



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

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Judgment reserved on: 24.01.2024
Judgment pronounced on: 01.04.2024

+ CM(M) 1540/2019, CM APPL. 46644/2019—stay
ABNASH CHANDER CHADHA Petitioner
Through: Mr. J. C. Mahindru, Adv.
versus

BALBIR KUMAR CHADHA & ANR Respondents
Through: Mr. Gigi George, Mr. Gaurav Shawel
and Mr. Dheeraj Singh, Advs.
alongwith respondent.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India, 1950 for setting aside the impugned order dated 09.08.2019 passed by the learned Additional District Judge-04, Patiala House Courts, New Delhi (hereinafter referred to as “Trial Court”) in CS (OS) No. 59427/2016 titled as “*Shri Abnash Chander Chadha vs. Shri Balbir Kumar Chadha and Anr*” wherein the learned Trial Court dismissed the application filed by the petitioner under Order XVIII Rule 3 of Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) seeking permission to lead evidence in rebuttal of the evidence led by the respondents.



2. For the purpose of adjudication of the present petition, the relevant facts are that Mr. Abnash Chander Chadha/petitioner herein, Mr. Balbir Kumar Chadha/respondent no. 1 herein and Mr. Ashwani Kumar Chadha/respondent no. 2 herein are the legal heirs of Late Mr. Prakash Chander Chadha and Late Mrs. Prakash Devi Chadha.

3. During their lifetime, the parents of the parties had acquired several properties i.e. i) A property located at B-98, Naraina Vihar, New Delhi; ii) A property bearing no. 50545-50546, situated in Chaman Ganj, Roshanara Road, Sabzi Mandi, Delhi; iii) A residence at Bhola Nath Bazar, Uppar, Pacca Danga, Jammu Tawi, J&K; iv) Two shops at Panthirithi Chowk, Jammu, J&K and an additional shop at Moti Bazaar Chowk, Pacca Danga, Jammu, J&K (hereinafter referred to as “suit properties”). The suit properties mentioned above are in dispute in the present case.

4. It is the case of the petitioner that upon joining the Department of Railways in 1954, he dedicated his entire income towards the household expenses and for acquiring the further assets. In 1966, the Delhi Development Authority (hereinafter referred to as “DDA”) allotted a plot bearing no. B-98 measuring 125 square yards in Naraina Vihar in the name of respondent no. 1 and the acquisition of the plot was financed jointly by the petitioner and the Hindu Undivided Family (hereinafter referred to as “HUF”) headed by the father of the parties.

5. Thereafter, the petitioner along with his father undertook the construction of the aforesaid property which was completed in 1969. A three-storey house was erected on plot bearing no. B-98 with the specific



arrangement that the ground floor would belong to the petitioner, the first floor would belong to respondent no. 1 and the second floor to respondent no. 2. Additionally, the parents retained the right to stay with either of the parties as deemed suitable.

6. It is further the case of the petitioner that the respondents lacked the means to earn or deposit such funds with DDA for the acquisition of the plot and subsequent construction on the aforesaid plot because during this period, respondent no. 1 was employed as a helper in the departmental canteen of the Ministry of Agriculture and respondent no. 2 was a student. Therefore, to finance this construction, a loan of Rs. 30,000/- which was given to Shri J.R Bhasin against his property bearing no. E-30, Kalkaji was recalled. Further, the construction was successfully completed with the funds from HUF along with major contribution from the petitioner's side.

7. In 1993, the parties reached a mutual agreement or oral partition concerning the property at B-98, Naraina Vihar, New Delhi. This agreement took place after the petitioner's retirement from government service in June 1992, necessitating him to surrender his government accommodation and relocate to the above-mentioned property.

8. It is the case of the petitioner that after the death of Late Mr. Prakash Chander Chadha in 1998, the petitioner requested the respondents for partition of assets left behind by their parents. However, the respondent no. 1 in collusion of respondent no. 2 refused to do the same. Thereafter, respondent no. 1 sent a legal notice dated 11.03.1999 claiming exclusive ownership of the aforesaid property. Petitioner replied to the said legal



notice on 18.03.1999. Subsequently, respondent no. 1 initiated a suit bearing CS (OS) no. 59428/16 seeking possession of the property at B-98, Naraina Vihar, New Delhi against the petitioner.

9. As a counterblast, petitioner filed a suit against the respondents for partition, declaration and rendition of the accounts. In the suit, the petitioner prayed for a decree for partition in respect of the suit properties left by the parents of the parties, wherein the parties have 1/3rd share each; a decree for declaration confirming the said oral partition and a decree for rendition of accounts of all the moveable assets including fixed deposits and rental income. It is pertinent to mention that both suits between the parties were consolidated by this Court vide order dated 22.11.2001.

10. On 30.10.2002, the respondents filed their written statements, contending that the above-mentioned property is registered in the name of respondent no. 1, who purchased the plot from DDA using his own money and subsequently constructed the building on it. Petitioner filed his replication reiterating that the payment for the construction of the house was made by him from the joint HUF fund and as per the oral partition, he is in possession of the ground floor.

11. Vide order dated 09.09.2010, the learned Trial Court closed the evidence of the petitioner. The petitioner had examined four witnesses between 28.09.2005 and 09.10.2009. Further, the petitioner filed an application having I.A. no. 14658 of 2009 under Section 65(c) & 66 of Indian Evidence Act read with Section 151 of CPC seeking permission to lead secondary evidence which was dismissed by this Court vide its order



dated 14.05.2010 with cost of Rs. 10,000/-. An appeal preferred against this order was also dismissed.

12. Thereafter, the petitioner filed another application under Order XIII Rule 1(3) CPC before the learned Trial Court for summoning of witness from the office of the Airport Authority of India, New Delhi with relevant record. The learned Trial Court dismissed the said application vide order dated 14.09.2016 which is under challenge in CM(M) no. 1207/16 before this Court.

13. In 2018, the petitioner filed an application under Order XVIII Rule 3 CPC read with Section 151 CPC praying for leading evidence in rebuttal. It is the case of the petitioner that in another suit initiated by the respondent bearing CS (OS) no. 59428/16 which has been consolidated by this Court, the petitioner would not get opportunity to lead negative evidence before any evidence in affirmative is led by respondent no.1.

14. Further, it is the case of the petitioner that he has only led evidence in respect of the issues of which the onus of proving was on him, and he could not lead evidence in respect of issues of which the onus was on the respondents. It is submitted that after the petitioner concluded his evidence in affirmative, he reserved the right to lead evidence in rebuttal. Therefore, in the interest of justice, the petitioner should be allowed to lead his evidence in rebuttal.

15. Respondents opposed the application by filing a reply dated 12.03.2018 and contended that the application is misconceived, malafide



and represents yet another attempt by the petitioner to prolong and obstruct the proceedings of the consolidated cases ongoing since 1999. It is the case of the respondents that the petitioner has already led evidence on all the issues and the present application is silent as it nowhere mentions on what issues the petitioner wants to adduce evidence in rebuttal. Further it is submitted that after the consolidation order, common issues were settled with common trial to be conducted in the lead matter CS (OS) no. 59427/16 and the petitioner has already concluded his evidence on all issues.

16. The learned Trial Court vide impugned order dated 09.08.2019 dismissed the application under Order XVIII Rule 3 CPC read with Section 151 CPC with cost of Rs. 10,000/- and held that once the petitioner has concluded his evidence on the issues on which he was required to lead evidence, he cannot later claim that he has not led any evidence on some of the issues especially if he had cross-examined the witnesses of the respondents on those issues. Further, the learned Trial Court observed that the present application is silent as to on what issues, the petitioner seeks to lead evidence in rebuttal. The application does not disclose whether the petitioner wants to lead the evidence in rebuttal on the issues the onus of which is on the petitioner or the respondents. The said order forms subject matter of challenge in the present petition.

Submissions by the petitioner

17. Learned counsel for the petitioner submitted that the learned Trial Court has grossly erred in dismissing the application filed by the petitioner for leading evidence in rebuttal contrary to the principles of law as per



Order XVIII Rule 3 CPC and as such the impugned order cannot be sustained in law.

18. It is submitted that the impugned order is based on mere assumptions and presumptions and not based on any sound or valid reasoning and as such the same needs to be set-aside and the petitioner needs to be granted permission to lead evidence in rebuttal when the right of rebuttal was reserved by him while closing his evidence in affirmative on 09.09.2010.

19. It is submitted by the learned counsel for the petitioner that the learned Trial Court has been influenced by the false facts alleged by the respondents that the petitioner was deliberately delaying the proceedings. However, the learned Trial Court failed to acknowledge the fact that the present suit was initially pending before this Court which was transferred to the learned Trial Court in 2016 due to an enhancement in pecuniary jurisdiction of the District Courts. Additionally, it submitted that the respondent no. 2, who is a resident of U.S.A. was not able to appear on few dates.

20. Learned counsel for the petitioner submitted that the learned Trial Court has erroneously observed that when evidence was led by the respondents, the counsel for the petitioner had cross-examined the respondents to falsify their evidence. It is submitted that a mere cross-examination cannot be a substitute to the right of the petitioner to lead evidence on his behalf in respect of the issues of which the onus was on the respondents and as such the right of rebuttal was necessary and had to be granted to the petitioner as per the procedure laid down under CPC.



21. In the petition, the petitioner has submitted that the onus of proving the issues nos. (i), (ii), (iii), (vi), (vii) & (x) was on the respondents on which no evidence in affirmative was led by the petitioner when he was leading evidence in his case as the petitioner could not have led evidence in rebuttal till the evidence was led by the respondents. Thus, the right of rebuttal in such circumstances was necessary and could not have been closed.

Rival submissions by the respondents

22. To the contrary, respondents submitted that common evidence is being led in a consolidated trial of the two cases, therefore, there is no justification of leading evidence in rebuttal. It was submitted that evidence in rebuttal could be permitted to be led with respect to issues, the burden of proof of which was on the respondents. Whereas, the petitioner has moved a vague application under Order XVIII Rule 3 read with Section 151 CPC wherein it has not been mentioned that on which of the issues and with respect to which of the witnesses, the petitioner seeks to lead evidence in rebuttal.

23. To conclude, the learned counsel submitted that the application was moved by the petitioner with sole object to delay the proceedings in which the petitioner has amply succeeded.

Analysis and conclusion

24. It is to be noted that the settled position of law under Order XVIII Rule 3 CPC would show that when there are several issues, which are



framed in a suit, the onus having been placed on one of the parties, if the other party chooses to lead evidence first, the said party can reserve its right to lead evidence in affirmative, meaning thereby, the other party can begin at its option, either to produce its evidence on those issues or reserve its right to lead evidence in affirmative in the beginning and can lead rebuttal evidence in respect of the issues where the onus is not on the said party. However, the law does not permit the party to lead evidence later on, even on the issue, the onus of such lies on it. The right of rebuttal can be expressly exercised by a party, who either at beginning of his evidence on his side or when he closes the evidence and before the opposite party starts the evidence on its side can exercise this right.

25. The said position in law is trite as enunciated in ***Surjit Singh v. Jagtar Singh*** Vol 145 2007 (1) PLR 552, the Division Bench of Punjab & Haryana High Court had dealt with the provision under Order XVIII Rule 3 CPC and held if the onus of a particular issue is on the plaintiff, the plaintiff would not get the right of leading rebuttal evidence on such an issue. The relevant portion of the judgment reads as under:-

"21. In our opinion, Order 18, Rule 3 of the CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18, Rule 3 of the CPC. The rule clearly postulates that "the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties". No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may



well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (supra). It has been held that if a statement is made by the Advocate for the plaintiff that "the plaintiff closes its evidence in the affirmative only", the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur's case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned single Judge in the case of Punjab Steel Corporation (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra)."

26. Reverting to the facts of the case in hand, following issues were framed vide order dated 18.07.2005:

- (i) Whether the Plaintiff executed the Deed of Relinquishment dated 21 August, 1998 in favour of Smt. Prakash Devi, the mother of all the parties?*
- (ii) Whether Smt. Prakash Devi executed Will dated 1st February, 1999?*
- (iii) Whether Smt. Prakash Devi was competent to bequeath the properties, mentioned in the Will, other than B-98, Naraina Vihar, New Delhi?*
- (iv) Whether the property bearing No. B-98, Naraina Vihar, New Delhi was constructed by contributions made exclusively by the Plaintiff and his father Shri Prakash Chand ?*



- (v) *Whether the suit is barred by Sections 3 and 4 of the Benami Transaction Act, 1988 in respect of the property bearing No. B-98, Naraina Vihar, New Delhi?*
- (vi) *Whether the suit filed by the Plaintiff is otherwise not maintainable in view of the preliminary objections raised by the Defendant in the written statement?*
- (vii) *Whether Defendant No.1 is entitled to any damages for use and occupation of the ground floor of B-98, Naraina Vihar, New Delhi from the Plaintiff, and if so to what extent?*
- (viii) *Whether the Plaintiff is entitled to partition of the properties mentioned in para 21 of the plaint, and if so to what extent?*
- (ix) *Whether the Plaintiff is entitled to rendition of accounts in respect of the properties mentioned in para 21 of the plaint except B-98, Naraina Vihar, New Delhi?*
- (x) *Whether Defendant No.1 is entitled to possession of ground floor of property bearing No. B-98, Naraina Vihar, New Delhi from the Plaintiff?*
- (xi) *Whether the suit has been correctly valued by the Plaintiff for the purpose of court fee?*
- (xii) *Relief*

27. The evidence of the petitioner was concluded and was closed in affirmative on 09.09.2010. From aforesaid framed issues, it can be discerned that the onus of proving all the issues could not have been placed on the petitioner as submitted by the petitioner, the onus of proving some issues i.e. issue nos. (vi), (vii) & (x) lies on the respondents. It is true that the petitioner has reserved his right to lead evidence in rebuttal by closing his own evidence in affirmative, thus petitioner could lead evidence in rebuttal only after respondents could have led their evidence on the above mentioned issues, the onus of which was on them.

28. Having considered the submissions, the record and totality of circumstances, the petitioner is granted liberty to lead evidence in rebuttal in terms of following directions:-



- (i) The relevancy of the evidence to be led in rebuttal shall be considered by the learned Trial Court when an appropriate application shall be moved by the petitioner disclosing the details about the witnesses to be examined in rebuttal.
- (ii) The learned Trial Court shall also ensure that petitioner shall not lead fresh evidence.
- (iii) The learned Trial Court shall ensure that the evidence shall not be led to fill lacunae in petitioner's case
- (iv) The learned Trial Court to permit evidence in rebuttal to the extent of evidence produced by the respondents.
- (v) The evidence in rebuttal to be concluded within two months from today and the learned Trial Court shall ensure that unnecessary adjournments are not requested by the parties.
- (vi) The petition is allowed subject to cost of Rs. 15,000/- to be paid by the petitioner to the respondents before the learned Trial Court on the next date of hearing.

29. In view of the above, order dated 09.08.2019 of the learned Trial Court is hereby set aside.

30. Consequently, present petition along with pending application is allowed.

SHALINDER KAUR, J.

APRIL 01, 2024/ss