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

Date of decision: 24th December, 2019

+ **CM(M) 1469/2019, CM APPLs.44698/2019, 44699/2019 & 44700/2019**

RATTAN SINGH (SINCE DECEASED) THR LRS

& ORS

..... Petitioners

Through: Ms. K. Kiran, Advocate.
(M:9818893995)

versus

RAM PYARI

..... Respondent

Through: Mr. Bhupinder Singh Saini,
Advocate. (M:9891646109)

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WITH

+ **CM(M) 1471/2019, CM APPLs. 44704/2019, 44705/2019 & 44706/2019**

RATTAN SINGH (SINCE DECEASED) THR LRS

& ORS

..... Petitioners

Through: Ms. K. Kiran, Advocate.

versus

RAM PYARI

..... Respondent

Through: Mr. Bhupinder Singh Saini,
Advocate.

24

WITH

+ **CM(M) 1472/2019, CM APPLs. 44708/2019, 44709/2019 & 44710/2019**

RATTAN SINGH (DECEASED) THR LRS & ORS..... Petitioners

Through: Ms. K. Kiran, Advocate.

versus

RAM PYARI

..... Respondent

Through: Mr. Bhupinder Singh Saini,
Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The present petitions arise out of a suit filed for possession by one Mr. Rattan Singh against Ms. Ram Pyari who is the wife of Sh. Jayanti Prasad, the brother of Mr. Rattan Singh. The reliefs sought in the suit are as under:

“11. It is, therefore, prayed that a decree of the possession and mandatory injunction be passed in favour of the plaintiff and against the defendant directing them to vacate the room and part of the verandah in premises. No.16/144, Road No.3, Bapa Nagar, Karol Bagh, New Delhi as shown in the red in the plan attached to this plaint and hand over the same to plaintiff.

b) Cost of the suit be allowed”

2. CM(M) 1469/2019 arises out of an application moved by the Petitioner seeking permission to lead the evidence of a handwriting expert to read an entry in a so-called audit report of the Shri Thakkar Bapa Cooperative Multipurpose Society. According to the ld. counsel for the Petitioner who is the Plaintiff in the suit, this document was relied upon by the Defendant and though the Defendant's husband was never a member of this Society, a claim was made during cross-examination that the husband was a member on the basis of entry no. 652 which was read by the Defendant's witness as, *Sh. Jayanti Prasad/Janti Prasad/Jaiti Prasad*. The said cross-examination reads as under:

The witness has pointed out to the entry no. 652 marked as Mark X 1 in red color in the document Mark C tendered by her today as the document of cooperative society in name of her father Sh. Jayanti

Prasad.

My father's name is JANTI PRASAD. Again said, it is Jayanti Prasad. In entry no, 652, my father's name is mentioned as 'Jaiti Prasad. The letters at point (1) in entry no. 652 are 'ti'.

3. Ld. counsel for the Petitioner submits that this audit report was never relied upon previously by the Defendant as, in order to prove that the husband of the Defendant was a member, there was no document filed and it is only on 12th September, 2017 that the above statement was made. Thereafter the Petitioner moved an application for leading the evidence of a handwriting expert in order to read the said name in the proper manner. The same has been wrongly rejected.

4. It is the submission of Ms. Kiran, ld. counsel for the Petitioner, that the ld. Trial Court would not have the wherewithal to read the said name from the Register which is crucial for considering whether the Defendant's husband was indeed a member of the Society.

5. On the other hand, ld. counsel appearing for the Defendants submits that the Plaintiff was given adequate opportunity, to lead even rebuttal evidence which is clear from the order dated 21st March, 2018 and thereafter order dated 2nd May, 2018. The manner in which the Plaintiff wishes to protract this case is not permissible according to ld. counsel for the Defendant as the Plaintiff has had adequate opportunity to lead the evidence in support of her suit.

6. A perusal of the impugned order dated 6th September 2018 in CM(M) 1469/2019 and the order dismissing the application seeking review shows that the trial court has given clear reasons as to why a handwriting expert need not be permitted.

7. The suit for recovery of possession was filed in the year 1989 and the evidence of the Plaintiff/Petitioner concluded on 19th November 2014. Thus 15 years were consumed in the conclusion of Plaintiff's evidence. Thereafter the Defendant has led evidence and DW-2's cross examination was concluded on 17th January 2018. In the evidence of DW-2, reliance was placed on the alleged audit report. The Petitioner's grievance is that the onus of proving that the Defendant's husband was a member of the society was upon the Defendant. Until and unless the Defendant relied upon the report, the Plaintiff could not have dealt with the same. Since the Defendant relied upon it only during the cross examination and also mis-read the name, opportunity ought to be given.

8. The question as to whether *Sh. Jayanti Prasad* has other names which were used by him, whether he was a member of Shri Thakkar Bapa Cooperative Multipurpose Society, whether he was in illegal occupation of the room of which possession is sought, are all facts to be adjudicated in the suit on the basis of the pleadings, documents and evidence. The same cannot solitarily depend upon the Audit report which has a name – read by DW-2 as '*Jayanti Prasad*' or '*Jaiti Prasad*'. The Plaintiff's case was that he was never a member and that he was in illegal occupation of the room. The Defendant is arguing the contrary. The respective stands of parties would have to be established with contemporaneous and authentic/credible evidence. DW-2 claims to be the daughter of Jayanti Prasad. She relied upon the audit report Mark C, to read entry number 652 as *Sh. Jayanti Prasad*, then as *Janti Prasad*, again as '*Jaiti Prasad*'. This statement and the document Mark C would have to be considered by the trial court in its entirety. First, the document ought to be proved in accordance with law. If it

is proved in accordance with law, the document has to be read by the trial court to see as to what is the name written and whether the same confers any rights.

9. The suit is of 1989 vintage. This document was always on record since 1990. It was well within the knowledge of the Plaintiff. The Plaintiff would be free to address its submissions on this document as the onus to prove this document would be on the Defendant. This court does not deem it necessary to permit a handwriting expert as the trial court would read the document and decide if the same is admissible and the manner, if any, it is to be read, subject to the objections to be raised by the Plaintiff. Parties have had adequate opportunity to prove their respective case in accordance with law. At this stage, to permit a handwriting expert would result in delaying the adjudication of the suit endlessly. Thus, all the contentions of parties are left open.

10. CM (M) 1471/2019 relates to an application under Order VII Rule 14 CPC filed by the Plaintiff where additional documents are being sought to be filed. The Trial Court, vide order dated 6th September 2018, has rejected the same after holding that once defendant's evidence was concluded, opportunity for rebuttal evidence was also given. The application was moved at the stage of final arguments and was rejected by the trial court. Clearly, the trial court's approach is in consonance with law as an application under Order 7 Rule 14 for additional documents cannot be allowed at such a late stage in the suit.

11. In CM (M) 1472/2019, the trial court's order rejecting the application under Order 6 Rule 17 is under challenge. The Plaintiff sought amendment to add the relief of damages. The same has been rejected in view of the

proviso to Order 6 Rule 17 CPC and on the ground that the same is time barred. Clearly, the suit was filed in 1989. Issues were framed in 1992. Seeking an amendment at the stage of final arguments, cannot be permitted. No interference is called for.

12. Considering that the suit is more than thirty years old, the final judgment in these suits shall be rendered within a period of four months.

13. With these observations the petitions and all pending applications are disposed of. Registry to send copies of this order to the concerned Civil Judges in the Trial Court.

DECEMBER 24, 2019/dj

**PRATHIBA M. SINGH
JUDGE**

