

\$~15

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

+ RSA 405/2015

PARAMJIT KAUR

..... Appellant

Through: Mr.Kunal Kalra, Advocate.

versus

AMARJIT KAUR & ORS

..... Respondents

Through: Mr.Vinod Kumar, Advocate for R-1
and R-3 with R-3 in person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

20.01.2017

1. This litigation is mainly between the appellant/plaintiff (mother-in-law) and respondents/defendants i.e. respondent No.1 (daughter-in-law). Whereas respondent No.2 is son of appellant and husband of respondent No.1, respondent No.3 is father of respondent No.1.

2. The Civil Suit No.127/2010 filed by the appellant/plaintiff (mother-in-law) against the respondents/defendants praying for a decree of mandatory and permanent injunction against the respondents/defendants in respect of Property No.E-71, East of Kailash, New Delhi was decreed by the learned Civil (South), Saket Court on 12th April, 2013. Feeling aggrieved, the respondent No.1/defendant No.1 Amarjit Kaur (daughter-in-law) preferred RCA No.7/2013 before the learned Senior Civil Judge, South-East District, Saket. The First Appellate Court while allowing RCA No.7/2013 made certain observations in respect of the relief granted to the daughter-in-law i.e. respondent No.1 herein under Domestic Violence Act as well the alleged collusion between the mother-in-law (appellant herein) and her son (respondent No.2 herein) in para 14 and 15 of the judgment and remanded

the case to the learned Trial Court to decide the suit afresh. The relevant paragraphs of the judgment of the First Appellate Court passed in RCA No.7/2013 read as under:-

'14. In the circumstances it is clear that the element of collusion between respondent and defendant No.2 her son cannot be ruled out with a view to oust the appellant herein and to nullify the order of protection granted by Ld.MM. The defendant No.2 the husband has very conveniently not filed any WS and has also left the suit premises without any forwarding address or providing for appellant and their minor child. Even in cross examination of respondent the counsel for respondent No.2 has only attempted to help the respondent by getting the clean chit from respondent with regard to harassment, losing sight of the facts that the serious allegation of dishonesty and harassment were made also against defendant No.2 by respondent.

15. In view of the above, it is clear that the order of the Ld.Trial Court is not sustainable in law and allowing it to subsist will result in miscarriage of justice, since, it is against law and has been obtained by collusion between respondent, mother-in-law and her son with intention of defeating Court order of residence for appellant and her minor daughters passed by Ld.M.M. in Domestic Violence and rendering the said order nullity even when there being no appeal against the same.

16. It is well settled law that an order injunction cannot be granted in case where a party comes to Court with unclean hands i.e. collusion as in this case. In facts of the case the appeal is allowed and judgment dt.12.04.2013 passed by the Ld.Trial Court is set aside and remanded back and the Ld. Trial Court is directed to decide the said suit afresh by giving findings on issues framed on 07.01.2010 after hearing final arguments and allowing the parties to file written submissions issue-wise. The Ld.Trial Court is further directed to dispose off the matter after hearing fresh final arguments. Parties are

directed not to seek unnecessary adjournment and help the Ld.Trial Court in compliance of this order. Parties to the suit are directed to appear before the Ld.Trial Court on 30.11.2013. Copy of this order be sent to the Ld.Trial Court along with Trial Court Record. Appeal Court Record be consigned to Record Room.'

3. After the matter was remanded, learned Trial Court, being influenced by the observations/findings made by the First Appellate Court while remanding the case for deciding afresh, dismissed the suit.

4. Aggrieved by the dismissal of her suit, the plaintiff i.e. appellant herein (mother-in-law) filed RCA No.2/2015 before the learned Additional Senior Civil Judge, South-East District, Saket Court wherein apart from various other pleas it was contended that the judgment was influenced by the findings of the First Appellate Court in RCA No.7/2013. This appeal (RCA No.2/2015) was dismissed by the learned Additional Senior Civil Judge, South-East District, Saket Court wherein inter-alia it was observed as under:-

"17. Despite having such findings against her, the appellant did not choose to challenge the order dated 25.10.2013 passed by Ld.Senior Civil Judge. Such findings of Ld.Senior Civil Judge obviously could not have been ignored by Ld.Trial Court which was directed to decide the three issues afresh. Having not challenged the order of Ld.Appellate Court, it now does not lie in the mouth of the appellant to say that Ld.Trial Court erred in holding that there was collusion between her and the respondent No.2. This Court is of coordinate jurisdiction to the Court of Ld.Senior Civil Judge and hence is bound by the findings made by Ld.Senior Civil Judge vide order dated 25.10.2013."

5. This case has just become a shuttle cock between the Trial Court and First Appellate Court.

6. In view of the decision reported as Lisamma Antony and Anr. vs. Karthiyayani and Anr. (2015) 11 SCC 782, the First Appellate Court could not have remanded the appeal bearing RCA No.7/2013 to the Trial Court for fresh decision unless of the view that remand is necessary for additional evidence or the Trial Court had only decided the preliminary issues and not all the issues.

7. In the present case, since the civil suit was disposed of on merits by the learned Trial Court, the First Appellate Court should have restrained itself from remanding the case to the learned Trial Court for re-appreciation of evidence and fresh decision in the matter as it is nothing but harassment to the litigant which causes unnecessary delay in the final disposal.

8. It is noteworthy that the learned Senior Civil Judge, South-East District, Sake Court while disposing of RCA No.7/2013 issued directions to the learned Trial Court to decide the suit afresh but without mentioning that the decision shall be uninfluenced by the judgment in RCA No.7/2013.

9. If the decision by the learned Trial Court was required to be passed on the dotted lines as suggested by the First Appellate Court, there was hardly any necessity to remand the case as the First Appellate Court could have disposed of the appeal instead of suggesting the lines on which the decision is to be taken by the learned Trial Court.

10. Unfortunately, this litigation, which can be termed as matrimonial litigation, being between mother-in-law and daughter-in-law is continuing since 2010. Learned counsel for the respondents No.1 and 3 fairly concedes that the impugned orders are not sustainable in the eyes of law.

11. Since the Regular Second Appeal preferred under Section 100 of Code of Civil Procedure can be entertained only on substantial question of

law being raised, it is desirable that the case be decided by the learned Trial Court uninfluenced by the decision of First Appellate Court in RCA No.7/2013.

12. Learned counsel for the parties submit that in the peculiar facts and circumstances of the case, it would be desirable that the case be remanded to the learned Trial Court to decide it afresh purely on the basis of evidence adduced by the parties during trial and uninfluenced by any observation made in the judgments dated 25.10.2013 passed in RCA No.7/2013, dated 27.11.2014 passed in Civil Suit No.98/2014 (new number) and dated 27.07.2015 passed in RCA No.2/2015.

13. In the peculiar facts and circumstances of the case, with the consent of the parties following order is passed:-

(i) The judgment dated 12.04.2013 passed by learned Trial Court whereby Suit no.127/2010 filed by the plaintiff (mother-in-law) was decreed, judgment dated 25.10.2013 passed in RCA No.7/2013 whereby the First Appellate Court, after making certain observations against the plaintiff (mother-in-law), remanded the case for deciding afresh, judgment dated 27.11.2014 passed by the learned Trial Court whereby the Suit no.98/2014 (new number) of the plaintiff (mother-in-law) was dismissed on the basis of observations made by the First Appellate Court in RCA No.7/2013 and judgment dated 27.07.2015 passed in RCA No.2/2015 whereby the First Appellate Court has dismissed the appeal filed by the mother-in-law observing that the learned Trial Court could not have ignored the findings given by the learned Senior Civil Judge, South-East District, Saket Court in RCA No.7/2013, are hereby set aside.

(ii) Civil Suit no.127/2010 titled as Mrs.Paramjit Kaur vs. Amarjit Kaur

& Ors. shall be decided by the learned Trial Court afresh purely on the basis of evidence adduced by the parties during trial in accordance with law and uninfluenced by any observation made in the judgments dated 25.10.2013 passed in RCA No.7/2013, dated 27.11.2014 passed in Civil Suit No.98/2014 (new number) and dated 27.07.2015 passed in RCA No.2/2015.

(iii) The learned Trial Court shall decide the Civil Suit no.127/2010 after giving an opportunity to the parties to make written as well as oral submissions.

(iv) Learned counsel for the parties agreed that on the date to be fixed for their appearance before the learned Trial Court, they shall submit the written submissions and thereafter on the date to be fixed by the learned Trial Court as per its convenience, they shall make oral submissions.

14. Parties are directed to appear before the learned Trial Court on 16th February, 2017.

15. The learned Trial Court shall decide the case within three months to be reckoned from 16th February, 2017.

16. Appeal stands disposed of in above terms.

17. ACR be sent back alongwith copy of this order.

18. A copy of this order be also sent to the concerned Trial Court through District Judge, South-East District, Saket Courts.

19. As prayed, copy of the order be given dasti to learned counsel for the parties under the signature of Court Master.

PRATIBHA RANI, J.

JANUARY 20, 2017

'st'