

\$~2

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

+

FAO(OS) 2/2018

%

Date of decision : 27th April, 2018

SUKHDEV SINGH

..... Appellant

Through : Mr. S.P. Kalra, Sr. Adv. with
Mr. Rahul Thukral, Adv.

versus

SHEETAL SURI & ORS

..... Respondents

Through : Mr. Pramod Ahuja, Adv.
for R-3.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This appeal has been filed challenging the order dated 10th October, 2017 passed by the ld. Single Judge in CS(OS)No.2092/2010.

2. The appellant Sukhdev Singh before us was the defendant no.1 in the suit while the suit was filed by Sheetal Suri - respondent no.1 herein. The respondent no.2 - Raghubir Singh was defendant no.2 in the suit. The plaintiff and the defendant no.1 are siblings while the

defendant no.2 is their father's brother i.e. paternal uncle.

3. It is to be noted that the defendant no.1 (appellant herein) has filed counter claim which has been registered as CC No.108/2011.

4. The record of CS(OS)No.2092/2010 has been received. The same shows that the issues were framed in the suit and counter claim as back as on 7th April, 2014 and a Local Commissioner was appointed for recording of evidence of the parties.

5. The evidence of the plaintiff is complete. It appears that on 29th August, 2017, the matter was listed for recording of evidence of the defendant no.2 before the Local Commissioner. The defendant no.2 filed his examination-in-chief on affidavit as a sole witness in support of his case. However, the affidavit was accompanied by a large number of documents which had not been filed at the stage of admission/denial of documents. Copy of this affidavit and documents were handed over on 29th August, 2017 only in the hearing that day. The matter was adjourned to 27th September, 2017 for recording the evidence of the defendant no.2.

6. On the 27th of September 2017, an objection was taken on behalf of the appellant/defendant no.1 with regard to the filing of the documents along with the affidavit for the first time.

7. In these circumstances, the Local Commissioner placed the matter before the court for further directions with regard to the recording of evidence. On the 10th of October 2017, the matter was placed before the court when the court noted the fact that no leave was sought by the defendant no.2 for relying on and exhibiting additional documents. However, the court took a view that this was a legal issue

which had to be dealt with at the stage of final hearing. The court also took a view that *de hors* the objections with regard to the documents filed by the witness, the defendant no.1 was bound to have cross-examined the witnesses.

In our view, this would not be correct.

8. Ld. counsel for the respondents contend that in view of the fact that the suit is pending since 2010 and deserves to be expeditiously tried, it would be in the interest of justice that the entire issue is resolved at this stage.

9. It is not disputed before us that the law mandates that the documents have to be filed at the appropriate stage along with their respective pleadings in accordance with the Code of Civil Procedure, as amended and also the Delhi High Court Original Side Rules.

10. Mr. Pramod Ahuja, ld. counsel for the respondent no.2/defendant no.2 makes a prayer to this court to take the said documents on record subject to payment of costs. However, Mr. S.P. Kalra, ld. Senior Counsel for the appellant submits that the appellant has strong objection on the documents being filed at this stage and that the same cannot be taken into consideration at any stage. The defendant no.2 would therefore, be required to make appropriate application in this regard and seek its adjudication before the ld. Single Judge. Till such time, any new document filed with the affidavit of defendant no.2 cannot be taken on record or into consideration for any purpose.

11. However, we find merit in the submissions of Mr. S.P. Kalra, ld. Senior Counsel for the appellant that the appellant should not have

been denied an opportunity to cross-examine the witnesses on behalf of the defendant no.2 and that the order dated 10th October, 2017 closing such right of the appellant was inappropriate.

12. In this background, the order dated 10th October, 2017 is set aside and quashed. Inasmuch as the appellant is yet to be afforded an opportunity for cross-examination of the defendant no.2, the suit cannot proceed for final hearing.

13. Let the matter be placed before the Id. Single Judge on 16th July, 2018 for passing appropriate orders with regard to the fate of the affidavit which has been filed by the defendant no.2 and further proceedings.

14. This appeal is allowed in the above terms.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 27, 2018

aj