



2024:DHC:5101



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

% ***Judgment reserved on: 16.04.2024***
Judgment pronounced on: 11.07.2024

+ CM(M) 814/2019

MANPHOOL SINGH & ANR

..... Petitioners

Through: Mr. A.K. Singh, Sr. Advocate with
Mr. Pankaj Gupta, Advocate.

versus

RAM CHANDER & ORS

..... Respondents

Through: Ms. Smita Maan, Mr. Vishal Maan
and Mr. Kartik Dabas, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The short controversy arising from the present petition revolves around an application filed by the respondents under Section 151 of the Code of Civil Procedure, 1908 (in short "CPC") seeking permission to adduce defendant evidence and place on record the list of witnesses along with the affidavits of evidence. Vide impugned order dated 15.04.2019, the aforesaid application was allowed subject to a cost of Rs. 30,000/- by the Additional learned District Judge-05, South-West District, Dwarka Courts, New Delhi (in short "Trial Court") in C.S No.312/17, titled as "*Sh. Manphool Singh & Anr. vs. Sh. Ram Chander & Ors.*"
2. The relevant facts culminating into filing of the present petition are that on 16.05.2009, the petitioners instituted a suit against the respondents



before this Court for partition, declaration and injunction regarding a plot of land measuring 7000 square yards described as Munshi Ram Krishi Farm, Papravat Road, Najafgarh, Delhi. Apart from this, there are several litigations going on between the parties, the specifics of which are not relevant to this case.

3. The respondents filed a joint written statement on 09.09.2009 wherein inter alia they opposed the entitlement of the petitioners on the ground of alleged adoption of petitioner no.1. Vide order dated 28.10.2014, this Court framed issues based on the pleadings of the parties and appointed a Local Commissioner to record the evidence of the parties. Additionally, the parties were given two weeks time to file their lists of witnesses.

4. Subsequently, there was a delay in filing of the evidence by way of an affidavit on behalf of the petitioners which was vehemently opposed by the respondents. On 05.01.2015, this Court allowed the evidence filed by the petitioners to be taken on record subject to a cost of Rs. 20,000/-. Subsequent thereto, the matter was listed for 19.01.2015, before the Local Commissioner for recording of evidence.

5. On 19.01.2015, no one appeared on behalf of the respondents and the matter was adjourned for 28.01.2015 for recording the evidence of the petitioners. On the said date of hearing, again, no one appeared for the respondents. As a result, the two witnesses i.e. PW-1 & PW-2 of the petitioners were examined in chief, but their cross-examination was postponed to 29.01.2015.

6. On that date, the proxy counsel for the respondents appeared and requested an adjournment which was strongly opposed by the learned



counsel of the petitioners. However, the Local Commissioner granted an adjournment and listed the matter for 09.02.2015. On the said date of hearing, the witnesses were present before the Local Commissioner but the proxy counsel for the respondents once again sought adjournment on the ground that an application under Order VI Rule 17 CPC for amendment of the written statement had been moved before the learned Trial Court.

7. The learned counsel for the petitioners strongly objected to the request for an adjournment, contending that the cross-examination of the witnesses should be conducted as per the averments in the existing written statement. Further, the learned counsel submitted that in case, the amendment is allowed, the witnesses can be recalled for further cross examination. However, the learned Trial Court adjourned the matter for 18.03.2015.

8. On that date, the two witnesses, i.e., PW1 and PW2 were present but the proxy counsel for the respondents appeared and again sought an adjournment. The Local Commissioner took note of the respondents' repeated requests for adjournments. As a result, the Local Commissioner denied the request for an adjournment and recorded the cross-examination of the witnesses as 'Nil'. Additionally, the learned counsel for petitioners closed the evidence of the petitioners and the matter was adjourned to 20.04.2015 for recording the evidence of the defendants/respondents herein.

9. On 20.04.2015, the respondents did not lead evidence but instead submitted that an application to recall the petitioners' witnesses had been moved. The matter was then renotified to 14.05.2015. On the said date of hearing, neither did anyone appear for the respondents nor were their



witnesses present. Under these circumstances, the Local Commissioner recorded the evidence of the respondents as “Nil”.

10. Upon enhancement of the pecuniary jurisdiction of this Court, the said suit was transferred to the learned Trial Court. Subsequently, the respondents moved an application under Order XVIII Rule 17 CPC to recall the petitioners’ witnesses for cross-examination. Vide order dated 10.08.2017, the said application was allowed by the learned Trial Court subject to a cost of Rs. 50,000/-. Thereafter, the petitioners’ witnesses i.e. PW-1 and PW-2 were cross-examined on 18.04.2018 and the matter was adjourned to 22.05.2018 for final arguments.

11. On that date, the respondents moved an application under Section 151 CPC seeking permission to adduce defendant evidence and place on record the list of witnesses along with the affidavits of evidence. Further, it was submitted by the learned counsel for the respondents that they wish to examine only one of the respondents i.e. respondent no.2 and one official witness from the BDO Office, Najafgarh. The petitioners filed a reply contending that the application filed by the respondents is hopelessly time barred.

12. Vide impugned order dated 15.04.2019, the aforesaid application was allowed by the learned Trial Court, subject to a cost of Rs. 30,000/- to be paid to the petitioners. Thus, the present petition has been preferred invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to challenge the impugned order.

Submissions of the petitioners

13. Mr. A.K Singh, the learned Senior Counsel for the petitioners submitted that the impugned order passed by the learned Trial Court is



illegal and arbitrary both factually and legally. Despite observing that the respondents have been totally negligent & callous in their approach and have taken the Court proceedings for granted, the learned Trial Court erroneously allowed the said application filed by the respondents to lead evidence and also to place on record the list of witnesses.

14. The learned Senior Counsel further submitted that despite relying upon and citing the law laid down by the Division Bench of this Court in the case titled as *Ishwar Dayal Kansal vs. Nirmal Nayyar; R.F.A. (OS) no.7/2015*, the learned Trial Court passed the impugned order in contravention of the said precedent, without providing any reasons, let alone justifiable ones, to justify the allowance of the said application.

15. The learned Senior Counsel submitted that the learned Trial Court grossly erred while passing the impugned order by ignoring the fact that the witnesses sought to be examined from the office of BDO, Najafgarh, to prove the alleged settlement should not be allowed to be examined, as the alleged settlement is neither part of the pleadings filed by the respondents in the present case nor has any issue regarding it has been framed by this Court.

16. The learned Senior Counsel also submitted that the impugned order passed by the learned Trial Court has resulted in miscarriage of justice, causing grave prejudice to the petitioners including petitioner no.1, who is a senior citizen. Furthermore, the respondents have failed to provide any justifiable or plausible reason to justify their attempt to put the clock back for several years, especially considering that the objections raised are purely legal in nature and can be resolved based on admitted documents



that are part of the proceedings. Additionally, other pleas, being barred by res judicata are not permissible to be re-agitated in law.

17. Finally, the learned Senior Counsel submitted that the respondents have not challenged the order dated 14.05.2015 by which their defence evidence was recorded as 'Nil' by the Local Commissioner.

Submissions of the respondents

18. On the other hand, Ms. Smita Mann, the learned counsel for the respondents controverted the submissions by contending that although the respondents have been diligently pursuing the proceedings of the present suit, they are old-aged senior citizens who are illiterate and are not acquainted with the procedural law. As a result, they are totally dependent upon their counsel for conducting the proceedings of the suit. It is further submitted that the right of the respondents to present their evidence was closed by the Local Commissioner solely due to the mistake or negligence on the part of their former counsel. Therefore, an innocent party should not be made to suffer due to a mistake on part of their counsel.

19. The learned counsel further submitted that the present counsel was engaged by the respondents at the stage when the matter was referred to the Mediation Center in pursuance of the order dated 01.10.2015. Thereafter, the present counsel for the respondents has been diligently pursuing the matter before the learned Trial Court. After the change in the pecuniary jurisdiction, when the matter was transferred to the learned Trial Court, the respondents did not delay the proceedings in any manner whatsoever and no adjournment was sought on behalf of the respondents. On the contrary, it is the petitioners, who have been delaying the adjudication and timely disposal of the suit by seeking repeated adjournments. This is evident from



the orders dated 02.05.2017, 20.12.2017, and 26.07.2018 passed by the learned Trial Court.

20. The learned counsel submitted that on 18.03.2015, the matter was listed before the Local Commissioner for recording the evidence of PW-1 and PW-2. On that date, the proxy counsel for the respondents sought an adjournment, citing that the main counsel was facing a personal difficulty as her daughter was appearing for Class 12th Board Examination and the main counsel had gone to pick her up from the school. Further, it was also submitted by the proxy counsel that an application to amend the written statement under Order VI Rule 17 CPC is pending before this Court. However, the Local Commissioner without considering the said request and submissions made by the proxy counsel of the respondents closed the evidence of the petitioners by treating the cross examination as “Nil.”

21. The learned counsel also submitted that on 18.04.2018, when the petitioners’ evidence was closed, the counsel for the respondents requested the learned Trial Court to fix the matter for defence evidence. At this point, the learned Trial Court informed the counsel for the respondents that the defence evidence had already been recorded as “Nil” by the Local Commissioner vide order dated 14.05.2015. It was only at this point that the counsel for the respondents first became aware of this fact.

22. The learned counsel submitted that upon inspection of the Court record, she came across the order dated 14.05.2015 passed by the Local Commissioner and she also learned that the list of witnesses and affidavits of evidence of the respondents were not on record because same were not filed by the previous counsel, although copies were found in the file handed over by the respondents to the present counsel.



Reasons and Conclusions

23. To begin with, I may note that the learned Trial Court has passed a detailed order noting the conduct of the respondents herein in being negligent and thus failing to defend their case diligently. It is an admitted case that the right of the respondents to lead their evidence in defence was closed vide order dated 14.05.2015, prior to that the respondents failed to cross examine the two witnesses of the petitioners and their right to cross examination was closed on 18.03.2015.

24. Needless to say, the respondents had moved an application under Order XVIII Rule 17 CPC and vide order dated 18.04.2018 they were permitted to cross examine the two witnesses of the petitioners subject to cost of Rs. 50,000/-. Finally, the respondents cross examined these two witnesses on 18.04.2018 and the matter was posted for hearing the final arguments on 22.05.2018.

25. Subsequent thereto, the respondents moved an application under Section 151 CPC to lead evidence in defence and submitted before the learned Trial Court that they were to examine only two witnesses which has been allowed by the learned Trial Court.

26. No doubt respondents should have been vigilant about their right for approaching the Court with a request for reopening their right to lead evidence in defence which was closed by the learned Trial Court on 14.05.2015, specially when the respondents approached the Court seeking opportunity to cross examine PW1 & PW2 which was also treated as “Nil” by the Local Commissioner and subsequently permitted by the learned Trial Court. Though the cause explained by the respondents in their application does not inspire confidence, however, in the interest of justice



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and keeping in view the fact that suit is for partition and it is settled law that in a suit for partition all the parties are treated as plaintiffs. Thus, no infirmity is found in the order of the learned Trial Court permitting an opportunity to the respondents to examine one of the respondents and one summoned witness with a caveat that only two opportunities on the dates to be fixed by the learned Trial Court shall be granted for defendant's evidence and for summoning the witness, respondents shall take appropriate steps diligently.

27. The petition along with application, if any, is accordingly, disposed of.

SHALINDER KAUR, J.

JULY 11, 2024
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