



2024:DHC:4210



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

% *Judgment reserved on: 28.02.2024*
Judgment pronounced on: 22.05.2024

+ CM(M) 838/2019 and CM APPL. 25407/2019--stay

NOYAL DATA RAM @ BABU RAM Petitioner

Through: Mr. Aayush Agarwala, Adv.

versus

BHUSHAN & ORS Respondents

Through: Mr. Abhinav Ramkrishna, Adv. for
R-1, 3, 4, 5 & 7.

Ms. Shrishti Govil, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioner has invoked the supervisory jurisdiction of this Court by filing the present petition under Article 227 of the Constitution of India to impugn the orders dated 14.12.2018 and 12.04.2019 passed by learned Additional District Judge-05, South District, Saket Courts, Delhi (hereinafter referred as 'Trial Court') in CS No.8373/2016 titled as '*Bhushan vs. Sant Ram & Ors.*' whereby the applications filed on behalf of the petitioner under Order VII Rule 14(3) of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC') for leave of the Court to place on record certain documents has been dismissed.



2. It is the case of the petitioner that respondent no.1 has filed a civil suit against the petitioner and respondent nos.2 to 7 seeking partition and permanent injunction in respect of property bearing No.65-A, Savitri Nagar, New Delhi-110017 (hereinafter referred as 'subject property'). In the suit, the respondent no.1 has pleaded that the subject property was in the absolute ownership of one late Shri Kalu Ram, the great-grandfather of the respondent no.1 who expired on 11.05.1992, whereupon the subject property devolved upon the grandfather of the respondent no.1, Shri Mawasi Ram.

3. It is also stated that Shri Mawasi Ram expired in the year 2000 leaving behind four children i.e. petitioner and respondent nos.2 to 4. The respondent no.1 and respondent nos.5 to 7 are the legal heirs of one pre deceased son of Shri Mawasi Ram i.e. late Shri Joel Data Ram. Respondent no.1 claimed 5% share in the subject property being 1/4th share out of the alleged share of 20% which was to fall to the share of his father late Shri Joel Data Ram. Respondent no.1 thus claimed reliefs in the subject suit property through his predeceased father Shri Joel Data Ram.

4. A common written statement was filed by the petitioner and the respondent no.2. Their plea has been that Shri Mawasi Ram had debarred late Shri Joel Data Ram from the family and had refused to recognise him as his son. It was also stated in the written statement that Shri Mawasi Ram had issued a publication in newspaper to that effect and executed an affidavit expressing his decision to oust late Shri Joel Data Ram. It was further stated in the written statement that a Will has also been executed by Shri Mawasi Ram excluding by Shri Joel Data Ram from the subject property and it was accordingly prayed that the suit be dismissed.



5. The petitioner moved two separate applications dated 19.07.2018 and 05.12.2018 seeking to place on record certain documents which support and corroborate the aforesaid fact that late Shri Joel Data Ram, the father of respondent no.1 has no right in the subject property and as such the civil suit filed by respondent no.1 claiming rights to Shri Joel Data Ram is not maintainable.

6. The documents sought to be placed on record by the petitioner are as follows:

- i. Letter dated 30.08.1993 issued to issued to the Editor, Jan Satta, by the Advocate of Shri Mawasi Ram requesting the publication of a notice for information to the general public that late Shri Joel Data Ram has been debarred from the family.
- ii. Affidavit dated 30.08.1993 executed by Shri Mawasi Ram stating that late Shri Joel Data Ram is debarred from all rights, title or interest in his movable and immovable properties.
- iii. Will dated 04.05.1995 executed by Shri Mawasi Ram bequeathing the subject property to the petitioner and respondent no.2 alone and expressly excluding late Shri Joel Data Ram and his family.
- iv. Judgment dated 22.01.1966 passed by the court of Shri R. K. Synghal, Sub-Judge, Delhi in Suit No.177/1965 titled '*Mawasi Ram v. Shri Lachman*' declaring the subject property to be the absolute property of Shri Mawasi Ram who inherited the same from his biological parents, namely Shri Mansukh and Nihali.



- v. Publication in Jan Satta newspaper announcing to the general public that late Shri Joel Data Ram has been ousted from the family and that the public should deal with him at their own peril.
7. The learned Trial Court vide order dated 14.12.2018 and 12.04.2019 dismissed both the applications respectively and the same are impugned before this Court.

Submissions of Petitioner:

8. Mr. Aayush Agarwala, learned counsel for the petitioner submitted that the learned Trial Court passed the impugned orders without appreciating the significance of these documents to the defence of the petitioner and dismissed the applications merely on the ground of delay, notwithstanding that such delay is not intentional and the said applications were moved as soon as the documents were discovered and the delay on the part of petitioner was on justifiable ground. Learned Trial Court also does not find the documents to be irrelevant but has dismissed the applications.
9. Learned counsel states that the necessary pleadings in respect of the aforesaid documents have already been taken up by the petitioner in its written statement, hence, respondent no.1 is aware about the nature of the documents proposed to be placed on record and thus no prejudice would be suffered by the respondent had the documents been taken on record.
10. Further, the learned Trial Court failed to appreciate that old documents are difficult to trace and the interest of justice demanded that the petitioner be permitted to put forward its best case and the right of the petitioner to effectively contest the suit be not defeated by citing procedural technicalities. It was thus submitted that the equity demanded that petitioner



be permitted to place the documents on record which are essential to his case and which would enable him to contest the suit effectively.

11. Reliance has been placed on the following judgments:

- i. ***Sanjay Kumar Singh vs. State of Jharkhand: (2022) 7 SCC 247***
- ii. ***HI-Tech Geosynthetics Pvt. Ltd. vs. Shubh Constructions Co.: 2021 SCC OnLine Del 4083***

Submissions of Respondents:

12. Mr. Abhinav Ramkrishna, learned counsel for respondent no.1 contended that the applications filed by the petitioner are not maintainable in law and are in abuse of process of law and the Court. The primary purpose of the petitioner is just to delay the proceedings and despite having had sufficient opportunities, he failed to place the aforementioned documents on record at relevant stage. When the parties have already led their evidences and the case is at the stage of disposal, the petitioner came forward with frivolous applications to cover up lacunae and build up his case on the basis of aforesaid documents.

13. The learned counsel submitted that the petitioner has not shown a single reason for not filing the said documents at relevant stage despite the fact that the same were in his possession since beginning and therefore, according to respondent no.1, the said applications filed by the petitioner are frivolous and have been rightly dismissed by the learned Trial Court.

14. The relevant observations of the learned Trial Court while rejecting the applications filed by the petitioner are reproduced hereinbelow:

“Order dated 14.12.2018:



This suit is for partition with respect to the property of Late Sh. Mawasi Ram and prime defence of the defendants is that the plaintiff had been debarred by Late Sh. Mawasi Ram from inheriting his movable and immovable properties including the suit property. Certain questions were put to DW1 with respect to the fact of disowning of the plaintiff by Late Sh. Mawasi Ram during cross examination. The instant application has been moved after completion of cross examination of DW1 in order to fill up the lacuna that arose during the cross examination of DW1. It is not stated in the application how, when and where the defendant no. 2 got the documents from. No reason is specified why documents were not filed initially. Evidence on behalf of the defendants is also almost over.

Considering the stage of the suit and that the application does not specify how defendant no. 2 got the documents now after completion of cross examination of DW1, the application is dismissed.

Order dated 12.04.2019:

The instant application has been filed after examination of DW1 was over. No reason is specified in the application why documents were not filed on record earlier, and if the documents were not in possession of the applicant how these have come in knowledge & possession of the applicant now.

7. It is stated in the written arguments, for the first time, that the applicant was searching some documents of his late father and he suddenly found these documents. Now, what documents the applicant was searching and with what purpose, is again not specified in the application.

8. The documents are sought to be placed on record at a belated stage when DE has already begun & defendant no.1 has been examined. If the documents are taken on record now serious prejudice may be caused to the plaintiff who has already led his evidence and cross-examined one of the defendants on the basis of material on record, thereby revealing his entire strategy to bring out the truth before this Court. Application is not only belated but is also completely devoid of reasons.

9. For discussion above, the application is dismissed & stands disposed off."

Analysis & Conclusion:

15. It is clear from the reading of both the orders that learned Trial Court did not find any merits in the contention of petitioner and declined to entertain prayer of petitioner.



16. To appreciate, the rival contentions of the parties, Order VII Rule 14 CPC is reproduced which reads as under:

“14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. 5

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.”

17. A plain reading of Order VII Rule 14(3) makes it clear that the documents which ought to be produced in the Court by the plaintiff when the plaint is presented but is not produced shall not, without the leave of the Court, be received in evidence on his behalf. However, before leave of the Court can be granted for receiving additional documents on record at belated stage, the party seeking to produce the documents must satisfy the Court that the said documents were earlier not within the party's knowledge at appropriate time despite due diligence and the relevancy of such documents is also required to be quoted. It is not that the party has a legal right to file a document at a belated stage as it is in this case when the matter is at the stage of hearing of the final arguments. The provision gives a discretionary power to the Court which is to be exercised in a reasonable manner.



18. The petitioner has plainly stated in his application that the proposed documents to be placed on record were earlier not in his knowledge at the time of filing the written statement and were not found by him even at the time of filing of the evidence affidavit but all of a sudden the petitioner got these documents and thus wants to place them on record.

19. Needless to say, the petitioner has not clarified that when and how the said documents suddenly came in his possession which does not discharge the burden on the petitioner that, inspite of due diligence, the proposed documents could not be filed at the relevant stage.

20. It is to be noted further that the petitioner has not mentioned anything about affidavit dated 30.08.1993 executed by Shri Mawasi Ram, judgment dated 22.01.1996 and Will dated 04.05.1993 in the written statement. Regarding execution of the Will, he has mentioned that Shri Mawasi Ram had executed a Will dated 03.03.1994 and in the said Will, he had bequeathed the subject property and another property bearing no. 210-A, comprising in Khasra No.548/135 (Min) measuring around 320 square yards, village Sheikh Sarai, Savitri Nagar, New Delhi-110017 whereas by virtue of the applications, the petitioner desires to bring on record another Will dated 04.05.1995 also executed by Sh. Mawari Ram bequeathing the subject property to petitioner and respondent no. 2. Hence, the introduction of a new Will is completely contrary to the defence of the petitioner already taken in his written statement. Moreso, the probate petition with regard to said Will has been instituted by the petitioner.

21. Learned counsel for the petitioner submitted that copy of the newspaper whereby publication was circulated has been placed on record,



however, in the publication, the property number from where respondent no.1 was disowned is not mentioned, whereas matter for the publication was prepared by the advocate of Shri Mawasi Ram and on his letter head and an affidavit of late Shri Mawasi Ram clearly mentions about the property therefore, both these documents are necessary to prove the said publication. However, the petitioner has not stated that he is in possession of original affidavit dated 30.08.1994 and the letter of the advocate of Shri Mawasi Ram merely bringing the photocopies of the documents on record will not support the case of the petitioner any further.

22. In the written statement, the petitioner has submitted that relation between late Shri Mawasi Ram and his son Joel Data Ram were not cordial as he was in bad company and was debarred by Shri Mawasi Ram during his life time. Petitioner disputed the plea of respondent no.1 that Shri Mawasi Ram died intestate and submitted that he executed a Will in favour of petitioner and respondent no.2.

23. The petitioner further seeks to bring on record copy of a judgment dated 22.01.1996 in a suit instituted by Mawasi Ram to establish that Shri Mawasi Ram was the absolute owner of the subject property which he inherited through his adoptive father Shri Man Sukh and after the death of Shri Man Sukh, the property devolved upon his wife Nihali and after she died, Shri Mawasi Ram became its owner, whereas the case of respondent no.1 as stated in his suit is that Mawasi Ram was the only progeny of late Shri Kalu Ram who became owner of all his property after death of Shri Kalu Ram by way of succession.



24. Hence, the petitioner seeks to being on the aforesaid judgment, which would raise distinct and contrary pleas as to the case of petitioner. These documents except for the fact regarding publication notice in the newspaper of the petitioner do not figure in the written statement of the petitioner. Moreso, the petitioner seeks to bring the photocopies on record. Therefore, the documents, the petitioner wants to place on record, *de hors* the case of the petitioner.

25. The position of law is squarely well-settled that in the absence of pleadings any amount of evidence will not help the party.

26. In the case of ***National Textile Corporation Limited vs. Naresh Kumar Badrikumar Jagad and Ors.: (2011) 12 SCC 695***, the Hon'ble Supreme Court has reiterated the said position of law and held as under:

"12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ.

13. In Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College & Ors., AIR 1987 SC 1242, this Court held as under:

"..... in the absence of pleadings, evidence if any, produced by the parties cannot be considered..... no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

Similar view has been reiterated in Bachhaj Nahar v. Nilima Mandal & Ors., AIR 2009 SC 1103.

14. In Kashi Nath (Dead) through L.Rs. v. Jaganath, (2003) 8 SCC 740, this Court held that "where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon."



Same remain the object for framing the issues under Order XIV CPC and the court should not decide a suit on a matter/point on which no issue has been framed.

15. In Syed and Company & Ors. v. State of Jammu & Kashmir & Ors., 1995 Supp (4) SCC 422, this Court held as under:

"Without specific pleadings in that regard, evidence could not be led in since it is settled principle of law that no amount of evidence can be looked unless there is a pleading. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible."

16. In Chinta Lingam & Ors. v. The Govt. of India & Ors., AIR 1971 SC 474, this Court held that unless factual foundation has been laid in the pleadings no argument is permissible to be raised on that particular point.

17. In J. Jermons v. Aliammal & Ors, (1999) 7 SCC 382, while dealing with a similar issue, this Court held as under:

"..... there is a fundamental difference between a case of raising additional grounds based on the pleadings and the material available on record and a case of taking a new plea not borne out of the pleadings. In the former case no amendment of pleading is required, whereas in the latter it is necessary to amend the pleadings...The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision."

18. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same.

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings."

27. Therefore, in view of the above, the plea of petitioner to bring on record the additional documents is not justifiable as in the first place, he could not explain any cogent reason for not producing the documents well in time before the Trial Court. Moreover, most of the documents are photocopies and does not support the written statement of petitioner being



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beyond pleadings, hence, no purpose would be served even if these documents are permitted to come on record.

28. The impugned order does not suffer from any infirmity. Consequently, the petition along with pending application is dismissed.

SHALINDER KAUR, J.

MAY 22, 2024/ab