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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 3/1992 & IA.No.2489/2016 (for consolidation of present suit with Test Cas No.92/2014)

SATISH KUMAR GUPTA Plaintiff

Through: Mr. Tanmay Mehta with Ms. Mamta Mehra, Advs.

versus

SUNIL KUMAR GUPTA AND ORS Defendants

Through: Mr. Vikas Mehta and Mr.Rajat Sehgal, Advs. for D- 8 to 10.

Ms. Vinita Sasidharan, Adv. for D-6 ISKCON Temple.

Ms. Sapna S.Kapil, proxy counsel for Mr. J.C. Mahindro, Adv.

+ CS(OS) 2005/1999 & IA.No.7347/2009(u/O 39 R.1&2 CPC),
IA.No.7348/09(u/S 151 for direction), IA.No.12733/2015(u/O 14 R-5,
IA.No.14963/2015 (u/O 6 R-14, IA.No.1015/2016 (u/S 151 CPC)

SUNIL KUMAR GUPTA AND ORS. Plaintiffs

Through: Ms. Sapna S Kapil, proxy counsel for Mr. J.C. Mahindro, Adv.

Versus

SHANTI SWARUP GUPTA & ORS Defendants

Through: Mr. Tanmay Mehta with Ms. Mamta Mehra, Advs for D-2,5,6 and 7.

Mr. Vikas Mehta and Mr.Rajat Sehgal, Advs. for D- 8 to 10.

Ms. Vinita Sasidharan, Adv for ISKCON Temple.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.07.2016

1. These two suits are listed together and some of the parties in the two suits are common.
2. The counsel for the defendants No.2,5,6 and 7, namely, Satish Kumar Gupta, Ritwick Gupta, Mayuri Gupta and Mala Gupta in CS(OS) No.2005/1999 states that the subject suit was filed seeking partition of as many as 21 properties; that vide order dated 9th December, 2010, 11 properties of the said 21 properties were deleted and the suit remains with respect to 10 properties; that issues were framed in the suit on 4th November, 2011; that the evidence of the plaintiffs stands closed; that since the onus of proving that the properties of which partition is claimed, are joint and which is disputed by the defendants was on the plaintiffs who failed to lead evidence, the defendants also closed their evidence.
3. It is his contention that the suit is therefore liable to be dismissed.
4. The counsel for the defendants No. 8,9 and 10, namely, Aditya Gupta, Mehak Gupta and Shashi Gupta supports the aforesaid contention.

5. The counsel for ISKCON Temple stated to have been subsequently impleaded as a defendant No.6 in the suit CS(OS) No.2005/1999 states that she has no role to play in the present suit except with respect to property bearing No.F-10, East of Kailash, New Delhi which ISKCON Temple claims under the will subject matter of Testamentary Case No.92/2014 which is listed before the Joint Registrar next on 2nd September, 2016.

6. The counsel for the plaintiffs does not dispute that the evidence stands closed but states that the plaintiffs have filed an application for review of the order dated 1st September, 2015 of this court closing the plaintiffs evidence but which application has not been listed and is lying under objections.

7. CS(OS) No.2005/1999 which has already been pending in this Court for 17 years cannot be adjourned in this fashion. If the plaintiffs were desirous of seeking review of the order dated 1st September, 2015 they should have acted earnestly and cannot chose their own pace for pursuing litigation in the Court.

8. I may in this regard also notice that the time for seeking review of the order dated 1st September, 2015 is also over. More than 9 months have passed since the order and on the ground of wanting to seek review thereof, adjournment cannot be granted.

9. Vide order dated 4th November, 2011 the following issues were framed in CS(OS) No.2005/1999.

“1. Whether the following immoveable properties and businesses were HUF properties, as alleged in the plaint? (OPD)

- (a) F-10, East of Kailash, New Delhi-110098
- (b) Tenancy premises No.21, Narain Market, Qutab Road, Sadar Bazar, Delhi-6.
- (c) Tenancy premises No.60, Narain Market, Qutab Road, Sadar Bazar, Delhi-6.
- (d) Four Godowns forming part of property No.3680, Katra Karigran, Qutab Road, Sadar Bazar, Delhi-6.
- (e) Godown opposite shop No.21, Narain Market, Sadar Bazar, Delhi-6.
- (f) Business under name and style of Light and Music Corner.
- (g) Property No.197, Kailash Hills, New Delhi.
- (h) Shop on first floor, Fountain Market, Chandni Chowk, Delhi.
- (i) Business under name and style of Golden Electric Com.

(j) Business under name and style of Savita Home and Appliances Pvt. Ltd.

2. Whether the suit is not maintainable, as alleged in the preliminary objection (1) in the written statement of defendant no.2? (OPD)

3. Whether the suit is barred under limitation? (OPD)

4. Whether the suit is properly valued for the purpose of court fees jurisdiction? (OPD)

5. Whether the plaintiffs are entitled to partition, and if so, in respect of which properties and businesses? (OPP)

6. Whether the plaintiffs are entitled to rendition of account, and if so, from whom and in respect of which properties and businesses? (OPP)

7. Relief.”

10. Though as per the order dated 4th November, 2011 supra, the onus of issue No.1 is on the defendants but the same is obviously a typographical error. An application in this respect is also stated to have been moved and pending consideration. In any case, it is not the case of the plaintiff that the onus of the said issue was on the defendants or that the defendants should have led evidence first in the suit.

11. The plaintiffs cannot be granted the decree for partition and rendition of accounts and for other ancillary reliefs claimed without

first discharging the burden of issue No.1 and which the plaintiffs have failed to do.

12. The suit i.e. CS(OS) No.2005/1999 has thus to fail for the reason alone of the plaintiffs having not led evidence and in view whereof need to adjudicate the other issues framed on the pleas of the defendants as to the maintainability of the suit and as to the claim of partition and rendition of accounts being barred by time does not arise.

13. As far as CS(OS) No.3/1992 is concerned, the counsel for the plaintiffs therein states that the same is for partition of ground floor of Property No.F-10, East of Kailash, New Delhi and for declaration that the plaintiff is the absolute owner of first and second floor with terrace above thereof. It is further stated that issues were framed in the said suit on 17th December, 2012 but the recording of evidence has not begun as the said suit was earlier consolidated with Test Cas No.31/2004 which has since been dismissed and IA.No.2489/2016 is pending now for consolidation of the CS(OS) No.3/1992 with Test Cas No.92/2014 supra.

14. The status of Test Cas No.92/2014 has been enquired.

15. It is informed that the service of all the respondents has not been completed.

16. The petitioner namely ISKCON Temple in Test Cas NO.92/2014, to take steps for service of all the respondents therein and all the parties present here to complete their pleadings therein also before 2nd September, 2016.

17. List CS(OS) No.3/1992 and Test Cas No.92/2014 before the same Bench on 24th October, 2016 subject to orders of Hon'ble the Judge In-Charge.

18. CS(OS) No.2005/1999 is dismissed with costs of Rs.25,000/- to each set of the defendants.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JULY 12, 2016
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