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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th November, 2019

+ **CM (M) 1499/2019 & CM APPL. 45745/2019 (stay)**

RAMO DEVI & ORS. Petitioners

Through: Mr. Mohit Siwach, Mr. Rohit Kaliyar
and Mr. Karan Sharma, Advocates.
(M: 9643797717)

versus

LATE CHELA RAM CHOPRA THR HIS LRS Respondents

Through: Mr. Atul Kumar, Advocate for
Respondent No.1 (B)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

1. The present petition has been filed challenging the impugned order dated 17th September, 2019, by which four applications filed by the Petitioners – two applications under Order XVI Rule 6 CPC for summoning the original documents from L&DO and the Ministry of External Affairs, an application under Order XVI CPC read with Order XVIII Rule 17 CPC and an application under Section 151 CPC, have been dismissed by the Id. Civil Judge.

2. The suit for partition was instituted in 1980 and relates to the estate of Late Sh. Manohar Lal Chopra. The suit has seen several rounds of litigation. Initially, a preliminary decree was passed which was set-aside by this Court in RFA 704/2002 vide decision dated 5th July, 2010. Vide the said order, after the preliminary decree was set aside, the Appellant in the said RFA, namely, Sh. Chela Ram Chopra through his LRs, was permitted to lead fresh evidence in the matter and early trial was ordered. The observations of the

ld. Single Judge are set out hereinbelow:

“15. In the result, this appeal succeeds and the judgment and the preliminary decree passed by the learned Additional District Judge are set aside. The matter is remanded back to the trial Court for re-trial which shall be conducted after taking on record amended memo of parties in which the left out legal heirs of late Shri Manohar Lai Chopra would be shown as defendants since they are being ordered to be impleaded by this Court to enable the trial Court to adjudicate the rights of all the legal heirs of late Shri Manohar Lal Chopra in respect of his estate once for all leaving no scope for any of the legal heirs to contend at any stage in future that the determination of shares in respect of the estate of late Shri Manohar Lal Chopra is not binding on him/her because of his/her not impleadment. During the course of hearing of the appeal this Court had been informed by the appellants' counsel that one of the daughters of late Shri Manohar Lal Chopra, namely, Smt. Shakuntala Kapoor had died issueless and another daughter Smt. Krishna Dhawan had died within 12 hours of the death of her father leaving behind one daughter Mrs. Neelam Khanna who was now settled in U.S.A. and her address was 1810, University Avenue, Berkley, California, U.S.A. The third daughter Mrs. Nirmal Dhawan was also settled in U.S.A. and her address was 3700, Parkview Apartments, Parkview Lane, Apartment No. 1-D Irvine, California-92612, U.S.A. This position was not disputed by the counsel for the respondents-plaintiffs. The trial Court shall take on record the amended memo of parties and shall cause these legal heirs of late Shri Manohar Lal Chopra to be served with the summons in the suit and after completion of service and pleadings on their behalf, if they choose to contest the suit, and after framing additional issues, if any, arising out of their pleadings render fresh decision. Since re-trial of the suit is being ordered, the trial Court shall render fresh findings even in respect of the issues which already stand framed. And now that the matter is being remanded back to the trial

Court the appellants would be at liberty to make their prayer before the trial Court itself for adducing additional evidence and if any such request is made the trial Court shall deal with the same in accordance with law.”

3. Subsequent to this remand taking place, an application was moved by the Respondents seeking fresh evidence to be led and for marking of documents. The marking of documents was conducted before the Id. Trial Court on 16th May, 2019. The witness on behalf of the Respondents was also cross-examined by the Petitioners on 25th May, 2019 and 1st June, 2019. The order dated 1st June, 2019, specifically records that DW-5 - Sh. Rakesh Chopra, was cross-examined and discharged and the matter was listed for final arguments on 7th June, 2019. Between 1st June, 2019 to 7th June, 2019, four applications came to be moved by the Petitioners herein on the ground that the documents which were exhibited, in fact, have forged signatures and accordingly, permission was sought to summon the records of the L&DO and for summoning an official from the Ministry of External Affairs. The Petitioners also sought permission to lead forensic examination of the documents, as it is his contention that the relinquishment deed allegedly relied upon by the Respondents is a forged document. These applications have been rejected by the Id. Trial Court vide the impugned order dated 17th September, 2019.

4. Ld. counsel for the Petitioners contends that though the suit has been pending since 1980, there has been no delay on his behalf, inasmuch as the documents were themselves exhibited on 25th May, 2019. Thus, the documents which he now wishes to summon could not have been sought to be placed on record prior to the exhibition of the documents relied upon by

the Respondents. Ld. counsel further submits that enormous injustice would be caused to the Petitioners as the Respondents are enjoying the property and if the relinquishment deed is relied upon by the Id. Trial Court, the Petitioners would never get to establish the forgery. Further, it is submitted that insofar as the L&DO's record is concerned, he does not wish to summon the same as it is admitted by all the parties that the property stands in the name of the three brothers. He only wishes to call for the record from the Ministry of External Affairs at this stage and seeks forensic examination of the documents exhibited.

5. On the other hand, Id. counsel for Respondent No.1(B) – Sh. Rakesh Chopra, submits that the documents, which were allowed on 25th May, 2019, were documents filed way back in 1982 in the suit. It is his contention that these documents were always within the knowledge of the Petitioners and at this stage, just because of exhibition of these documents, the entire trial cannot be re-opened at the stage of final arguments.

6. A perusal of the record shows that the issues in this matter were framed on 10th November, 1982, and read as under:

"1. Whether the suit has been instituted by a duly authorized person on behalf of Smt. Kamlesh Chopra and her two daughters? OPP.

2. Whether the suit is bad for non-joinder of Sh. Sudhir Kumar and Smt. Neena, the children of late Roshan Lal Chopra? OPD.

3. Whether the plaintiffs are out of possession of the property in suit and the suit has not been correctly valued for purposes of court fees? OPD.

4. Whether there was any family arrangement on July 12, 1963? If so, what are its terms and its effect? OPD.

5. Whether the plaintiffs or anyone of them surrendered their rights in the property in dispute? If so, to what

effect? OPD.

6. What are the respective shares of the parties in the property in suit? OP parties

7. Relief"

7. The Petitioners' contention is that there is no family arrangement dated 12th July, 1963. On this the onus is on the defendants. As regards the question as to whether the Plaintiffs or anyone had surrendered their rights in the property, the onus of proof was on the Defendants. Admittedly, the evidence of the Plaintiffs was concluded way back in the year 1986. The Petitioners were well aware of these documents and ought to have dealt with the same in their evidence. In any event, they have been given adequate opportunity to cross-examine the Respondents' witness on 1st June, 2019. A perusal of the said cross-examination shows that only one question has been put to the witness regarding the document being forged. The cross-examination is extracted herein below:

"DW-5

*Statement of Sh. Rakesh Chopra,
S/o Late Sh. Chela Ram Chopra,
R/o J-369, New Rajendra Nagar.
(Aged about 57 years) (Recalled for
cross-examination after 25.05.2019).*

ON SA:

*XXXX by Sh. Rohit Kaliyar, Ld. Counsel for the
plaintiff.*

*It is wrong to suggest that Ex. DW-5/4 (OSR) i.e. copy of
letter dated 26.11.1966, Ex. DW-5/5 (OSR) i.e. copy of
settlement dated 25.12.1966 and Ex. DW-5/6 i.e. Letter
dated 24.09.1970 are false and fabricated. It is wrong to
suggest that signatures of Sh. Roshan Lal Chopra on
Ex.DW5/5 are forged. Vol. These documents were in
possession of my father and I got them from him. It is*

wrong to suggest that I am deposing falsely.”

8. When the documents have been on record since 1982 and the Petitioners have had adequate opportunity to cross-examine the Defendants’ witness, even after the remand by this Court in 2010, this Court does not find any illegality or perversity in the impugned order passed by the Id. Trial Court rejecting the applications.

9. The Court notices that it is becoming a trend before the trial courts, for parties to move applications when evidence stands concluded and the matter is listed for final arguments. Such a procedure would lead to an unending trial and would result in the adjudication of suits being delayed, as has happened in the present case. The present suit has been pending for almost 40 years.

10. Under these circumstances, the petition is dismissed. All pending applications are also disposed of. The Id. Trial Court shall proceed to hear the final arguments in the suit and shall render judgment within a period of four months from today. The Petitioners’ contention in respect of forgery having already been raised and they having led evidence in this regard, the said allegation shall be adjudicated by the Id. Trial Court, in accordance with law.

11. The impugned order or the present order shall not in any manner affect the objections of the Petitioners if a decree is passed against them or in any challenge thereto.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 28, 2019/Rahul