

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

+ **CM(M) No.718/2017**

RAJ KUMARI (DEAD) THR L R VEENA DEVI Petitioner

Through: Mr. Kuldeep Kumar, Adv.

versus

ASHOK KUMAR & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% 18.07.2017

CM No.24924/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

CM(M) No.718/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 17th April, 2017 of the Court of Additional District Judge-02, Shahdara, Karkardooma Courts, Delhi in CS No.756/16 filed by the petitioner / plaintiff), allowing the application of the respondents / defendants under Section 151 of the Code of Civil Procedure, 1908 (CPC).
4. The learned Additional District Judge in the impugned order has observed that though the application was titled as “under Section 151 CPC” but the relief claimed therein fell within Order VIII Rule 1A (3) of the CPC.
5. The counsel for the petitioner / plaintiff has been heard.
6. As per the counsel for the petitioner / plaintiff (i) the petitioner / plaintiff in or about May, 2012 instituted the suit from which the present petition arises, *inter alia* for recovery of possession of immoveable property from the respondents / defendants; (ii) the respondents / defendants

contested the suit by filing a written statement pleading to have purchased the property but further pleading that the documents with respect thereto in favour of the respondents / defendants were misplaced and a Non-Cognizable Report (NCR) No.111/2010 of Police Station New Usmanpur, Delhi had been lodged with respect thereto; (iii) that the petitioner / plaintiff also filed a probate case seeking probate of a document claimed to be the Will of mother of the petitioner / plaintiff bequeathing the subject property in favour of the petitioner / plaintiff and in the said probate case also the respondents / defendants were impleaded as parties; and, (iv) that the respondents / defendants along with their objections to the probate case filed in the year 2015 filed the documents of purchase of the property in his favour.

7. The respondents / defendants filed the application, against the order of allowing whereof this petition has been filed, to place the said documents in the suit aforesaid.

8. The learned Additional District Judge in the impugned order has reasoned (i) that the respondents / defendants in the written statement in the suit had already pleaded that the documents of purchase in his favour had been misplaced and an NCR having been lodged with respect thereto; (ii) in view of the same it could not be said that the respondents / defendants were negligent in filing the documents; and, (iii) that the recording of evidence of the petitioner / plaintiff was yet to commence.

9. Accordingly, the application of the respondents / defendants has been allowed and the documents belatedly filed, taken on record.

10. The counsel for the petitioner / plaintiff has argued (i) that the respondents / defendants along with their written statement in the suit did

not even file any copy of the NCR or give any particulars of nature of the documents or file copies of the documents; (ii) that there are inconsistencies in the pleas of purchase of the property in the written statement in the suit and in the objections in the probate case; (iii) that the purport of amendment of the year 2002 of the CPC, particularly by deletion of Order XIII Rule 2 is to prevent documents from being filed belatedly; (iv) that though the documents were filed in the probate case along with the objections in the probate case in the year 2015, but the application in the suit for filing the same documents was filed on 16th May, 2016 i.e. after one year; and, (v) that the petitioner / plaintiff on the date when the application was filed had already filed his affidavits by way of examination-in-chief and the same had also been tendered.

11. I have considered the aforesaid contentions.

12. As far as the argument of amendment to the CPC is concerned, the High Courts of Andhra Pradesh, Madras and Kerala in (i) ***Gullipalli Naram Naidu Vs. Kinthali Kumaraswami*** AIR 2003 AP 481; (ii) ***K. Kasturi Vs. C. Mohan, C. Somasundaram and C. Loganathan*** MANU/ TN/9768/2006; and, (iii) ***Bhanumathi Vs. K.R. Sarvothaman*** MANU/KE/2337/2010 respectively have held that Order XIII Rule 2 of the CPC has virtually been transplanted in Order VII Rule 14 and Order VIII Rule 1A. I respectfully concur. This Court also in (i) ***Gold Rock World Trade Ltd. Vs. Veejay Lakshmi Engineering Works Ltd.***; (2007) 143 DLT 113 (ii) ***F. Hoffmann-La Roche Ltd., Switzerland and OSI Pharmaceuticals, Inc., New York Vs. Cipla Ltd., Mumbai Central, Mumbai*** (2012) 195 DLT 641; and, (iii) ***L.T. Overseas North America INC. Vs. Sachdeva & Sons Pvt. Ltd.*** MANU/DE/4058/2013 has held that the Court remains empowered under

the said provisions. It is thus not as if the effect of deletion of Order XIII Rule 2 of the CPC is to take away the power of the Court to allow documents to be filed at a belated stage.

13. Else, I am of the view that the present is not a case for interference in the discretion exercised by the learned Additional District Judge in allowing the documents to be taken on record though belatedly. Supreme Court in *Sadhana Lodh Vs. National Insurance Company Ltd.* (2003) 3 SCC 524 held that where the remedy of Revision Petition under Section 115 of the CPC is barred, though Article 227 of the Constitution of India can be invoked but the jurisdiction thereunder is confined only to see whether the inferior Court has proceeded within its parameters and not to correct an error apparent on face of record, much less an error of law. Admittedly the cross-examination of the witnesses of the petitioner / plaintiff had not begun till the application was filed and the pleas regarding the existence of the documents and loss / misplacement thereof were present in the written statement as originally filed. It is also not in dispute that considering the nature of the suit, the documents are relevant.

14. As far as the argument of inconsistency is concerned, it is always open to the petitioner / plaintiff to, in cross-examination, falsify the documents relied upon by the respondent / defendant.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 18, 2017

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