



\$~3

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

Date of decision: 14.08.2023

+ CM(M) 73/2018 & CM APPL. 1973/2018

R D GUPTA

..... Petitioner

Through: Mr. Nikhil Rawat, Advocate.

versus

PERMANAND & ORS

..... Respondent

Through: None.

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 18.12.2017 passed by the ADJ-03, South District, Saket Courts, New Delhi ('Trial Court') in civil suit no. 6079/2016, dismissing the Petitioner's application under Section 151 of Code of Civil Procedure, 1908 ('CPC'), for inclusion of residential property, ad-measuring 250 sq. yds., known as Jenus Plot situated in the residential area of Chattarpur, Mehrauli Delhi ('Jenus Plot').

2. The Petitioner is plaintiff no.1 in the suit. The Respondents are the remaining parties in the suit including the legal representatives of deceased parties. The plaintiff is the son of late Shri Rati Ram and the civil suit was filed by the Petitioner for partition of the estate of Late Shri Rati Ram.

2.1. It is stated in the plaint that late Shri Rati Ram died intestate on 01.02.1990. The suit was filed for the partition of the properties, specifically enlisted at paragraph 4 of the plaint. The suit was initially filed by four (4) plaintiffs and was contested by Respondent No.1 herein, Shri Permanand,



who was arrayed as defendant no.1 in the suit.

2.2. The Respondent No.1 in his written statement raised a preliminary objections at paragraph 2(a) and in reply on merits at paragraph 4, to the effect that the Jenus Plot, which is in the possession of plaintiff no.2 i.e., Sh. Nand Kishore Gupta, has been wrongly excluded from the schedule of properties.

2.3. The Petitioner herein filed a replication to the said written statement and specifically denied the allegations made by Respondent No.1. The Petitioner specifically stated that the Jenus Plot was purchased by plaintiff no.2 i.e., Shri Nand Kishore, from Late Sh. Rati Ram during his lifetime for valuable consideration.

2.4. During the pendency of the proceedings, the plaintiff no.2 i.e., Late Sh. Nand Kishore Gupta passed away and his legal representatives ('LRs') were brought on record of the Trial Court. However, since the LR's did not participate in the suit proceedings despite service, they were transposed as defendants and have remained ex-parte since 21.08.2012 before the Trial Court. In these proceedings the said LR's are arrayed as Respondent Nos. 10 to 14.

3. The evidence was led by the Petitioner herein and contesting defendant i.e., Respondent No.1 in the suit, which stood concluded on 17.07.2017. The parties addressed final arguments on 12.12.2017.

3.1. It was at this belated stage that the Petitioner herein made an oral submission before the Trial Court that the subject property i.e., Jenus Plot, be also treated as a part of the estate of late Shri Rati Ram and prayed for declaration of title and interest therein. The Petitioner also filed an application to this effect on or about 12.12.2017.

3.2. The Trial Court by its impugned order dated 18.12.2017 dismissed the



said application after taking note of the stand of the Petitioner in the replication.

4. The relevant extract of the written statement filed by Respondent No.1 and the replication of Petitioner herein; and the impugned order reads as under:

Written Statement filed by defendant No.1

"2. That the plaintiff No 2 to 4 too do not have any locus standi to file and prefer the suit for the following reasons :-

(a) By virtue of family settlement Ratti Ram gave a residential plot measuring 250 sq. yards known as JENUS plot situated in the residential area of Chhattarpur to Plaintiff No.2 Nand Kishore. The fact has intentionally been suppressed by the plaintiffs in the plaint under reply.

In the said residential plot two pieces of land each measuring 20 yards adjoining the same were added by the deceased Ratti Ram and by defendant No.1. Ratti Ram purchased 20 yards of land from his own income in the name of Nand Kishore and other plot of 20 yards was purchased by the answering defendant which has always been part of the said residential plot and in the occupation of plaintiff No2. The occupation of 20 yards of land belonging to the answering defendant which he purchased from one Ram Kishan on 16.9.1961 vide a registered sale deed speaks eloquently about the family settlement devised by Ratti Ram; otherwise there has been no reason or justification to allow plaintiff no.2 to continue to be in the possession of that plot.

Besides, the said plots of land given to plaintiff No.2 by way of family settlement, Ratti Ram in his life time had been occasionally rendering financial help to the former. Two instances alone which were not solitary would adequately substantiate the factum of family settlement. Ratti Ram paid Rs.10,000/- (Ten thousand) by Cheque drawn on the Syndicate Bank, Chhattarpur on 1.7.1993 and Rs.20,000/- (Twenty thousand) by cheque drawn on the Syndicate Bank, Chhattarpur on 25.4.1984. Nand Kishore encashed these cheques but have very conveniently but deliberately suppressed the factum of these payments to him. There were numerous occasions when Nand Kishore got money from Ratti Ram.

In sum, Nand Kishore plaintiff No.2 abandoned his rights and interests in the estate of Ratti Ram including 80 yards of agriculture land out of 480 sq yards bearing Khasra No. 261/1 for he was adequately compensated by the said plots and other largess bestowed upon him. Assuming (though not admitting)



that there was no family settlement made by Ratti Ram, the plaintiffs ought to have included the said residential plot of land in the list of properties sought to be partitioned. The wilful exclusion of this plot by the plaintiffs impliedly but irresistibly leads to the conclusion that Ratti Ram made a family settlement.”

(Emphasis Supplied)

Replication filed by the Petitioner

“2. Para 2 is also wrong and denied including reasons mentioned therein:
a) Para as stated is wrong and denied. The area of the plot is only 200 sq. yds and not 250 sq. yds. This total area of 200 sq. yds is worked out as follows:

Length 57-7
Breadth 31'-9" (West)
Breadth 31'-1" (East)

This plot was purchased by plaintiff No.2 from his father after the family settlement dated 13.5.60 because he expressed his desire to live separate from joint family. In fact, the two pieces of land measuring 20 yds each adjoining the plot were also purchased by plaintiff No.2 with his own money in the name of himself and defendant No.1 his elder brother to give him respect, The sale deeds of the said two plots of land were executed in 1961 as stated by defendant No.1 after the family settlement of properties on 13.5.60 amongst the brothers of late Ratti Ram when it was thought necessary to execute the same. The purchase consideration of said pieces of land was paid by Shri Nand Kishore to late Shri Ram Kishan. Out of his own income which he had been receiving as teacher after being appointed as Teacher on 28.2.1966. As stated in the above para Shri Ratti Ram made the payments of Rs.10,000/-and Rs.20,000/- to Shri Nand Kishore when he felt some financial problems. However, the entire amount was paid back to Shri Ratti Ram in cash by Nand Kishore. No other payments or any financial help was ever given by late Shri Ratti Ram to Shri Nand Kishore.

Petitioner No.2 Nand Kishore being the son has got full right to claim share of properties of his father late Ratti Ram including 480 yds of agricultural land) bearing Khasra No.261/1 and he never abandoned this right. As stated the plaintiff No.2 was never compensated. The false story of compensation has been cooked up by defendant No.1 to deprive the plaintiffs of the right to claim share in the properties of late Shri Ratti Ram. The said residential plot was not included in the properties of late Shri Ratti Ram because the payments for the plot was made by Shri Nand Kishore to late Rati Ram in cash after the settlement of properties amongst the brothers of late Rati Ram on 13.6.1960.”

(Emphasis Supplied)



Impugned Order dated 18.12.2017

“It transpires from above pleadings that the details of the said property was well within the knowledge of the plaintiff and rather there were rival stands taken by the parties to the suit and the plaintiff no. 1 had categorically stated in replication that the said residential plot was not included in the properties of Late (Sh.) Ratti Ram because the payment of the plot was made by Sh. Nand Kishore to Late (Sh.) Ratti Ram in cash after the settlement of the properties. It is noteworthy to mention here that the matter is at the stage of final arguments and part arguments has already been advanced by the counsel for the plaintiff and now at this stage (December 2017), the plaintiff wants to add this property, more so when the LRs of defendant no. 2 did not appear for contesting of this suit. It seems from the pleadings that the plaintiff no. 1 himself abandoned the claim with regard to this property and in view of above discussion, it is evident from the contents of this application that this application is moved to delay the decision of the suit and it is also worth mentioning that law will not assist those who sleeps over their rights, thus, the application is dismissed.

Put up for final arguments on 21.12.2018”

(Emphasis Supplied)

5. After a perusal of the aforesaid stand of the Petitioner herein in his replication, this Court is of the opinion that the finding of the Trial Court in the impugned order rejecting the application of the Petitioner is correct in the facts of this case and requires no interference.

6. The learned counsel for the Petitioner has relied upon the judgment of the Supreme Court in **S. Satnam Singh & Ors v. Surender Kaur & Anr., AIR 2009 SCC 1089** and more specifically para 16 and 17 therein, which reads as under:

“16. Before advertng to the rival contentions of the parties, it must be kept in mind the principle that ordinarily a party should not be prejudiced by an act of court. It must also furthermore be borne in mind that in a partition suit where both the parties want partition, a defendant may also be held to be a plaintiff. Ordinarily, a suit for partial partition may not be entertained. When the parties have brought on records by way of pleadings and/or other material that apart from the property mentioned by the plaintiff in his plaint, there are other properties which could be a subject-matter of a partition, the court would be entitled to pass a decree even in relation thereto.

17. In certain situations, for the purpose of complete adjudication of the



disputes between the parties an appellate court may also take into consideration subsequent events after passing of the preliminary decree. In Ct. A. Ct. Nachiappa Chettiar v. Ct. A. Ct. Subramaniam Chettiar [(1960) 2 SCR 209] it was held:

“It would thus be seen that the respondent's share in the family properties was not in dispute nor was his share in the properties in Burma seriously challenged. The only plea raised in respect of the latter claim was that the court had no jurisdiction to deal with it. This state of the pleadings in a sense truly reflected the nature of the dispute between the parties. It is common ground that the family is a trading family and there could be no doubt that the assets of the family were partible between the members of the family. It was on these pleadings that the trial Judge framed fifteen issues and set down the case for hearing.”

6.1. In the opinion of this Court, the said judgment in ***S. Satnam Singh*** (Supra) is of no assistance to the case set up by the Petitioner. The Petitioner herein has categorically admitted in the replication that the Jenus Plot was owned by Late Shri Nand Kishore Gupta. Even the plaint excluded any reference to the said property.

6.2. This Court is unable to accept the submission of the learned counsel for the Petitioner that the judgment of the Supreme Court in ***S. Satnam Singh*** (supra) would remain applicable so as to enable party, such as the Petitioner herein to include at the stage of the final arguments an immovable property, which he categorically deposes does not form part of the estate of the deceased; and in fact, confirmed that it is owned independently by the late Shri Nand Kishore Gupta. It appears to this Court that the Petitioner herein is aggrieved by the non-participation of the legal heirs of late Sh. Nand Kishore Gupta and this application has been filed to provoke the said parties.

7. This Court is in agreement with the finding of the Trial Court that the Petitioner's application filed on 12.12.2017 is not maintainable and has been filed to delay the adjudication. The reasons given in the application for seeking inclusion of Jenus Plot at this stage is bereft of merit, as the Petitioner



has not explained the admissions made by him in the replication. The Petitioner sought to rely upon the stand taken by the Respondent No.1 in the written statement to seek the relief. The relevant portion of the application reads as under:

“2. That it is pertinent to mention herein that the aforesaid property emerged out of the pleadings of the parties. It is specifically stated that the defendant no. 1 in his para no. 2 of the preliminary objections of the written statement had alleged that the abovementioned property was given to the plaintiff no. 2 by Late Sh. Ratti Ram out of the 480 sq. yards.

xxx

xxx

xxx

8. That it is further pertinent to mention herein that this Hon'ble Court is sufficiently empowered to include the abovementioned property at any stage, when pointed out by the parties.”

(Emphasis Supplied)

7.1. However, the Respondent No.1 herein filed his reply to the said application, opposing the same and raising an objection that this application, at the final stage of the proceedings, is not maintainable. Thus, the party which raised the plea himself is not placing reliance on the same and has abandoned the same; surely, the Petitioner herein who disputed the correctness of the said plea cannot rely on the same.

7.2. During the course of the arguments, learned counsel for the Petitioner failed to explain the stand taken by the Petitioner herein in his replication. In the opinion of this Court, in view of stand taken in replication, the Petitioner herein is precluded from contending that the Jenus property forms part of the estate of Late Sh. Rati Ram.

8. The petition is without any merits and is dismissed. Interim orders are vacated. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 14, 2023/msh/aa

[Click here to check corrigendum, if any](#)