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**IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 03.08.2023*

+ CM(M) 1133/2023

SHYAM SINGH

..... Petitioner

Through: Mr. Mahipal Singh Rajput and Mr.  
Harsh Rajput, Advocates

versus

RAMA DEVI

..... Respondent

Through:

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**CORAM:****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J (ORAL):****CM APPL. 39307/2023**

1. This is an application seeking advancement of the hearing dated 15.12.2023.
2. For the reasons stated in the application, the same is allowed and the matter is taken up for hearing as per the request of the Petitioner.

**CM(M) 1133/2023**

3. This petition filed under Article 227 of the Constitution of India impugns the order dated 22.12.2022 passed by Civil Judge, East District, Karkardooma Courts, Delhi ('Trial Court') in Civil suit no. 8874/2016 (old no. 122/2007) titled as **Rama Devi v. Shyam Singh**, whereby the application filed by the Petitioner under Order 18 Rule 17 of the Code of Civil Procedure ('CPC'), seeking the leave of the Court to recall and cross-examine all the



plaintiff witness ('PWs') in respect of his counter claim, was dismissed.

3.1. The Petitioner is the defendant and the Respondent is the plaintiff in the civil suit.

3.2. In this petition, the Petitioner seeks an opportunity to recall and cross examine the plaintiff witnesses i.e., PW-2, Rama Devi and PW-3, Ravinder Kumar with respect to the reliefs sought by the Petitioner in the statement of counter claim.

3.3. The civil suit was instituted by the Respondent on 02.03.2007 seeking relief of declaration of ownership with respect to the property bearing no. B-13, Ram Gali, North Ghonda, Delhi-110053 ('subject property').

4. On 27.07.2007, the Petitioner herein filed his written statement. It is stated that along with the written statement, the Petitioner also raised a counter claim and sought a decree of declaration that the Petitioner is the owner of the subject property on the basis of documents executed by the mother-in-law of Respondent No. 1, which have been signed by the husband of Respondent No. 1 as the attesting witness.

5. After completion of pleadings issues were framed by the Trial Court on 22.05.2009. The order dated 22.05.2009 reads as under: -

*"Suit No. 122/07*

*22.05.09*

*Present: Sh. D.D. Pandey counsel for the plaintiff.*

*Sh. J.M. Akbar counsel for the defendant.*

*Cost of Rs. 300/- paid. It is stated by the counsel for the defendant that he is adopting the previous WS. It is stated by the counsel for the plaintiff that he does not want to file replication. Admission denial of documents not pressed. I have perused the record. From the pleadings of the parties following issues are framed: -*

- 1. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 2. Whether the suit is not maintainable in its present form? OPD*
- 3. Whether the plaintiff is entitled to a decree of declaration as prayed? OPP*
- 4. Relief*



**No other issue arises or pressed.** Now to come up for PE on 14.09.09.  
Advance copy of the affidavit be supplied to the counsel for the defendant at least 15 days prior to the assigned date.”

(Emphasis supplied)

6. After the framing of the issues, the Respondent led plaintiff's evidence, which was concluded on 29.05.2013. The Petitioner herein duly cross examined the plaintiff's witnesses. The matter was thereafter, listed for defendant's evidence.

7. The Petitioner herein examined himself as DW-1 and filed his affidavit of evidence and tendered his examination-in-chief. The cross examination of DW-1 was pending and at this stage, the Petitioner herein engaged a new counsel, who after perusing the record filed an application dated 01.06.2017 seeking framing of additional issues with respect to the reliefs sought by the Petitioner herein in the counter-claim and sought fresh examination of plaintiff witnesses. The relief sought in the said application reads as under:

*“In view of the submissions made above it is respectfully prayed that this Hon'ble Court may be pleased to pass appropriate orders thereby framing issues with respect to the Counter Claim of the defendant and the evidence of the parties may be led afresh in this regard after framing of issues on the Counter claim of the defendant as the same is necessary in the interest of justice.”*

(Emphasis supplied)

8. The said application was duly considered and disposed of by the Trial Court *vide* detailed order dated 18.08.2017. The Trial Court in the said order observed that the relief of declaration of ownership sought by the Petitioner in the counter-claim will be duly considered as a part of issue No. 4. The Trial Court, however, declined to permit re-examination of the plaintiff witnesses. The relevant portion of the order read as under: -

*“4. Thus, what the plaintiff and the defendant both claim is that they be*



*declared the owner of the property identified as B-13, Ram Gali, North Ghonda, Delhi-53 and since relief is one of the issues, the claims of the plaintiff and the defendant shall be addressed under the issue of relief. So far as the issues of fact are concerned, they remain unaffected and plaintiff and the defendant have already led evidence on the issues. Plaintiffs evidence has already been closed. DW1/defendant has already been examined-in-chief. Cross-examination of DW1 is pending.*

(Emphasis supplied)

9. The Court thus disposed of the application and listed the matter for further cross examination of DW-1 on 02.11.2017. The Petitioner herein accepted the order proceeded to lead its evidence and examined DW-1, DW-2, DW-3 and DW-4.

10. The learned counsel for the Petitioner states that the Petitioner has concluded the evidence and only proposes to examine a summoned witness as DW-5 and thereafter, defendant's evidence will stand closed.

11. However, at this stage, on 26.08.2022, the Petitioner herein filed an application under Order 18 Rule 17 CPC seeking permission to recall and cross examine the plaintiff witnesses in respect of his counter-claim and referred to the order dated 18.08.2017. The Trial Court *vide* its impugned order dated 22.12.2022 has dismissed this application which reads as under:-

*"5. At the outset, the Court is compelled to advert to the order of Ld. Predecessor dated 18.08.2017, even before delving into the merits of the application. The said order reveals that defendant had moved an application under Order 14 Rule 5 r/w Section 151, 152 and 153 CPC, praying that issues be framed in view of the counter claim of the defendant and evidence of the parties be led afresh in the interest of justice: It is mentioned in the aforementioned order that the defendant took ten years after the presentation of W.S. and eight years after the framing of issues to raise the plea that issues were not properly framed. By this order the Ld. Predecessor had dismissed the application under Order 14 Rule 5 r/w Section 151, 152 and 153 CPC.*

*6. The defendant did not seek review of the aforementioned order even after passing of more than five years of that order. The matter was again listed for defence evidence after passing of the aforementioned order and only on 26.08.2022, the aforementioned application has been moved on behalf of the*



defendant. Since, the Predecessor of this court had dismissed the plea of framing additional issues on behalf of the defendant on the point of counter claim, then no question arises for leading evidence on this issue by the defendant.

7. **Having said that, this Court has no power to decide the aforementioned application. If done so, it would amount to review of the order dated 18.08.2017 without any plea by the defendant praying review or setting any grounds for review. More so, the said order must have attained finality since nothing has been brought on record by the parties that the order was ever challenged.** It is held in the Judgment of Hon'ble Delhi High Court in ***Aakash Educational Services Pvt. Ltd. Vs. Nitin Jain*** 278 (2021) DLT 630, in which it was held that bar of *res-judicata* is applicable even between the successive stages in the same suit, to the extent that the Court having at an earlier stage decided the matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage.

8. Considering the aforesaid circumstances, nothing remains to be adjudicated on merits, Therefore, the application in hand is dismissed.

9. Application disposed of accordingly.”

(Emphasis supplied)

12. The learned counsel for the Petitioner during the course of his arguments has stated that the limited relief that the Petitioner seeks is an opportunity to recall and cross-examine PW-2, Rama Devi and PW-3, Ravinder Kumar with respect to the documents relied upon by the Petitioner in support of his counter-claim.

13. This Court has heard the arguments of the learned counsel for the Petitioner and perused the record.

14. This Court is of the opinion that there is no infirmity in the impugned order passed by the Trial Court. The documents, which the Petitioner relies upon in support of its counter claim is the defence of the Petitioner in the written statement to the claim set up by the plaintiffs for the relief of declaration of title. The Petitioner herein was granted sufficient opportunity between the period 2009 to 2013 to cross examine the witnesses of the



Plaintiff on his defence.

14. The pleas raised in the present petition for re-examining the plaintiff witness is without any merit and it is apparent that the Petitioner is seeking to fill up the lacunas, which have crept in during the cross examination of PW-2 and PW-3. It is evident that the Petitioner is seeking to revisit the order dated 18.08.2017, where the similar relief was sought and declined by the Court. The said order passed five years ago was accepted by the Petitioner and has become final. The Petitioner has failed to explain what prevented him from raising these questions during the cross examination of PW-3 held prior to 29.05.2013.

15. The onus to prove the documents (purportedly executed by the mother-in-law of Respondent No.1), which have been relied upon by the defendants is on the defendant and since the defendant has been given sufficient opportunity since 2017 till date i.e., six (6) years to prove the said documents, his prayer seeking recall of the PW-1 and PW-2 is without any merit.

16. This Court finds no merit in this petition. Accordingly, the petition is dismissed. Pending application(s), if any, stand disposed of.

**MANMEET PRITAM SINGH ARORA**  
**(JUDGE)**

**AUGUST 3, 2023/rhc/sk**

*Click here to check corrigendum, if any*