



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order : 18th July, 2023**
 + C.R.P. 162/2023 & CM APPL. 33052/2023
 HARI RAM Petitioner
 Through: Mr. Sanjeev Kumar, Advocate
 versus
 LEKHI RAM Respondent
 Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner/revisionist seeking the following reliefs:

"i). Call for the records of the Civil Suit No.10291 of 2016, titled as Lekhi Ram Vs Hari Ram pending before the learned Additional District Judge-03 (South East), Saket Courts;

ii). Set aside the order dated 28.02.2023 in CS DJ 811/2016 10291/16 Lekhi Ram vs Hari Ram passed by Ld. ADJ-04, South East District, Saket Court, Delhi, and

iii). Pass the appropriate order against the plaintiff/respondent had got the favorable order by fraud; and

iv). It is therefore most respectfully prayed that in view of



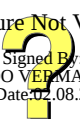
the above stated facts, circumstances, kindly stay all the petition of the plaintiff with immediate effect in the interest of justice, and

v). It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to dismiss the petition with exemplary cost in the interest of justice. It is prayed accordingly.

vi). And pass such other or further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. The petitioner and the respondent are real brothers, who have been involved in a series of litigation, one of which has led to the filing of the instant revision petition. The parties before this Court are also parties to the suit bearing No. 10291/2016 preferred by the respondent herein, seeking partition of the property situated in Village Masjid Moth, South Extension Part-II, before this Court which was subsequently transferred to the Additional District Judge-04 (South East), Saket Courts, New Delhi (hereinafter “ADJ”) in pursuance of the change in the pecuniary jurisdiction. In the said suit, an application under Section 151 of the CPC was preferred by the petitioner herein seeking dismissal of the suit on the ground of lack of territorial jurisdiction with the Court to entertain the suit.

3. In the said application preferred by the petitioner, i.e., the defendant before the Court below, the learned ADJ passed the order dated 28th February 2023, seeking a transfer of the matter to the appropriate jurisdiction. The petitioner/revisionist herein is aggrieved of the said order and is seeking its revision by way of filing the instant





petition. Therefore, the limited consideration before this Court pertains to the contents of the order under revision.

4. The learned counsel appearing on behalf of the petitioner/revisionist submitted that an oral family settlement had taken place between the parties about 50 years ago in the presence of their father, who is since deceased. Therefore, by pressing this ground, along with the ground of lack of jurisdiction, the petitioner herein had sought dismissal of the plaint and the suit thereto before the learned ADJ. It is submitted that instead of dismissing the suit, the Trial Court allowed the matter to be transferred. It is submitted that the learned Trial Court failed to appreciate that the matter was filed in abuse of process of law. It is further submitted that the Trial Court failed to appreciate that the respondent herein had deliberately filed the suit before a Court having no territorial jurisdiction to entertain the same and the learned Trial Court without considering the same, erroneously admitted his suit.

5. It is submitted that the learned Trial Court failed to consider that an application under Order VI Rule 17 of the CPC, preferred by the respondent herein, was also not maintainable in view of the settled proposition of law that a relief which cannot be granted directly, can also not be granted indirectly. Hence, the transfer of the matter would amount to grant of the relief indirectly.

6. It is submitted that the respondent intentionally did not claim partition *qua* the property bearing No. 165, Masjid Moth, New Delhi at the time of filing of the suit. It is submitted that learned Trial Court failed to appreciate that the Order II Rule 2 of the CPC prescribes that



every suit must include the whole claim that a party is entitled to and when a part of a claim is relinquished, the same cannot be sought thereafter. The Trial Court did not appreciate the settled position that a party abandoning or relinquishing their right under a family settlement cannot later go back plead that they gave up only a part of their rights. Such a plea which forms the foundation of the subsequent suit is barred by Order II Rule 2 of the CPC.

7. The learned counsel for the petitioner referred to the order dated 10th December 2021, passed by the Coordinate Bench of this Court, passed in the previous civil revision petition preferred by the petitioner against the order of the Trial Court dated 9th September 2021 in CS No. 10291/2016, whereby the application of the respondent herein for amending the plaint under Order VI Rule 17 of the CPC was allowed. Referring to the order dated 10th September 2021, the learned counsel made several submissions to the effect that the respondent has not abided by the said order to the extent of paying the cost of Rs. 20,000/-. It is further submitted the Trial Court has also failed to appreciate and adhere to the directions and observations of the Coordinate Bench passed in the said order.

8. In view of the submissions, the learned counsel prayed that the order dated 28th February 2023 may be set aside.

9. Heard the learned counsel for the petitioner/revisionist and perused the record, including the order against which revision is sought.

10. The petitioner/revisionist herein has preferred the instant revision petition against the order of the learned ADJ in the suit initiated by the



respondent and pending between the parties. By way of passing the said order, the learned ADJ disposed of the application filed by the petitioner seeking dismissal of the suit and sought a transfer of the matter to the South District, subject to the orders of the appropriate Bench of this Court. Since on the day of passing the order, the Court had to reconvene due to disruption in the proceedings, the impugned order was passed in two parts and hence, only the relevant observations of the Trial Court are reproduced hereunder:

“3. The argument made by Ld. Counsel for plaintiff appears to be correct that the present suit has been transferred to this District from Hon'ble Delhi High Court in the year 2016 pursuant to change in pecuniary jurisdiction. However since this court does not have territorial jurisdiction and it appears to have been inadvertently transferred to South-East District instead of South District, it is advised to the plaintiff either to move an application before the Hon'ble Delhi High Court for transferring it to South District or the court may return this suit to the plaintiff with liberty to file in South District.

4. It is submitted by Ld. Counsel for plaintiff that plaintiff present in the court is a poor person and very old aged person, above 80 years of age, who does not have financial resources to move before Hon'ble Delhi High Court. Further return and re-filing would be difficult and matter would be further delayed. Hence it is prayed that matter be sent back to Hon'ble Delhi High Court to be transferred to South District.”

At 3:00 pm

“3. Plaintiff, as per record, is approximately 82 years of age and does not come from any affluent background. It is stated by him with folded hands that no additional burden be placed upon him as son of defendant is a Counsel and they have to



incur no expenses on hearings. While plaintiff has already spent Rs. 4 lacs in trial of this suit and he has got nothing while the suit was filed in January, 2015.

4. Considering the facts of the case and submissions of plaintiff, I deem it appropriate that present matter be sent back to Hon'ble Delhi High Court with request to transfer it to the South District, which has territorial jurisdiction to deal with the present matter.

5. The application under section 151 CPC is accordingly disposed off.”

11. The contents of the impugned order make it evident that the learned ADJ considered the submissions made on behalf of the parties as well as the facts and circumstances that had arisen pertaining to the jurisdiction of the Court to try the suit before it. It was noted by the learned ADJ that, subsequent to a change in the pecuniary jurisdiction in the year 2016, the case of the respondent was transferred from this Court to the District Court. It was further noted that instead of the matter being transferred to the proper forum, i.e. South District, as per the territorial jurisdiction pertaining to the subject matter and parties in question, it was transferred to the South-East District and hence, was placed before the learned ADJ.

12. While making the observations pertaining to the issue of jurisdiction, the learned ADJ did not limit herself to the technicalities but also considered the claim of the respondent herein on principles of equity and justice. It was observed that a fresh filing would only lead to delay in the adjudication of the matter and its pendency, while also keeping in view that the parties involved in dispute are senior citizens.

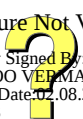
13. At this instance, this Court finds it apposite to revisit the scope of



intervention under revisional jurisdiction, which has been settled by the provision itself as well as by interpretation made by the Hon'ble Supreme Court.

14. In the landmark judgment passed in ***D.L.F. Housing & Construction Co. (P) Ltd. vs. Sarup Singh, (1969) 3 SCC 807***, the Hon'ble Supreme Court while discussing the scope of revision under Section 115 of the CPC held as under:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on





the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

15. The Hon’ble Supreme Court has explicitly settled that the Court exercising revisional powers shall not enter into the questions of facts or evidence or any errors thereto but shall limit itself to the question of errors of exercise of jurisdiction. Even the bare language of the provision itself stipulates the three grounds where a revisional court shall interfere which include matters where the Subordinate Court appears to have;

- (a) exercised a jurisdiction not vested in it by law, or
- (b) has failed to exercise a jurisdiction so vested, or
- (c) has acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

16. Even in the judgment passed in ***Pothina Narasamma vs. Marupilla Ammaji*, (2006) 9 SCC 749**, the Hon’ble Supreme Court, while referring to the judgment of ***Manindra Land and Building Corpn. Ltd. vs. Bhutnath Banerjee*, AIR 1964 SC 1336**, reiterated that it is not open for a High Court to delve into the questions of facts and merits while adjudicating upon an order under revision. The relevant portion of the said judgment is reproduced hereunder:

“6. Having heard the learned counsel for the parties we are



satisfied that the impugned judgment of the High Court cannot be sustained. In Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC 1336] this Court has held: (AIR p. 1336)

“It is not open to the High Court in the exercise of its revisional jurisdiction under Section 115, to question the findings of fact recorded by a subordinate court. Section 115 applies to cases involving questions of jurisdiction i.e. questions regarding the irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a court and is not directed against conclusion of law or fact in which questions of jurisdiction are not involved.”

17. The position was also reiterated in the judgment ***Ambadas Khanduji Shinde vs. Ashok Sadashiv Mamurkar, (2017) 14 SCC 132***, wherein the Hon’ble Supreme Court held as under:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

18. Upon a bare perusal of the judgments reproduced above, it is evident that the scope of intervention by this Court under Section 115 of the CPC is fairly narrow and limited. The provision stipulates the three grounds where a High Court may interfere by calling for the record of



any case decided by a subordinate Court, where an appeal against such a decision does not lie and, as reproduced above, the Hon'ble Supreme Court has also reiterated the view that the scope of revisional powers bars an interference on the basis of errors of facts or law. It is only where there is an irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a court that the revisional court may intervene.

19. In the matter at hand, the learned ADJ has passed the order dated 28th February 2023, as impugned by the petitioner, only after considering the material placed before her, the submissions and objections raised on behalf of the parties as well as the intervening circumstances pertaining to the issue of territorial jurisdiction. There is nothing in the contents of the impugned order that suggests that the while passing the order, the learned ADJ has exercised jurisdiction not vested in her by law or that she failed to exercise jurisdiction that is vested in her. Moreover, the petitioner has also failed to show that the learned ADJ, while passing the impugned order has exercised her jurisdiction illegally, or that the impugned order suffers from any infirmity or material irregularity.

20. Therefore, this Court is not inclined to exercise its revisional jurisdiction and set aside the impugned order which has been passed after due consideration and in proper exercise of the powers.

21. At this juncture, this Court also finds it apposite to translate the observations made in the impugned order *qua* the conduct of the petitioner and his counsel. To this effect, the learned Trial Court while passing the impugned order noted as under:



“5. At this stage, Ld. Counsel for defendant started shouting in the court that court need not ask plaintiff or suggest plaintiff what is to be done, the court should pass the orders for dismissal.

6. At this stage, it is stated by Ld. Counsel for plaintiff that Ld. Counsel for defendant is son of defendant himself and this is his behaviour in every court. The suit is transferred to this court due to his such behaviour in previous court.

7. Since Ld. Counsel for defendant is disturbing the proceedings of the court and is unnecessarily shouting, put up for orders in the post-lunch session.

At 3:00 pm

“6. I deem it appropriate to mention here that during the arguments in the morning, where the court had declined to dismiss the suit and rather was inclined to transfer it to Hon'ble Delhi High Court, in order that this court may not pass any such orders instead of dismissing the suit, Ld. Counsel for defendant namely Sh. Sanjeev Kumar who is also son of defendant, has filed a complaint against the undersigned to Ld. District Judge through e-mail and a copy is also sent to official e-mail of this court. Further Sh. Sanjeev Kumar/Advocate had also filed one such complaint against Ld. Predecessor of this Court, which he has himself mentioned in the complaint filed before the undersigned. Such conduct of this Advocate in filing complaints against the Judicial Officers, in case he is unable to get favourable orders and in order to get the matter transferred, so that no orders against his whims and fancies is passed, is highly deprecable.”

22. This Court strongly condemns the conduct of the petitioner and his counsel, who have made appalling and deplorable comments about the learned Judicial Officers of the Court below in their pleadings and have



also conducted themselves in an extremely improper manner before the Trial Court. Such conduct of the petitioner's counsel was also noted in the orders of the Trial Court, which shows that such misconduct is consistent and as such has become the reason for the delay in the process of law.

23. In view of the aforesaid facts, circumstances, submissions made on behalf of the petitioner during the course of arguments and in the pleadings, as well as the contents of the impugned order dated 28th February 2023, the instant petition is dismissed for being devoid of merit along with pending applications, if any.

24. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 18, 2023

gs/ms

Click here to check corrigendum, if any