court as reproduced above.

7. In view of the above, besides the fact that the powers under Article 227 of the Constitution of India are discretionary and extraordinary powers and which are only exercised to prevent injustice and hence cannot be exercised in favour of the present petitioner, the fact of the matter is that not only this petition but the subject/present suit which is the sixth suit in the line of the suits which have been filed either by the petitioner/plaintiff himself or his father is a gross abuse of the process of the law. Therefore, this petition is dismissed with costs of Rs.1 lakh to be paid to the defendants

in the suit. Payment of cost of Rs.1 lakh by the petitioner/plaintiff to the respondents/defendants in the suit will be a precondition for the petitioner/plaintiff to pursue the suit in the trial court. In fact, the trial court must consider if the suit filed has to be dismissed, and if this suit has to be dismissed then the trial court can order/direct that costs be imposed on the petitioner/plaintiff for being deposited as a pre-condition to file another suit or legal proceedings, and which condition will be necessarily complied with before the fresh suit or legal proceedings are filed. If the trial court finds that actions of the petitioner/plaintiff amounts to criminal contempt of court, then the trial court can frame appropriate reference of criminal contempt and send it for decision to this Court.

VALMIKI J. MEHTA, J

DECEMBER 03, 2014
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