

\$~14

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

Date of Decision: 18th November, 2019

+ **CM (M) 1086/2018 & CM APPLs. 37029/2018, 30353/2019 & 37367/2019**

BHAI BALBIR SINGH

..... Petitioner

Through: Mr. Adit S.Pujari & Ms. Tusharika
Mattoo, Advocates.

versus

BHAI SARDAR SINGH (DECEASED) THR LRS. Respondents

Through: Mr. Pawanjit S. Bindra and Mr.
Lakshay Dhamija, Advocates for R-1
& 2.

Mr. Sanjeev Mahajan, Advocate for
R-2(b) & (c). (M:9811156437)

Mr. Gaurav Duggal, Advocate for R-
3(a) & (b). (M:9811297368)

Ms. Anusuya Sadhu Sinha, Mr.
Bharat Monga and Mr. Shubhankar,
Advocates for R-7. (M:9958696222)

Mr. Sujoy Chatterjee, Advocate for
R-11 & 12. (M:8447376187)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. A suit filed in 1984 is the subject matter of the present petition. One Late Bhai Sardar Singh had filed a suit for partition of joint family property against his siblings and other family members, who are legal heirs of Late Bhai Sunder Das. The suit was initially filed before this Court but was later transferred to the District Court, in view of the increase in pecuniary jurisdiction of the High Court. The original parties to the suit, except the

Petitioner/Defendant No.3 - Bhai Balbir Singh (*hereinafter*, “*Defendant No.3*”), have since passed away.

2. The suit has remained pending all these years. Some part of the blame is on the Plaintiff – Bhai Sardar Singh, who allowed the suit to be dismissed in default on two occasions. The application seeking restoration of the suit was also dismissed. On 8th August, 2018, the suit was restored and on 4th September, 2018, two separate applications, seeking review of the order dated 8th August, 2018, as well as the order dated 1st May, 2018, which allowed the application for restoration of the application seeking restoration of the suit, were dismissed. The said orders have been impugned before this Court.

3. Ld. counsel for Defendant No.3 submits that various members of the family owned several valuable properties at Amrita Shergil Marg, Asaf Ali Road etc., which have been listed in Schedule A to the suit. Ld. counsel submits that his client is more than 80 years of age and despite the suit having been filed in 1984, the Respondents continue to keep it pending, thereby keeping Defendant No.3’s title in property bearing No.9A, Amrita Shergil Marg, New Delhi, in doubt. Hence, he vehemently opposes the restoration of the suit and submits that the reasons given by the Respondents do not justify the restoration of the suit.

4. On the other hand, ld. counsels appearing for the Respondents submit that insofar as the restoration of the suit is concerned, the ld. Trial Court has put the parties to strict terms. Evidence by way of affidavit also stands filed and accordingly, the suit should be allowed to proceed further. Ld. counsels further submit that some of the Respondents have arrived at a settlement in respect of the property bearing No.9, Amrita Shergil Marg, New Delhi,

which they have placed on record. It is submitted that since there is no dispute in respect of this property, the said settlement ought to be recorded.

5. There are two aspects to this petition. The first, is in respect of the restoration of the suit and the second, is in respect of the Settlement Agreement *qua* property bearing No.9, Amrita Shergil Marg, New Delhi.

6. Insofar as the first aspect is concerned, the facts are not in dispute and are borne out from the list of dates itself. The suit was originally filed in 1984 and subsequent amendments were carried out in the same. The Plaintiff has clearly dragged his feet, even in respect of the compliance of orders relating to the issues of summons, notices, process fees etc. Repeated adjournments have also been sought. On 25th January, 2000, the suit was dismissed for non-appearance of the Plaintiff/his counsel. The application for restoration of the suit was also dismissed in default on 11th April, 2001. Thereafter, the application seeking restoration of the application for restoration of the suit was restored on 28th January, 2003 and on 19th August, 2004, the suit itself was restored. The issues were framed in the suit on 29th March, 2005. The evidence by way of affidavit was not filed for a considerable period.

7. The suit was again dismissed on 11th January, 2010 for the second time. During this period, steps were only being taken for impleadment of the legal heirs. An application for restoration of the suit was filed and the said application was dismissed on 28th May, 2015 for non-prosecution. On 1st May, 2018, the application seeking restoration of the suit was allowed to be restored and thereafter, the suit itself was restored on 8th August, 2018. The application seeking review of these orders was dismissed on 4th September, 2018 and hence, the present petition has been filed.

8. The list of dates in the suit shows that the purpose for which the suit has been filed has been completely defeated. The suit is of 1984 and could not have been allowed by the Plaintiff to linger on in this manner, for more than 35 years. There was a duty upon the Plaintiff to follow-up on the suit with due diligence and with alacrity. The orders in this case are an example of how suits continue to remain pending due to defaults committed by the parties and/or their counsels.

9. Ld. counsel for Defendant No.3 may be justified in his submission that the pendency of the suit raises a question mark on his right in property bearing No.9A, Amrita Shergil Marg, New Delhi, which is a valuable property. It is submitted that Defendant No.3, being more than 80 years of age, seeks closure of these proceedings during his lifetime.

10. The restoration application has been allowed by the Id. Trial Court after considering the various facts on record and by imposing some costs. In this factual background, this Court is inclined to put the parties to extremely strict terms. Recently, the Supreme Court in *Robin Thapa v. Rohit Dora* [CA No. 4507/2019, decided on 8th July, 2019] has held that, to the extent possible, disputes should be decided on merits and not on default. This is an ideal case to apply the said judgment.

11. Non-restoration of the suit would lead to enormous injustice, inasmuch as there would be no finality to a dismissal for a partition suit, due to non-prosecution. It is, accordingly, directed that the suit shall remain restored on the following terms:

- a) The Respondents have only one witness, whose evidence is already on record. The evidence of this witness shall be recorded on a day to day basis by the Trial Court and shall be concluded on

or before 15th January, 2020. If any of the parties do not cross-examine PW-1 on the date fixed by the Trial Court, their right for cross-examination shall automatically lapse.

- b) The Respondents also wish to summon three formal witnesses to prove documents, which are already on record. It is made clear that the Respondents would not have any right to file any fresh documents. The formal witnesses shall be examined, only in respect of the documents already on record, on or before 31st January, 2020. If summons are to be served upon the said formal witnesses, steps for summoning the said witnesses shall be taken by the Respondents without any delay, whatsoever.
- c) The Defendants, except Defendant No.3, i.e., the Petitioner herein, submit that they would be seeking deletion in the suit in view of the settlement which has been entered into. The Trial Court shall take the settlement on record subject to recording the statements of all the parties or their authorised persons, in accordance with law. It is made clear that the terms recorded in the said settlement *qua* property bearing No.9A, Amrita Shergil Marg, New Delhi would not have a binding effect on the right, title or interest of Defendant No.3, whose rights *qua* No.9, Amrita Shergil Marg, New Delhi shall be adjudicated in the suit in accordance with law. All parties agree to not rely on the settlement, insofar as the rights of Defendant No.3 are concerned.
- d) After conclusion of the Respondents' evidence, only the evidence of Defendant No. 3 - Bhai Balbir Singh would be left, which shall be concluded, on or before 31st March, 2020.

- e) The suit shall, thereafter, be heard and an endeavour shall be made for adjudicating the suit, finally, on or before 31st July, 2020.
 - f) The settlement agreement be produced in original before the Trial Court on 27th December, 2019. All parties to the settlement, or their power of Attorney holders/authorised persons, shall appear before the Trial Court on the said date, for taking the agreement on record and for passing of appropriate orders.
 - g) Considering the age of Defendant No.3 and the vintage of the suit, as also the delays caused by the Plaintiff, it is directed that the Plaintiff shall pay a sum of Rs.2 lakhs as costs to the Petitioner/Defendant No.3, on the next date of hearing before the Trial Court, i.e., 27th December, 2019.
 - h) All issues are to be adjudicated on merits by the Trial Court.
12. The petition is disposed off in the above terms. All pending applications are disposed of. *Dasti*.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 18, 2019/dk