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

Date of decision: 6th September, 2021

+ **C.R.P. 39/2021 & CM APPL. 14366/2021**

SMT. S. SACHDEVA Petitioner

Through: Mr. Pavan Sachdeva, Advocate

versus

SHRI ASHOK KUMAR Respondent

Through: Ms. Smita Maan, Advocate

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 10th April, 2019 by which a decree dated 2nd July 2004 was amended *ex-parte*, on an application by the decree holder, without notice to the judgement debtor. The decree was originally passed by the Civil Judge (West District), Tis Hazari Courts, Delhi (*hereinafter "Trial Court"*) in **Misc. SCJ No. 28/2019** filed by the Defendant in **Suit No. 502/2001** titled **Smt. S. Sachdeva v. Ashok Kumar**. The suit being **Suit No. 502/2001** was for cancellation of documents titled as Sale Deed dated 17th July, 1997 executed by the Plaintiff in favour of the Defendant, was filed by Smt S.Sachdeva against Sh.Ashok Kumar. The suit itself was dismissed for non-prosecution. The Defendant had sought a mandatory injunction by way of the counter claim and the same was decreed on 2nd July 2004 in the following terms:

"Testimony of DW-1 on counter claim has remained un rebutted and unchallenged. In view of un rebutted

testimony of DW-1 and the documents placed on record, I am of the opinion that defendant has been able to prove his counter claim and is entitled to relief claimed in counter claim. Suit of plaintiff has already been dismissed in default. Counter claim filed by the defendant qua mandatory injunction is decreed in favour of the defendant and the plaintiff is directed to restore the possession of the land measuring 16 bighas and 2 biswas Mustatil no 19, Kila no 25(0-2), Mustatil no. 20, Kila no 21(0-3), Mustatil no 21, Kila no 1/1 (4-9), 1/2 (0-7), Mustatil no. 22, Kila no. 5 (3-6), 6(3-6), 15(4-9) situated within the revenue estate of village Smalkha Tehsil Vasant Vihar, New Delhi.

3. The decree sheet that was issued pursuant to the said decree dated 2nd July, 2004 reads as under:

*“Claim for cancellation of documents titled as sale deed dated 17.7.97 executed by Plaintiff in favour of the Defendant.
Plaint presented on the 24.12.01*

It is ordered that defendant has been able to prove his counter claim and is entitled to relief claimed in counter claim. Suit of plaintiff has already been dismissed in default. Counter claim filed by the defendant qua mandatory injunction is decreed in favour of the defendant and the plaintiff is directed to restore the possession of the land measuring 16 bighas and 2 biswas Mustatil no 19, Kila no. 25(0-2), Mustatil no. 20, Kila no 21(0-3), Mustatil no 21, Kila no 1/1 (4-9), 1/2 (0-7), Mustatil no. 22, Kila no. 5 (3-6), 6(3-6), 15(4-9) situated within the revenue estate of village Smalkha Tehsil Vasant Vihar, New Delhi.”

4. Thereafter, an application was moved by the decree-holder/Defendant sometime in February, 2019 under Sections 151 & 152 of CPC seeking

correction of errors in the abovementioned decree sheet. In the said application, no notice was issued to the Plaintiff, against whom the decree was passed, and the impugned order dated 10th April, 2019 was passed by which the decree sheet has been amended. The amendment in the decree sheet is in the following form:

“It is ordered that the following corrections shall be carried out in the decree sheet:

1. At the top of the line where it is written that the decree is for suit for cancellation of documents, the same be corrected and shall read as

*“DECREE IN COUNTER CLAIM FOR
MANDATORY INJUNCTION”*

2. The subject stating the ‘claim for’ shall state as

*“CLAIM FOR MANDATORY
INJUNCTION”*

3. Instead of the words ‘plaint presented on 24.12.2001’, the following shall be substituted.

*“COUNTER CLAIM PRESENTED ON
18.02.2002”*

4. The portion of the decree sheet that states the description of the land to be restored as 16 bighas 2 biswas bearing mustatil no. 19, killa no. 25 (0-2), mustatil no. 20, killa no. 21 (0-3), mustatil no. 21, killa no. 1/1 (4-9), $\frac{1}{2}$ (0-7), mustatil no. 22, killa no. 5 (3-6), 6 (3-6), 15 (4-9), situated within revenue estate of village Samlakha, Tehsil Vasant Vihar, New Delhi, shall be substituted by

*“16 BIGHAS 2 BISWAS BEARING
MUSTATIL NO. 19, KILLA NO. 25(0-2),
MUSTATIL NO. 20, KILLA NO. 21 (0-3),
MUSTATIL NO. 21, KILLA NO. 1/1 (4-9), 1/2
(0-7), MUSTATIL NO. 22, KILLA NO. 5(3-
6), 6(3-6), 15(4-9), SITUATED WITHIN
REVENUE ESTATE OF VILLAGE
SMALKHA, TEHSIL VASANT VIHAR, NEW
DELHI.”*

*Let fresh decree sheet be drawn accordingly with
the abovesaid changes.”*

5. It is the amended decree sheet which is under challenge in the present writ petition. The reliefs prayed in the petition are as under:

*“(a) set aside the impugned order dated 10.04.2019
passed by the Court of Sh. Nitish Kumar Sharma, Civil
Judge (West District), Tis Hazari Courts, Delhi in Misc.
SCJ No. 28/2019.*

*(b) Dismiss the application filed on behalf of the
respondent herein under Section 151, 152 and 153 of the
Code of Civil Procedure.*

*(c) Or in the alternative clarify that the rectifications vide
order dated 10.4.2019 being clerical or arithmetic error
carried out in the decree dated 2.7.2004 would not
extend limitation for filing the execution as such
limitation invariably starts from the date of original
decree;*

*(d) Award costs of the proceedings in favour of the
petitioner.*

*(e) Pass such other or further order(s) as this Hon'ble
Court may deem fit and proper in the facts and
circumstances of the case in favour of the petitioner.”*

6. The submission of Mr. Sachdeva, Id. Counsel for the

Petitioner/Plaintiff is two-fold. First, that prior to the amendment of the decree, notice ought to have been issued to the Plaintiff who was the judgment debtor, and the Plaintiff ought to have been heard. Secondly, the date of the amendment ought not to extend the limitation period for filing execution of the decree.

7. Ms. Maan, Id. Counsel for Defendant, submits that insofar as the second submission is concerned, which is akin to the relief sought as prayer (c) in the petition, it is recorded by the Court in order dated 15th April, 2021 that Mr. Sachdeva would not press prayer (c). The said prayer related to this very issue as to whether the limitation for execution would be extended or not. Insofar as the other two prayers are concerned, Ms. Maan, Id. Counsel submits that the amendment is innocuous, and therefore no notice was issued by the Court. Thus, she submits that impugned order dated 10th April, 2019 does not warrant interference.

8. This Court has perused the amendment in the decree sheet. There is no doubt that by the original judgment dated 02nd July, 2004, the suit was dismissed for non-prosecution and the counter claim for mandatory injunction was decreed by the Trial Court. The amendments directed by the trial court in the title and in the property number would in effect be correction of typographical errors. However, insofar as the Plaintiff is concerned, since the order was passed after 15 years since the passing of the decree, that too, without hearing the Plaintiff, there may be some vested rights created. Accordingly, the Plaintiff is permitted to seek a clarification from the trial court, as to the date since when the amended decree sheet would come into effect. For the said purpose, the Plaintiff may move an application before the Trial Court in this regard which shall be decided after

hearing the counsels for the parties.

9. The present petition, along with pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 6, 2021
mw/AD

