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

Date of Decision: 22nd February, 2022

+ **RFA 412/2021**

RAKESH BHARDWAJ

..... Appellant

Through:

versus

MAHANT SURENDER NATH

..... Respondent

Through:

WITH

+ **CS (OS) 525/2021**

+ **CS (OS) 526/2021**

+ **CS (OS) 535/2021**

+ **CS (OS) 579/2021**

+ **CS (OS) 539/2021**

+ **CS (OS) 540/2021**

+ **CS (OS) 542/2021**

+ **CS (OS) 543/2021**

+ **CS (OS) 554/2021**

+ **CS (OS) 648/2021**

Appearances:-

Mr. Dheeraj Bhardwaj, Advocate for Defendant No.1 in CS (OS) 525/2021. (M:9312710547)

Mr. Aly Mirza, Advocate for Defendant No.2 in CS (OS) 526/2021

Mr. Rohit Kishan Naagpal & Mr. Dipanshu Gaba, Advocates. (M:9873730191)

Ms. Kiran, Advocate for Plaintiff in CS (OS) 648/2021. (M:9818893995)

Mr. R.R. Singh and Ms. Preeti Chaudhary, Advocates for Defendant. (M:9910003491)

Mr. Nitin Jain, Advocate.

Mr. Sarvesh Bhardwaj, Advocate for Plaintiff. (M:9350301058)

Mr. Vivek Kumar Singh, Advocate for Respondent in CS (OS) 543/2021. (M:8860456420)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.



2. These matters pertain to the *Kalkaji Mandir*, which this Court has been hearing from time to time. These are part-heard matters.

3. Vide order dated 27th September 2021, the present matters pertaining to the *Kalkaji Mandir* were transferred to this Court under Section 24 of The Code of Civil Procedure, 1908.

RFA 412/2021

4. The present first appeal has been filed challenging the order dated 30th July, 2018 passed by the Ld. Civil Judge, South-East, Saket District Courts, New Delhi (*hereinafter*, “*Trial Court*”) in *Civil Suit No.51666/2016* titled *Rakesh Bharadwaj & Anr. v. Surinder Nath @ Surinder Kumar*. By the impugned order, the suit for declaration and injunction filed by the Appellants-Plaintiffs (*hereinafter*, “*Plaintiffs*”) has been dismissed by the Trial Court.

5. The reliefs sought in the plaint include a declaration to the effect that the Respondent-Defendant (*hereinafter* “*Defendant*”) is not the *Mahant* of the *Kalkaji Mandir* and that he has no right, title, interest, claim or share to perform the *Pooja Sewa* or *Archana* or to collect *Tehbazaari*. The said reliefs have been extracted below:

“A. To pass a decree of declaration declaring the defendant is not the MAHANT i.e. Gaddinashin Mahant i.e. the Chief Priest of Kalkaji Mandir;

B. To pass a decree of declaration declaring the defendant no.1 has no right, title or interest or claim or share to perform Pooja Sewa Archana and to collect offering, Tehbazaari etc. for as being Mahant of Mandir Kalkaji, New Delhi;

C. To pass a decree of permanent injunction thereby restraining the defendant from claiming himself to be Mahant, Gaddi Nasheen, Avdhot Jogi



of the Mandir Kalkaji;

D. To pass a decree of permanent injunction thereby restraining the defendant his servants, representatives/Chela or any other person on his behalf to carry out/perform any Pooja-Archana in the Mandir Kalkaji or collect any offering etc.;

E. To award the entire cost of this suit on the defendant in favour of the Plaintiff;

F. To pass a decree of permanent injunction thereby restraining the defendant.”

6. It is noticed that the impugned order dated 30th July, 2018 is a handwritten order. Accordingly, let the typed copy of the impugned order be placed on record by the next date by Id. Counsel for the Appellant.

7. Mr. Nandrajog, Id. Counsel for the Defendant, submits that the present first appeal was listed before the Id. Additional District Judge, initially. In view thereof, the parties may be deprived of one appellate remedy if this Court adjudicates this matter. This Court shall consider the same after the typed copy of the impugned order is placed on record.

8. **List on 27th April, 2022, at 2:30 pm.**

CS (OS) 525/2021

9. On the last date before this Court, i.e., 9th December, 2021, notice was directed to be issued to the counsels for the parties appearing before the Trial Court.

10. Id. Counsel for the Defendant has entered appearance today. Defendant No.1 - Shri Lakhmi Chand Alias Lakhu, who is a *pujari*, is represented by Mr. Dheeraj Bhardwaj, Id. counsel.

11. The Registry has reported that the notice has also been issued to the Id. Counsel for the Plaintiffs through WhatsApp. In addition, it is a well-



known fact that this Court is seized of all matters relating to the *Kalkaji Mandir* premises. However, none appears for the Plaintiffs today.

12. In the present suit, the Plaintiffs claim that one Smt. Bhagwati inducted the Plaintiffs into the premises of the *Kalkaji Mandir*, as tenants. The case of the Plaintiffs is that the said Smt. Bhagwati had given permission to the Plaintiffs to reside in the said *Dharamshala* and pay rent to her, in respect of piece of land situated at Bhagwati Dharamshala, Kalkaji Mandir, New Delhi-110019 (*hereinafter "suit property"*). She passed away in 2002. The prayers in this suit, against the *pujari* and against the SHO, PS Kalkaji, are as under:

"i) Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining the defendants, their servants, tenants, agents, associates, employees, relatives etc. etc. from using the unauthorized and illegal toilet and bathroom constructed on the suit property of the plaintiffs for any purpose whatsoever more specifically shown in red colour in the site plan annexed herewith;

ii) Pass a decree of mandatory injunction thereby directing the defendant No.1 and 2 their officials, agents, attorneys, servants etc. to immediately demolish the illegal unauthorized construction of one toilet and bathroom which was constructed on the suit property and the same is shown in red colour in the site plan annexed with the plaint;

iii) Award the cost of the suit in favour of the plaintiffs and against the defendants alongwith litigation charges."

13. From the above prayers, it is clear that the Plaintiffs are seeking demolition of alleged unauthorized construction of toilet and bathroom in



the suit property.

14. This Court is seized of several suits and proceedings relating to the *Kalkaji Mandir*. The case of the Plaintiffs is one of tenants, who are seeking relief against a *pujari* in respect of construction of a toilet and a bathroom. Vide the judgment dated 27th September, 2021, this Court has already appointed the Id. Administrator for overall administration of the *Kalkaji Mandir* and vide subsequent orders, this Court has directed removal of all encroachments and unauthorized occupants from the premises of the *Kalkaji Mandir*.

15. This suit has been transferred to this Court under Section 24(1)(b) CPC, pursuant to the judgment dated 27th September, 2021 passed in ***FAO 36/2021*** titled ***Neeta Bhardwaj and Ors. v. Kamlesh Sharma*** and connected matters. A perusal of the Trial Court's record in this matter would show that there has been no appearance in this matter, for the Plaintiff, for the last several dates of hearing i.e., on 25th June 2020, 19th August 2020, 12th October 2020, 21st November 2020, 21st January 2021, 18th May 2021, 15th June 2021, 27th August 2021 and 21st October, 2021. Thus, for many hearings before the Trial Court, none appeared for the Plaintiffs. In any event, the Plaintiffs being mere occupants in the suit property, have no right to seek injunction in respect of the suit property as is being sought.

16. Accordingly, the present suit is dismissed. It is made clear that the directions issued in respect of *jhuggis* vide order dated 9th December, 2021, concerning the removal of the same, would also be applicable to the Plaintiffs herein.

CS (OS) 526/2021, CS (OS) 535/2021, CS (OS) 579/2021, CS (OS) 539/2021, CS (OS) 540/2021, CS (OS) 542/2021, CS (OS) 554/2021



17. Mr. Sarvesh Bhardwaj, submits that the Plaintiff-Sh. Harish Bhardwaj, who was a *pujari* in the *Kalkaji Mandir*, has passed away on 7th August, 2021, issueless and without any legal heirs. He further submits that he is the nephew of the Plaintiff. Accordingly, he wishes to move an application seeking his impleadment as the legal heir of the Plaintiff.

18. Let the said application seeking impleadment be moved by Mr. Sarvesh Bhardwaj.

19. The Registry to issue notice to the Defendants in these matters, through their counsels before the Trial Court. The details of some of the said Defendants, as provided by Mr. Sarvesh Bharadwaj, are set out below:

Suit No.	Defendant No.	Advocate(s)
CS (OS) 526/2021	2	Mr. Aly Mirza and Mr. Prabhash Chandra
	3, 4, 5 and 12	Mr. Srinivas Rao K, Mobile No. 9210600529, 9958022231. Chamber NO. 667, Saket Courts
	7,8,9,11,13,14,15,19,20	Mr. Amit Tanwar and Mr. Jameel Ahmad, Chamber No. 702, Saket Courts
CS (OS) 535/2021	1 and 9	Ms. Meenakshi Kalra Mr. Deepak Dewan, Advocate (Mobile No. 9810127778)
CS (OS) 579/2021	1, 8 and 11	Mr. Srinivas Rao K, Mobile No. 9210600529, 9958022231. Chamber NO. 667, Saket Courts
	2, 4, 9 and 12	Mr. Amit Tanwar and Mr. Jameel Ahmad, Chamber No. 702, Saket Courts
	14	Jagdamba Diligence, Attorneys & Pleaders, V-2, G/F, Green Park Extension, New Delhi-16
	19	Mr. Hamid Ali and Mr. Jitender Kumar, Advocates



CS (OS) 539/2021	4	Mr. Ashok Kotnala
	8	Mr. Rakesh Nautiyal
	9	Mr. R.K. Singh, Advocate
CS (OS) 540/2021	1,2,3,5,6,7,8,9,10,11,12,13, 14,16,18,19 and 21	Mr. Amit Tanwar and Mr. Jameel Ahmad, Chamber No. 702, Saket Courts

20. List on 13th April, 2022, at 2:30 pm.

CS (OS) 543/2021

21. The present suit has been filed in the name of *Shri Kalkaji Mandir, Shamlat Thok Jogians and Brahmins, Mauza Bahpur, New Delhi* through Sh. Harish Bhardwaj, who was the *pujari* in the *Kalkaji Mandir*, and has passed away on 7th August, 2021. The suit has been filed against *Kalkaji Vikreta Sangathan II* through its President, as also the Commissioner of Delhi Police and other governmental authorities. The prayer in this suit is as under:

“1. That the Registrar of Societies be ordered to declare the registration of the defendants No. 1 and 2 null and void ab-initio and the defendants No. 1 and 2 be restrained not use the name, land and buildings for their ulterior motives to mesne profits and to run and operate any social, religious organizations including the above said.

2. That the Hon’ble Court may pass any other order in favour of the plaintiff and against the defendant per facts and circumstances which deems fit and proper.”

22. Mr. Vivek Kumar Singh, Id. Counsel appearing for the Defendant- *Vikreta Sangathan*, submits that all the shopkeepers have already vacated the premises.

23. Insofar as the occupation of the premises by the shopkeepers is



concerned, this Court has already appointed an Administrator in the main matter vide order dated 27th September, 2021, and all the shopkeepers have vacated the premises in terms of the directions issued by this Court vide previous orders.

24. Insofar as the question as to whether the Defendant-*Vikreta Sangathan* can use the name of *Shri Kalkaji Mandir* or not, the said issue shall be taken up at the stage of final adjudication of the connected matters.

25. In light of these facts, no further orders are required in the present suit. Accordingly, the present suit, along with all pending applications, is disposed of.

CS (OS) 648/2021

26. Ms. Kiran, Id. Counsel appears for the Plaintiff-Smt. Rajwati. Mr. R.R. Singh, Id. Counsel appears for the Defendant-Sh. Rajesh Kumar *alias* Raju.

27. It is stated that the present suit has been filed by the Plaintiff, who is claiming to be the widow of one Sh. Ram Kumar Bhardwaj and seeking recovery of Rs.1,65,983/-. The case of the Plaintiff is that one portion of the property in question comprising one room and a *kothri* behind shop bearing Pvt. No.1, in premises no. D-7, Rewati Kunj, Shri Kalkaji Mandir, New Delhi was let out to the Defendant at a monthly rent of Rs.1000/- in the year 1993. Since the Defendant failed to pay the monthly rent from 1st July, 2002 onwards, the Plaintiff had filed an eviction petition before the Id. Rent Controller (South), Saket, New Delhi, in the year 2009.

28. Vide order dated 9th April, 2013 in eviction petition being *E-93/09/09* titled *Smt. Rajwati v. Sh. Rajesh Kumar*, the Id. Rent Controller directed



the Defendant to deposit the arrears of rent at the rate of Rs.1,000/- per month.

29. Ld. Counsel for the Defendant submits that the appeal against the said order dated 9th April, 2013, has been dismissed during COVID-19 pandemic. In any event, it is submitted that the Defendant has already vacated the premises in 2015. Thus, the only issue that remains is that relating to the outstanding dues that are to be paid by the Defendant to the Plaintiff.

30. Ms. Kiran, Id. Counsel for the Plaintiff, submits that the Defendant has admitted that he has not paid the rent since the year 2008, and the same has been extracted in paragraph 6 of the plaint.

31. In view of the above, let the Id. Counsel for the Defendant seek instructions in this matter. The Defendant shall also remain present in Court on the next date.

32. List on 13th April, 2022, at 2:30 pm.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 22, 2022/dk/aman/ms/ad
(corrected & released on 24th February, 2022)