



\$~77

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + RSA 194/2023 & CM APPL. 52460/2023, 52461/2023, 52462/2023

Date of decision: 10.10.2023

LATE AKSHEM CHAND THROUGH
 LR ATLO DEVI

..... Appellant

Through: Mr. Raghav Rajmalani, Advocate

versus

SURESH BALA & ORS.

..... Respondent

Through: Mr. Swadesh Kumar, R-4 in person.

%

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 regular second appeal filed under Section 100 of Code of Civil Procedure, 1908 ('CPC') impugns the judgment dated 25.01.2023 passed by the ADJ-02, Shahdara District, Karkardooma Courts, Delhi ('First Appellate Court') in RCA DJ No. 9/2019, titled as '**Akshem Chand & Ors. v. Suresh Bala**', whereby the First Appellate Court dismissed the appeal filed by the Appellants herein impugning the judgment dated 07.12.2018 and imposed costs of Rs. 40,000/- on the Appellant.

1.1. The First Appellate Court subsequently in a review application filed by the Appellant, waived off the costs of Rs. 40,000/- vide order dated 10.02.2023, on the ground of extreme financial hardship pleaded by the



Appellant.

1.2. The judgment dated 07.12.2018 was passed by the ASCJ – JSCC – GJ, Shahdara District, Karkardooma Courts, Delhi ('Trial Court') in civil suit no. 8353/2016, titled as '**Akshem Chand & Ors. v. Suresh Bala**' wherein the Trial Court allowed the defendant's application filed under Order VII Rule 11 of Code of Civil Procedure, 1908 ('CPC'), and rejected the plaint.

2. The Appellant as well as the Respondent Nos. 2 to 4 herein were the plaintiffs and the Respondent No.1 was the defendant before the Trial Court. The Appellant is the wife of late Sh. Akshem Chand, who was the elder brother of late Sh. Angad Ram i.e., the husband of the Respondent No.1 herein. The civil suit no. 8353/2016 was filed by the plaintiffs seeking a declaration that the judgment dated 04.07.2012 passed by the JSCC - ASCJ – GJ, North East District, Karkardooma Courts, Delhi in civil suit no. 417/2009 be declared as null and void.

3. The Appellant and her children i.e., Respondent Nos 2 to 4 are collectively referred to as the Appellants. The said Respondent Nos. 2 to 4 are supporting the claim of Appellant in this appeal.

4. Briefs facts leading to filing of present appeal are as under:

4.1. The late Sh. Akshem Chand i.e., the husband of the Appellant, filed a civil suit bearing no. 223/2009 on 20.05.2009 (1st suit) seeking permanent injunction against late Sh. Angad Ram, who is the husband of the Respondent No.1 herein. The said civil suit was decreed by the concerned Trial Court on the basis of statement of late Sh. Angad Ram that he will not dispossess late Sh. Akshem Chand from the first floor of property no. 1/4055, Ram Nagar Extn., Shahdara, Delhi ('suit property').



4.2. Subsequently, on 30.10.2009, the Respondent No.1 herein along with late Sh. Angad Ram filed a civil suit bearing No. 417/2009 (2nd suit) before the concerned Trial Court seeking permanent injunction, possession and mesne profits with respect to suit property against the Appellant and Respondent Nos. 2 to 4 herein on the ground that the Appellant along with family members are harassing the Respondent No.1 and her family members in order to acquire the suit property. The Respondent No.1 herein claimed to be the absolute owner of the suit property on the basis General Power of Attorney ('GPA'), Agreement to Sell, Affidavit, Possession Letter and Receipt, all dated 18.03.2009 and executed by the late Sh. Angad Ram i.e., the plaintiff no.2 therein. The said suit was decreed in favour of the Respondent No.1 herein vide judgment dated 04.07.2012 and the Appellants were directed to pay damages/ mesne profits to the Respondent No.1 herein at Rs. 1,000/- per month with effect from 24.02.2009 till the date of handing over of the vacant and peaceful possession of the first floor of suit property.

4.3. The Appellants herein being aggrieved by the judgment dated 04.07.2012 filed an appeal bearing RCA No. 42/2014, which as well was dismissed by the concerned Appellate Court vide judgment dated 15.04.2014.

4.4. The Appellants thereafter filed a regular second appeal bearing RSA No. 157/2014 before this Court, however, the same was not pressed on merits by the Appellants and was disposed of by the predecessor Bench of this Court vide consent order dated 08.07.2014 with a limited direction to the Appellants to vacate the suit property on or before 30.06.2015. The Appellants despite passing of a consent order dated 30.06.2015 filed a review petition no. 373/2014, which as well was dismissed by the



predecessor Bench of this Court vide order dated 19.08.2014.

4.5. The Appellants thereafter filed SLP(C) No. 13636/2015 impugning the order dated 08.07.2014, however, the Supreme Court declined to interfere with the said order and disposed of the petition granting extension of time to the Appellants till 05.01.2016 to vacate the first floor of suit property.

4.6. It appears that the Appellants had no intention of complying with the undertaking given to the Supreme Court; and at this stage, the Appellants on 01.07.2015 filed the present civil suit (3rd suit) seeking declaration that the judgment dated 04.07.2012 passed by the JSCC - ASCJ – GJ, North East District, Karkardooma Courts, Delhi in civil suit no. 417/2009 be declared as null and void. It is the order passed by the Trial Court in this suit which is the subject matter of this appeal.

5. Learned counsel, Mr. Raghav Rajmalani, has entered appearance for the Appellant.

6. The Respondent No. 4 i.e., Mr. Swadesh Kumar, is present in person and states that he is supporting the claim of the Appellant. Mr. Swadesh Kumar is the son of the Appellant No.1 and a lawyer by profession. He states that he is competent to represent the parties. He has therefore, addressed arguments on behalf of himself and Mrs. Atlo Devi i.e., the Appellant herein. Accordingly, he is transposed as Appellant No.2.

7. The Appellant No.2 states that one Mr. Zafarullah is the actual owner of the suit property. He states that the title documents which have been relied upon by Respondent No.1 in the 2nd suit are forged and fabricated by late Sh. Angad Ram. He states that this material fact that the documents relied upon by Respondent No.1 are forged and fabricated, was



comprehended by the Appellant No.2 only after Appellants had been evicted from the suit property and upon perusal of the documents once Appellant No. 2 became an Advocate.

7.1. He states that since this fact could not be raised in the trial of the 2nd suit, the cause of action for filing the present suit (3rd suit) is not eclipsed by the judgments of the High Court and Supreme Court upholding the decree in the 2nd suit. He states that therefore, the plea of res judicata would not be applicable.

7.2. No other arguments were addressed by counsel for Appellant No. 1 or Appellant No. 2.

8. This Court has perused the judgments of the Trial Court and the First Appellate Court in third suit which have concurrently returned a finding that the present proceedings initiated by the Appellants for seeking a declaration with respect to the decree dated 04.07.2012 is an abuse of process of law.

9. The only contention raised by the Appellants before this Court is that Respondent No. 1 has no title to the suit property and the title actually vests in Mr. Zafarullah. In this regard, it is pertinent to note here that the First Appellate Court has recorded that one Mr. Mohd. Irshad, who claim himself to be grandson of Mr. Zafarullah, had filed a substantive civil suit in the year 2016 against Respondent No.1 herein, which was dismissed by the Trial Court by judgment dated 12.09.2022. The relevant extract of the of the impugned judgment dated 25.01.2023 passed by the First Appellate Court reads as under:

10. *“Therefore, applying the principles of law and adverting to contents of the plaint of Appellants before trial court, cleverly, a cause of action has been created by Appellants on the premise of the alleged forgery and fraud at the behest of the Respondent, on the premise that suit*



property was owned by one Zafarullah. The plea falls flat in view of the categorical findings and observations of the courts. **Furthermore, my attention was drawn to one suit for Recovery of Possession and Injunction filed by Mohd. Irshad against Respondents titled Mohd. Irshad v. Smt. Suresh Bala & Ors. CS No.2142/2016 and the Order dated 12.09.2022 passed therein, which clearly shows that suit of Plaintiff Mohd. Irshad, who claimed himself to be the great grandson of one Zafarullah and thus claiming ownership on the strength of Will was found to be devoid of any cause of action in view of the Orders/judgments dated 04.07.2012, 15.04.2014 and 08.07.2014. The suit of Mohd. Irshad thus was dismissed being barred by principle of res-judicata.**"

(Emphasis Supplied)

10.1. The plea of title of Mr. Zafarullah has therefore, also been decided in favour of Respondent No. 1. The Appellants have not disputed the said finding of the First Appellate Court. The Appellant are therefore precluded from agitating the said plea.

10.2. Further even if as per the stand of the Appellants, the title vests in Mr. Zafarullah, this Court fails to comprehend on what basis/capacity are the Appellants maintaining the suit.

11. Coming back to the impugned judgments, it is noted that Appellant No.2 admits that after a detailed trial in civil suit no. 417/2009 (2nd suit) a decree dated 04.07.2012 was passed against the Appellants. The concerned Court held that Respondent No.1 i.e., Smt. Suresh Bala, is the owner of the suit property and late Sh. Akshem Chand, father of the Appellant No.2 is a licensee therein. The concerned Court thus, decreed the (2nd suit) suit for possession in favour of the Respondent No.1 herein.

11.1. As noted earlier, the said decree was challenged in appeals and was upheld up to the Supreme Court; and in fact, late Sh. Akshem Chand was granted time by Supreme Court to vacate the first floor of the suit property within the extended period. There is no dispute that the defense raised by the



Appellants in the 2nd suit were duly considered by the Courts and there are at least four successive judgments dismissing the pleas raised by the Appellants herein.

12. In the aforesaid background, when late Sh. Akshem Chand filed a fresh suit in the year 2016 seeking a declaration that the decree dated 04.07.2012 (passed in the 2nd suit) is null and void, the Trial Court by its judgment dated 07.12.2018 dismissed the suit holding that the suit is barred under Order VII Rule 11(d) of Code of Civil Procedure, 1908 ('CPC') in view of the principles of res judicata. The relevant portion of the judgment dated 07.12.2018 passed by the Trial Court reads as under:

"8. The entire case of plaintiff is based on the allegation of fraud that judgment and decree was obtained by fraud. At the same time, it is also admitted that the aforesaid decision was rendered on merits of the case and thereafter the present plaintiff challenged the same before the court of Ld. District Judge. The said appeal was dismissed by the court of Sh. Ajay Gupta, Ld. ADJ-02. vide detailed judgment dated 15.04.2014. Thereafter, the plaintiff filed second appeal before Hon'ble High Court. The said appeal was dismissed by Hon'ble High Court vide order dated 08.07.2014.

9. The review petition was filed by plaintiff. As per order dated 19.08.2014 passed by Hon'ble High Court, the plaintiff did not press the appeal on merits and it was dismissed as not pressed. At the same time, plaintiff was given time to vacate the premises. Thereafter, plaintiff filed SLP which was dismissed by Hon'ble Supreme Court of India on 07.08.2015. Therefore, it is apparent that the plaintiff had availed all his legal remedies with regard to findings of the trial court qua the judgment which is sought to be declared as null and void

10. Even if the averments of plaint to the extent that Md. Zafarullah was the owner of the suit premises are deemed to be correct, still that objection had to be taken before the court before judgment was passed. Explanation 4 of Section 11 of CPC specifically bars taking up of a defence. It is reproduced below:-

XXX

XXX

XXX

11. From the aforementioned discussion, it is absolutely crystal clear that the averments of the plaint qua allegations of fraud are totally misconceived



Since the plaintiff was party to the said litigation, he ought to have taken the defence which is barred subsequently. Therefore, aforesaid allegations even on the face of it do not disclose any existence of any kind of fraud being played upon the court. The suit is barred by Section 11 of CPC.

12. The suit is clearly gross abuse of process of law. Accordingly, the application is allowed and the plaint is rejected under Order 7 Rule 11 of CPC. File be consigned to record room after due compliance.”

(Emphasis Supplied)

12.1. Even in the appeal filed against the judgment dated 07.12.2018, the First Appellate Court while upholding the judgment of the Trial Court has in addition held that the suit is also barred under Order VII Rule 11(a), CPC as the plaint fails to show any cause of action. The relevant portion of the judgment dated 25.01.2023 passed by the First Appellate Court reads as under:

“12. In addition to the observations of Id trial court in the impugned Order dated 07.12.2018, another paint which this Court serves that the plaint did not disclose any cause of action in the said eventuality. It is settled law that for finding out whether Plaint discloses cause of action, the entire pleadings in the Plaint will have to be read and that too, at their face value. Only on the basis of the averments made in the plaint, it can be ascertained as to whether a cause of action is made out or not. Law with regard to Order VII Rule 11 CPC is well settled. While dealing with an application for rejection of plaint under Order VII Rule 11 CPC, the court has to consider only the averments made in the plaint and not the defence of the Defendant. In **C. Natrajan v. Ashim Bal** reported as (2007) 14 SCC 183, Hon'ble Supreme Court has observed:

“... 11. In **Popat and Kotecha Property v State Bank of India Staff Assn.** reported as (2005) 7 SCC S10, the Hon'ble Apex Court elaborately dealt with the law under Order VII Rule 11. The relevant portion of the judgment is:

“12. In the present case the respondent has relied upon clause (d) of Rule 11.

13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the in the legal ambit needs to be noted.

14. In **Saleem Bhai v. State of Maharashtra** it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application



thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit -- before registering the plaint or after issuing summons to the Defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane, the pleas taken by the Defendant in the written statement would be wholly irrelevant at that stage.....”

*13. Therefore, applying the principles of law and advertent to contents of the plaint of Appellants before trial court, cleverly, a cause of action has been created by Appellants on the premise of the alleged forgery and fraud at the behest of the Respondent, on the premise that suit property was owned by one Zafarulah. The plea falls flat in view of the categorical findings and observations of the courts. Furthermore, my attention was drawn to one suit for Recovery of Possession and Injunction filed by Mohd. Irshad against Respondents titled **Mohd. Irshad v. Smt. Suresh Bala & Ors.** CS No 2142/2016 and the Order dated 12.09 2022 passed therein, which clearly shows that suit of Plaintiff Mohd. Irshad, who claimed himself to be the great grandson, of one Zafarulah and thus claiming ownership on the strength of Will was found to be devoid of any cause of action in view the Orders/judgments dated 04.07.2012. 15.04.2014 and 08.07.2014. The suit of Mohd Irshad thus was dismissed being barred by principle of res-judicata.*

The Judgment and Decree sought to be declared as null and void by Appellants was rendered between the same parties in respect of the same property and the same was decided on merits of the case after both the parties had led their respective evidence. The said judgment was upheld by Ld. ADJ as well as Hon'ble Delhi High Court and was upheld upto Hon'ble Apex Court and an attempt of Appellants to initiate a new round of litigation by contending that Mohd. Zafarulah was the owner of suit property, is completely an attempt to intentionally keep alive the litigation by raising such meaningless pleas.

xxx

xxx

xxx

16. In fact, Appellants have not been able to point out any infirmity or perversity in the Order and to raise any valid ground in the appeal, warranting any interference in the impugned Order. I conclude that the Appellants/Plaintiffs have failed to point out any error in the Order dated 07.12.2018 passed by Id. trial court on any of the counts as alleged. This Court has no hesitation to observe that the present appeal is a gross abuse of process of law and deserves dismissal with exemplary costs.”

12.2. In fact, First Appellate Court while dismissing the appeal reiterated



the observation of the Trial Court that the present proceedings are an abuse of process of law and imposed costs of Rs. 40,000/- on the legal representatives of late Sh. Akshem Chand who have by then had come on record.

12.3. The Appellants have not addressed any arguments on the aforesaid concurrent findings of the Trial Court and the First Appellate Court. The decree of possession in the 2nd suit in favour of Respondent No. 1 was passed on merits and upheld by Supreme Court. The principles of res judicata are applicable in the facts of this case. This Court finds no infirmity in these findings in view of the judgments of this Court and the Supreme Court upholding the decree of possession in favour of Respondent No. 1 in the 2nd suit.

13. Admittedly, the Appellants and Respondent Nos. 2 to 3 have been dispossessed from the suit property. However, the present civil suit was filed by the Appellant seeking a simpliciter declaration without seeking any consequential relief. In this regard, the Supreme Court in ***Muni Lal v. Oriental Fire & General Insurance Co. Ltd. and Anr., (1996) 1 SCC 90***, has held declaration without consequential relief does not provide the needed relief in the suit and it would be for the plaintiff to seek both the reliefs. The Supreme Court held that the omission thereof mandates the Court to refuse to grant of the declaratory relief. Therefore, in any event, the civil suit filed by the Appellants is not maintainable. Further, as noted hereinabove, the Appellants have no locus to maintain this suit on the plea that the title of property vests in one Mr. Zafarullah.

14. This Court is of the opinion that no question of law, much less a substantial question of law has been made out in the facts of this case. The



present proceedings are vexatious and as rightly held by the Courts below are an abuse of process of law. Accordingly, the present appeal is dismissed with costs of Rs. 25,000/- to be payable to Respondent No.1 for these proceedings. The costs will only be recovered from Appellant No.2.

15. The present appeal is accordingly dismissed. Pending applications are disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 10, 2023/msh/aa

Click here to check corrigendum, if any