



2024 : DHC : 3899



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

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Judgment reserved on: 08.02.2024

Judgment pronounced on: 14.05.2024

+ CM(M) 1152/2022 and CM APPL. 46648/2022—stay

SMT. SNEH GUPTA & ANR.

..... Petitioners

Through: Mr. Shivom Garg, Mr. Mohd. Haris
Taslim, Ms. Meenu, Advs.

versus

SMT. VERSHA RANI & ANR.

..... Respondents

Through: Mr. Gobind Malhotra, Mr. Rakshit
Pandey, Mr. Lovish Sharma, Mr.
Gurpreet Singh, Mr. Rehan Saifi, Advs.
for R-1.
Mr. Ishan Sanghi, Ms. Sagrika Wadhwa,
Ms. Poorvashi Kalra, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. A very short question is the issue in controversy pertaining to refusal to issue directions on the report of the Local Commissioner for installation of separate water connection in the present petition.

2. A brief history of the issue in hand originates with the father-in-law of petitioner no. 1 who is also grandfather to petitioner no. 2, namely Harbans Lal Pamneja was the owner of the property bearing No. C-167, Dayanand Colony, consisting of ground floor, 1st floor and 2nd



floor with terrace (hereinafter referred to as “suit property”). Harbans Lal Pamneja expired on 10.07.2015 and his wife Laj Kumari @ Laj Wanti expired on 22.10.2018, they died intestate and after their death, the petitioner no. 1 got 50% share in the property and respondent no. 1 got the rest 50% share in all movable and immovable properties.

3. It is the case of the petitioners that respondents created nuisance and hindered the free movement of the petitioners in the suit property by throwing garbage in the common courtyard, locking the main gate of the suit property etc. This led to the petitioner herein filing a suit for partition, rendition of account, mandatory and permanent injunction thereby praying for partition of the property, restraining the respondents from resorting to illegal tactics.

4. The respondents herein countered the suit by filing the written statement where they took preliminary objection that the deceased Harbans Lal Pamneja had executed a Will dated 02.03.2005 thereafter, his wife, Laj Kumari @ LajWanti had executed a Will dated 07.08.2015 and subsequently she executed another Will dated 17.06.2018 and by virtue of the Will dated 17.06.2018, the respondent no. 1 became sole and absolute owner of the suit property. Further they mentioned that the petitioners are unauthorized and illegal occupants of the suit property and that late Laj Kumari @ Laj Wanti had disowned the petitioners by publishing advertisement in the newspaper on 07.06.2018.

5. During the trial, aggrieved by the obstruction in the supply of water, the petitioners filed an application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) dated



08.09.2020 thereby praying to the learned Trial Court to direct the respondents to not to obstruct the petitioners from getting separate water connection and the petitioners be allowed to obtain separate water connection. The respondents filed reply to the said application alleging that the building is old and it cannot afford the alteration in the property for getting separate water pipeline. The learned Trial Court appointed the Local Commissioner vide order dated 07.12.2021 thereby to examine the feasibility of the water connection in the suit property.

6. After the report was submitted by the Local Commissioner, arguments were heard on the report and the learned Trial Court passed the order dated 15.07.2022 vide which, learned Trial Court refused to pass any directions on the report of the Local Commissioner on the ground that the issue of seeking separate water connection on behalf of the petitioner is a separate cause of action which cannot be merged with the present suit. By way of the present petition, petitioners have challenged the said order under Article 227 of the Constitution of India passed in Civil Suit DJ No. 121/2019 passed by learned Additional District Judge-03, South-East District, Saket, New Delhi (“Trial Court”) before this Court.

7. It is the contention of the petitioners that the respondents have been continuously creating nuisance and causing hindrance to the petitioners in their day-to-day life. All of this has led to grave violation of basic human rights of the petitioners by respondents with the motive of pressurizing the petitioners to leave the suit property by selling it away at throw away prices to the respondents.



8. Learned counsel for the petitioners submits that the petitioners have made a prima facie case to grant permission for separate water connection as the Local Commissioner, who was appointed with the consent of the parties, in her report did make recommendation for the same. The respondents did not file objections to the said report. It was further submitted that the petitioners had highlighted the difficulty of water supply in the plaint and there are specific prayers no. (i) to (iv) of paragraph F in the plaint with regard to the issue. Hence the reliefs claimed are interconnected but the learned Trial Court has observed that reliefs claimed by the petitioners by way of present application are beyond the scope of pleadings.

9. Learned counsel for the petitioners submitted that by not allowing the petitioners to install a new separate water connection, the rights of the petitioners to get basic amenity i.e. water would be adversely affected. It was further submitted that, allowing the petitioners to have separate water connection would not cause any prejudice to the respondents, thus none of the parties would be prejudiced if the petitioners will be allowed to separate water connection.

10. Learned counsel for the respondents has confuted the submissions made by the counsel for petitioners by stating that said application filed under Section 151 CPC by the petitioners is just another attempt of the petitioners to harass the respondents in furtherance to the motive of the petitioners to oust the respondents from the suit property illegally. Moreover, the petitioners have installed a personal water tank on the first floor which is solely used by them.



11. It is submitted by the learned counsel for the respondents that the building in question is extremely old and debris are falling off from the roof of the building very frequently. Any new construction in the building can be hazardous for the residents of the building. Moreover, the petitioners are not residing in the suit property and have left the property since May, 2022, therefore, in the absence of the petitioners residing therein, there arises no need of separate water tank or connection and thus, the present petition is devoid of merits and liable to be set aside.

12. The Learned counsel submitted that the report of the Local Commissioner is not disputed by the petitioners but the petitioners have concocted a false story that there is obstruction of the water which is being negated.

13. Reliance placed upon the following judgments:

- i) **Ahmedabad mfg. & Calico Ptg. Co. Ltd. v. Ramtahal Ramanand & Ors.** [AIR 1972 SC 1598]
- ii) **Waryam Singh & Anr. V. Amarnath & Anr.** [1954 SCR 565]
- iii) **Babhutmal Raichand Oswal v. Laxmibai R. Tarte & Anr.** [AIR 1975 SC 1297]
- iv) **SadhnaLodh v. National Insurance Vo. Ltd.** [2003 3 SCC 524]

14. At this stage, it is necessary to note down the observation made by learned Trial Court in the impugned order which reads as follows:-

“Considering the facts and circumstances of the case, in my opinion, the issue of seeking separate water connection on behalf of the plaintiffs is the separate cause of action which cannot be merged with the present suit. Thus, I do not deem it expedient to pass any further directions on the report of the learned LC and plaintiff is at liberty to



avail her remedies with regard to her issue of installation of separate water connection in an appropriate court of law.”

15. Pertinently, the impugned order further shows that the petitioners had accompanied an application under order XXXIX Rules 1 and 2 CPC along with the suit for partition, rendition of accounts, mandatory and permanent injunction instituted by them.

16. Some interim orders in regard to supply of water were passed by the learned Trial Court on 13.02.2019 and 18.03.2019. Prior in time, the petitioners also filed an application under Section 151 CPC seeking installation of separate water connection which was decided on 06.02.2021 and a review application subsequently moved by them was decided vide orders dated 04.09.2021. Thereafter, the respondents also preferred a review application which was decided on 07.12.2021 and the report of the Local Commissioner was also called in this respect who had inspected the site at the directions of the learned Trial Court.

17. Therefore, the learned Trial Court without looking into the previous orders and the report of the Local Commissioner could not have summarily dismissed the application. The learned Trial Court has also ignored the fact that the said suit revolves around the subject property and also for the peaceful enjoyment of its possession till the suit is adjudicated upon by the learned Trial Court.

18. Having considered the above, the impugned order is set aside and same is remanded back to the learned Trial Court to reconsider the application moved on behalf of the petitioners after giving them an opportunity of being heard and in light of the previous orders passed by



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the learned Trial Court on different occasions with respect to the issue of water connection and report of Local Commissioner summoned by learned Trial Court.

19. The petition along with the pending application stands disposed of.

SHALINDER KAUR, J.

MAY 14, 2024
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