

\$~18

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

+ CM(M) 862/2018 & CM NO. 40949-50/2018, CM 45590/2018

KRISHAN GARG (S K GARG)

..... Petitioner

Through: Mr.A.K.Singla, Sr. Advocate with
Mr.Bhuwan Randran, Advocate

versus

HARI OM GUPTA

..... Respondent

Through: Mr.Pramod K. Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **17.12.2018**

CM No. 40950/2018 (Exemption)

Allowed, subject to just exceptions.

CM 45590/2018

CM 45590/2018 is an application seeking early hearing of CM No. 40949/2018 filed on behalf of the applicant/petitioner in relation to the CM 40949/2018, which is allowed.

CM 40949/2018

CM(M) 862/2018 was disposed of vide order dated 6.9.2018. Vide the said petition CM (M) No. 862/2018, the petitioner thereof, the present applicant, had *inter alia* sought transfer of the suit bearing CS(OS) No.10694/16 ***Hari Om Gupta v. Krishan Garg***, pending before the learned Additional District Judge-01, Tis Hazari Courts, Delhi to the learned Civil Judge West submitting to the effect that the same had to be so done essentially in terms of the valuation of the

suit for the purposes of Court Fees and jurisdiction.

Vide order dated 6.9.2018 in the said petition CM(M) 862/2018 proceedings of the suit bearing CS No.10694/2016 pending before the learned Additional District Judge-01 West, Tis Hazari Courts were withdrawn from the said learned Court and transferred to the learned Senior Civil Judge (West) for allocation of the said suit to the competent Court of learned Civil Judge-04 West, Tis Hazari Courts to proceed further in accordance with law. *Inter alia* vide the order dated 6.9 2018 it was directed as follows:

*“ As submitted and prayed on behalf of the respondent that the records of the CS(OS) no. **2676/1996** which was withdrawn on 20.04.2013, which are tagged alongwith the suit, be tagged alongwith the records of the suit bearing CS no. 10694/16 and the same be so tagged together.
The petition is disposed of.”*

Through the present application it has been submitted on behalf of the applicant/petitioner that the said directions detailed herein above in relation to the tagging of the records of CS(OS) No.2676/1996 which was withdrawn on 20.4.2013 with the records of the suit bearing CS No. 10694/16 be directed to be deleted.

During the course of submissions that have been made on the application, it has been submitted on behalf of the applicant that the proceedings in relation to CS(OS) No.2676/96 were withdrawn on 20.4.2013 and that it is for the respondent herein to prove whatever contentions and judicial records that the respondent seeks to urge in

relation to CS No. 355/12 before the learned District Courts and which bore the initial Suit No. 2676/96 as it bore when it was instituted before this Court and it is submitted on behalf of the applicant/ petitioner that the judicial record in relation thereto would have to be established by the non-applicant/respondent by production of the certified copies of the records of CS(OS) No.2676/96 which bore CS No. 355/2012 before the learned District Courts.

It has thus been submitted on behalf of the applicant in CS(OS) 2676/96 that in the event of the records of CS No. 355/2012 being continued to be tagged with the CS No.10694/16, they would be deemed to be consolidated and the reliance in relation thereto is placed on behalf of the applicant/petitioner on the proceedings of the verdict of the Hon'ble Division Bench of this Court in ***Butna Devi V. Amit Talwar & Ors.***; 2014(6) AD Delhi 220 with observations in para 24 thereof which read to the effect:

“ 24. Though undoubtedly the counterclaim was sought to be filed after nearly seven years of the institution of the suit but considering the entirety of the facts, we do not consider the same also as a factor for refusing the same. As aforesaid, the relief sought by way of counterclaim of recovery of possession is within limitation; if not by way of a counterclaim, the respondent / defendant no.1 could always file separate suit for recovery of possession and since the facts thereof would necessarily be intertwined with the claim of the appellant / plaintiff in the present suit, the same in all probability would have been tagged / consolidated with the suit from which this appeal arises, for adjudication. We thus do not feel that the appellant / plaintiff has been prejudiced in any

manner from the delay in the respondent / defendant no.1 making the counterclaim for possession. It cannot also be lost sight of that the appellant / plaintiff, till 14th February, 2012, was herself claiming the relief in alternative of recovery of the balance sale consideration from the respondent / defendant no.1, treating the sale deed to be valid.”

to submit and contend that the tagging of the two records would indicate intertwining of the contentions that would be raised.

The reply to the application on behalf of the non-applicant/respondent is on the record which *inter alia* indicates that the proceedings in CS(OS) 2676/96 and CS No.10694/16 after they were both pending before the learned District Courts, had vide order dated 17.12.2012 of the learned Additional District Judge-06 West in Suit No. 341/12 been consolidated with suit No. CS(OS) 355/12 previous number CS No.2676/2016 and that the prayer as made on behalf of the applicant if allowed the same would unnecessarily necessitate the non-applicant to file the certified copies of the records.

Apart from other contentions that are sought to be raised on behalf of the non-applicant/respondent in relation to the purported deliberate withdrawal of the suit bearing No.355/12 by the petitioner herein in view of the directions dated 17.12.2012 in suit No. 341/12 consolidating the said suit with suit No. 341/12 which bore previous CS No. 10694/16 as it bore when it was pending before this Court before the change of pecuniary jurisdiction, it is submitted the respondent would gravely be prejudiced.

Vide order dated 15.11.2018 on the present application filed by the applicant/petitioner it was considered essential thus that the records CS No.10694/16 which now bears the No. 341/12 before the learned Civil Judge-04 West which is apparently yet to be numbered now, further in terms of the proceedings dated 16.11.2018 of the learned Civil Judge-04 West, which bore previous No. 341/12 as it bore before the learned Additional District Judge-06 West, and the records of CS(OS) 2676/96 as it bore before this Court before transfer thereof to the learned District Courts on the grounds of pecuniary jurisdiction which subsequently bore CS 355/12 as on the date when it was dismissed as withdrawn on 27.4.2013 were directed to be requisitioned and both have been received and perused.

A perusal of the proceedings dated 17.12.2012 in suit No. 341/12 bearing CS No. 10964/16, now pending before the Court of the learned Civil Judge-4 West for the date 19.12.2018 as already observed herein above indicate the previous consolidation of the two suits. However, vide order dated 27.4.2013 in CS No. 355/12 i.e. the number of the suit as it bore on the date 27.4.2013 in relation to CS(OS) No. 2676/96, indicates that the prayer made on behalf of the applicant/petitioner herein seeking withdrawal of the said suit was opposed on behalf of the respondent, i.e., non-applicant herein submitting *inter alia* to the effect that there had been a consolidation of the two suits vide order dated 17.12.2012 which application had been considered and *inter alia* it having been observed to the effect that the plaintiff of the suit i.e., Sh. Krishan Garg arrayed as the applicant herein, was the dominus *litus* of the suit and vide order

dated 27.4.2013 in suit No. 341/12 i.e., suit bearing No. 2676/96 as it bore before this Court was allowed to be withdrawn with it having been specifically observed to the effect:

“ In view of the statement of the plaintiff, the Suit No.355/12 is dismissed as withdrawn. Parties shall bear their own costs.

*Vide order dated 17.12.2012, Suit No.341/12 titled as Hari Om Gupta vs. Sri Kishan Garg was consolidated with the suit Since, the plaintiff has withdrawn the present suit, **the suit of the defendant bearing No.341/12 shall continue independently.** Copy of this order be placed in the Suit No.341/12.*

Now, to come up for evidence of the plaintiff in Suit No.341/12 on 22.07.2013.

Case File of Suit No.355/12 be consigned to Record Room.”

whereby it was thus directed categorically to the effect that since the plaintiff had withdrawn the present suit i.e. Suit No.355/12 ie. CS(OS) 2676/96, the suit of the defendant bearing No. 341/12, i.e.10694/16 shall continue independently and the copy of the said order was directed to be placed on the record on CS 341/12 with the matter having been directed to be fixed for the evidence of the plaintiff in suit No. 341/12 on the next date of hearing. Apparently, in view of the proceedings dated 23.4.2013 in Suit No. 355/12 dismissed as withdrawn on 27.4.2013 with categorical observations therein to the effect that the suit of the defendant bearing No.341/12 i.e. CS(OS) 10694/16 would continue independently, it is apparent that as of date there is now no consolidation of the two suits.

In the circumstances, there is no requirement of the deletion of

the directions granted by the previous order that the records of CS(OS) No. 2676/96 i.e. 355/12 continue to be remained tagged with the records of Suit No. 10694/2016. However it is needless to observe that it would be for the plaintiff of CS No. 10694/16 as it bore the number before the date 16.11.2018 when it stood assigned to the Court of the learned Civil Judge-04 (West) which has apparently to be numbered afresh, to prove the records sought to be proved in relation to CS No. 355/12 as per procedure by production of certified copies of the record, if required.

CM NO. 40949-50/2018 are disposed of accordingly. Records of the Trial Court Record and the Appellate Court Record be returned forthwith through a special Messenger along with the copy of the order as proceedings before the Civil Judge-04 West are pending on 19.12.2018.

The date of 20.3.2019 is cancelled.

ANU MALHOTRA, J

DECEMBER 17, 2018/sv