



2024 : DHC : 2990



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

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Judgment reserved on: January 30, 2024

Judgment pronounced on: April 15, 2024

+ CM(M) 2093/2023, CM APPL. 65495/2023—stay, CM APPL. 65496/2023—Lengthy synopsis and list of dates

SH. BAL KRISHAN SHARMA

..... Petitioner

Through: Mr. Manisha Parmar and Mr. Shubham Jindal and Ms. Manisha Sharma, Advs.

versus

SMT. KANTA KUMARI SHARMA AND ORS Respondents

Through: Mr. Sanjay Garg, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioner along with his sisters namely Mrs. Urvashi Sharma and Mrs. Poonam Sharma filed a civil suit being CS DJ No. 571/18 before the learned District & Sessions Judge, Rohini Courts, Delhi against (i) their mother Smt. Kanta Devi (ii) real brother Mr. Rajeev Kumar Sharma, (iii) Mrs. Radha Garg and (iv) Mrs. Uma Mittal. The petitioner / plaintiff before the learned Trial Court in the suit inter-alia prayed for following reliefs:-



- (a) Cancel the relinquishment deed registration No. 2455, book No. 1, Vol. No. 3347 on page 10 to 13 on 19.2.2011 in the office of Sub Registrar VI-A, Delhi.
- (b) Sale Deed No. 3564, Book No. I, Volume No. 7416, page 1-8 dated 12.3.2018 with S.R. VI-A Pitampura, Delhi-110036.
- (c) Sale Deed No. 3565, Book No. 1, Volume No. 7416, page 9-16 dated 12.3.2018 with S.R VI-A Pitampura, Delhi- 110036.
- (d) Cancel Gift Deed was got executed by Defendant No. 2 from defendant No. 1 of Upper ground floor of the suit property on 27.4.2018 bearing registration No. 6063, Book No. I, Volume No. 7518, page 135-145 dated 27.4.2018 S.R. VI-A Pitampura, Delhi-110036.
- (e) Direct the Sub-Registrar VI-A, Delhi to cancel the above documents as null and void i.e. SL No. 1.1 to 1.4.
- (f) Declare the plaintiffs 3/5th (share) owner of the suit property collectively and individually 1/5 share in the Suit Property.
- (g) After declaring the owner if the 3/5th share of the suit property, partition the suit property in the same share ratio.

Factual matrix:

2. The petitioner is the joint owner and in possession of the entire first floor as well as one room on the upper ground floor in the property bearing No. C-208, Majlis Park, Delhi- 110033, admeasuring 111 square yards, built up to the second floor (hereinafter referred to as “Suit Property”). The suit property was purchased by the father of the petitioner in 1971 vide the sale deed dated 08.07.1971. Upon purchasing the suit property, the father of the petitioner constructed the ground floor as well as a tin shed and a bathroom on the first floor. However, the father of the petitioner expired intestate on 18.11.2003.



3. The father of the petitioner was survived by his wife Smt. Kanta Sharma (respondent no. 1), the elder son Bal Krishan Sharma (petitioner), the younger son Sh. Rajeev Kumar Sharma (respondent no. 2) and two daughters Smt. Urvashi Sharma and Smt. Poonam Sharma (plaintiffs before the learned Trial Court). As per the Hindu Succession Act, 1956, the properties devolved upon the aforementioned legal heirs of the deceased. Along with the said property, other movable and immovable property amounting to approximately Rs. 22,00,000/- are with respondent no.1. An ancestral property bearing No. C-588, Street No.12, Majlis Park, Delhi-110033 was also left with the respondent no.1, however a settlement was arrived at for the same and the proceeds of such settlement amounting to Rs.25,00,000/- were kept in the possession of respondent no.1 & 2 for the purpose of safekeeping as the said sum was required for construction of the suit property.

4. Respondent nos. 1 & 2 by playing fraud and misrepresenting the petitioner and his sisters (other plaintiffs) got signed a relinquishment deed dated 19.02.2011 registered with the Sub-Registrar VI-A vide registration no. 2455, book no. – I, vol. No. 3347 at page no. 10-13. By virtue of the said relinquishment deed, respondent no. 1 became the sole owner of the suit property. The respondent nos. 1 & 2 had obtained signatures of the petitioner and his sisters on some documents by representing that respondent no. 2, who was unemployed at that time and in order to run some business, required a loan. The petitioner and his sisters not sensing any



malice or malafide, signed some papers on the asking of respondent nos. 1 & 2 for respondent no. 2 to secure a loan from a bank.

5. Thereafter, the abovementioned legal heirs as per the family requirement, deemed it fit to pull down the existing structure at the suit property and construct a new building consisting of a stilt, upper ground floor and first, second and third floor. To construct the new building, the sum of Rs. 25,00,000/- received by way of the settlement deed dated 15.01.2012 as well the Rs.22,00,000/- which was in possession of the respondent no.1 as well as a sum of Rs. 2,61,00/- from the petitioner, Rs. 34,363/- from the wife of the petitioner and Rs.5,00,000/- by one of the sisters of the petitioner through her husband was given towards the same.

6. Whilst the construction took place, the petitioner and family along with the respondent no.1 & 2 rented an accommodation bearing the address No. C-387, Gali No. 10, Majlis Park, Delhi- 110033. On completion of the construction in May, 2016, the petitioner and his family resided on the first floor of the suit property along with one room on the upper ground floor. The respondents no.1 & 2 started residing on the upper ground floor. The sisters of the petitioner resided wherever they pleased whenever they came to their paternal home i.e. suit property.

7. On 09.08.2018, the petitioner was apprised of the fact that a sale deed qua the second floor with no roof rights and the third floor with roof rights has been executed in favour of the respondent no.3 & 4. Taking advantage



of the old age and ill health of the respondent no.1, the respondent no.2 while acting in connivance with respondent no. 3 & 4 got a sale deed registered wherein the respondent no.3 acquired the rights for the third floor as well as the roof rights and the respondent no.3 & 4 have jointly purchased the rights for the second floor. The sale deed dated 12.03.2018 was further rectified and is now dated 09.05.2018. The petitioner further came to know that the respondent no.2 fraudulently got executed from respondent no.1 a gift deed dated 27.04.2018 in his favour qua the upper ground floor of the suit property.

8. Thereafter, on further enquiry, the petitioner discovered that the respondent no.1 & 2 had obtained signatures of the petitioner and his sisters (plaintiffs before the learned Trial Court) by portraying that the respondent no.2 who was unemployed at the time, required a loan. Later, to the dismay of the petitioner and his sisters, it was revealed that the respondent no.1 & 2 had got a relinquishment deed executed in their favour on 19.02.2011. By virtue of the relinquishment deed, the respondent no.1 became sole owner of the suit property.

9. The respondent no.2 had also obtained a business loan amounting to Rs.25,00,000/- and Rs.15,00,000/- from HDB Financial Services by keeping the original papers of the suit property as mortgage/collateral. The petitioner tried to inform HDB Financial Services about the fact that the loan had been obtained by misrepresentation, but to no avail.



10. Being aggrieved by the acts of the respondents, the petitioner and his sister proceeded to file a Civil Suit bearing CS DJ No. 571/2018 against the respondents, before learned District & Sessions Judge, Rohini Court, Delhi.

11. It is the case of the petitioner/plaintiffs that the respondent no.1 is an educated lady and is capable of appending her signatures, however, the sale deed dated 12.03.2018, the gift deed dated 27.04.2018 as well as the rectified relinquishment deed dated 09.05.2018 only bear the thumb impression of the respondent no.1. It was further the case that after the abovementioned dates, the respondent no.1 appended all documents with her signature and not her thumb impression.

12. The respondents/defendants then filed their common written statement on 11.10.2018 along with an application under Order VIII Rule 1 CPC for condonation of delay in filing their written statement. In the written statement, the respondents stated that the respondent no.1 could not sign the deeds due to her ill health and that she possesses sound mind. The petitioner/plaintiff refuted the claims and also questioned the veracity of the written statement filed by the respondents.

13. After completion of pleadings, five issues were raised in the suit on 11.04.2019. Plaintiff witnesses were examined and thereafter plaintiff evidence was closed on 24.05.2022. The petitioner states that he had handed over to his previous counsel, an audio recording dated 25.05.2018 wherein the respondent no.1 can be heard stating that she had not sold the suit



property and fraud had been committed. However, the same was not placed on record due to the advice the petitioner had received from his previous counsel.

14. Thereafter, the respondent no.3 filed her evidence by way of an affidavit and the counsel for the respondents undertook to file the evidence for the respondents on the next date of hearing. However, no such affidavit was filed and the matter was renotified for 09.05.2023 for the remaining defence evidence by way of an affidavit. On 09.05.2023, the respondents moved an application under Order VI Rule 17 of the CPC for amending their written statement and placing amended written statement on record. The matter was then further renotified for the remaining defence evidence.

15. On 27.07.2023, the application moved by the respondents under Order VI Rule 17 of the CPC was allowed and the defendant evidence was closed by the statement of the counsel for the respondents. The petitioner, however, was astonished to see that the defence evidence was closed on the said date without the evidence of respondents no.1,2 & 4 even being filed. The matter was further listed for final arguments on 05.09.2023.

16. The petitioner engaged a new counsel before the next date of hearing and on 05.09.2023, filed an application under Order VII Rule 14 read with Section 151 of the CPC for placing on record additional documents. The documents the petitioner sought to place on record are:



- (i) *pen-drive containing audio recording dated 25.05.2018 in which the Respondent No. 1/Defendant No. 1 is heard clearly saying that she had not sold the suit property to the other Respondents/Defendants,*
- (ii) *a copy of the application filed by the Respondent No. 1/Defendant No. 1 under Rule 22(3) Delhi Maintenance and Welfare of Parents and Senior Citizens Act and*
- (ii) *copy of Voter I-d card of the Respondent No.1/Defendant No.1*

17. Vide the impugned order on 05.09.2023, the learned Trial Court dismissed the application of the petitioner under Order VII Rule 14 read with Section 151 of the CPC for placing additional documentary evidence on record, thereby leading to the petitioner to invoke this court's jurisdiction under Article 227 of the Constitution of India.

Submissions of the Petitioner:

18. The petitioner submits that the impugned order is liable to be set aside as the order has been passed in a mechanical manner by overlooking the fact that the additional documentary evidence the petitioner sought to place on record would be required for the adjudication of the suit before the learned Trial Court. It is further stated that the learned Trial Court did not peruse the documents to be placed on record.

19. Learned counsel submitted that the documents are important and are necessary for just adjudication of the case, which fact has been ignored by the learned Trial Court. The petitioner states that grave prejudice would be caused to him. The petitioner relied upon the following judgments:-



- i. *Rafiq & Anr. vs. Munshilal & Anr*, AIR 1981 SC 140
- ii. *Smt. Lachi & Ors. vs. Director of Land Records & Ors*, AIR 1984 SC 41.
- iii. *Mohanlal Shamji Soni vs. Union of India*, 1991 SUPP (1) SCC 271.
- iv. *Ritesh Tiwari vs. The State of UP*, (2010) 10 SCC 677.

20. The petitioner submits that the learned Trial Court in the impugned order had noted that the application under Order VII Rule 14 read with Section 151 of the CPC is being filed at a belated stage and a mere change of counsel cannot be a ground for allowing an application. Whereas, the delay was caused due to incorrect legal advice and the petitioner was still under the impression that the counsel would confront the respondent no.1 with the audio recording, however, the respondent no.1 was not examined as a defendant witness despite having taken various dates and thereafter the defence evidence was closed. The petitioner states that at the very next opportunity available, the application for placing additional documents on record was moved. Reliance is placed on “**M/s Golden Tobacco Limited & Anr vs ITC Limited & Anr**” in WP(C) 9490/2019.

21. Learned counsel submitted that the audio recording of respondent no. 1 is a relevant piece of evidence wherein respondent no. 1 can be heard clearly stating that she had not sold the suit property to the other respondents. Respondent no. 1 asserts in audio recording that “..... *dhoke se karwaya hain*” and “..... *maine becha nahi hain*”. It was submitted that the said audio recording is necessary to establish that the sale deeds



executed by respondent no. 1 in favour of other respondents are a sham and fraudulent. Being an essential piece of evidence, the same cannot be ignored on the ground that the trial shall be delayed as the Court is required to do substantial and real justice. Thus, by not allowing the petitioner to place on record the additional evidence, a grave prejudice shall be caused to him and would impact fair and proper adjudication of the suit pending before the Court.

22. It was submitted that the law has been well settled that a litigant shall not suffer for the fault of his advocate. The Court is required to take active role in the proceedings in finding the truth and administering justice and should not simply sit as a mere empire at a conflict between two parties.

23. It was also submitted that the petitioner may not be debarred from placing additional evidence, which is necessary to arrive at just decision of the case. Learned counsel further submitted that in the case of “M/s Golden Tobacco Limited & Anr. vs. ITC Limited & Anr.”, the Hon’ble Supreme Court had permitted documents and additional evidence to be led at a belated stage even when final arguments were heard in part, subject to cost.

24. Learned counsel submitted that the procedural and technical hurdles shall not be allowed to come in way of Court while doing substantial justice. Thus, the impugned order be set aside and the petitioner be afforded an opportunity to place additional evidence on record.

Submissions of the Respondents:



25. The entire set of submissions was refuted on behalf of the respondents, learned counsel submitted that the petitioner had instituted a case in the year 2018 and the present application has only been moved to delay the proceedings of the case.

26. It is submitted that the petitioner wants to travel beyond the well established law i.e. documents, which were in his knowledge and possession should have been filed at an appropriate stage and to contend that the same could not be placed on record at the relevant stage due to the wrong advise given by the previous counsel, cannot be made a ground to file the documents at a belated stage. Reliance is placed upon the judgment of this Court in the matter of “*Asia Pacific Breweries vs. Superior Industries*” in CS (OS) No. 946/2022.

Analysis and conclusion:

27. Notably, relevant observations of the learned Trial Court while rejecting the application filed by the petitioner are reproduced herein below for ready reference:-

“12.The court is in agreement to judgment cited by the counsel for the defendant wherein, it has been held that if such documents are allowed, the other party will have to be given a chance to rebut which would lead to a fresh trial. The amendments in CPC in 1976, 1999 and 2002 were carried out by the Legislature with the sole purpose that the trial should finish early and trial should not be prolonged. Parties were put on notice by the Legislature that they should file all the documents in their power and possession at the time of filing of the suit.

13. The application cannot be allowed at this belated stage as with the progress of the case, fresh material cannot be added without just and



reasonable grounds. The application is meritless and in the opinion of the court, the same deserves dismissal which the court directs.”

28. Order VII Rule 14(2) CPC mandates that the documents on which a plaintiff rely upon should be entered in a list, which should be annexed with the plaint. Order VII Rule 14(3) CPC provides that a new document can surely be produced on behalf of the plaintiff, even subsequently but the same has to be done with the leave of the Court. It is not that the plaintiff has a legally vested right to file documents at a belated stage, he is required to show the reason as to why the documents that were in power & possession, could not be filed at any appropriate stage. Order VII Rule 14(3) CPC gives a discretionary power to the Court, which has to be exercised in a reasonable and legal manner. In fact, this power has to be exercised sparingly.

29. In the present case, the reason given by the petitioner for filing the pendrive and the other two documents at a belated stage i.e. when the case is at the final hearing of the suit is that his erstwhile counsel has misadvised and misdirected him not to file the said documents on record. However, the subsequent advocate appointed by him to pursue his case found the aforementioned documents to be relevant and thus, advised him to place the said documents on the record. In any event, it is clear that the documents now to be placed on record were in the power and possession of the petitioner at the time of filing of the suit.



30. Pertinently, the petitioner herein and his two sisters filed a suit for cancellation of relinquishment deed dated 19.12.2011, cancellation of sale deed dated 12.03.2018, cancellation of gift deed dated 27.04.2018 and also for declaring 3/5th share in the suit property as well for partition of the suit property on 23.07.2018. It is the contention of the petitioner that in July, 2018, he had handed over the audio recording concerning respondent no. 1 to his erstwhile counsel, who told the petitioner that said recording is not admissible in Court and did not place the said audio recording on record. The issues were framed on 11.04.2019. In support of their case, the petitioner and others examined three witnesses w.e.f. 23.01.2020 to 24.05.2022. The respondents started their evidence on 13.12.2022 and only examined respondent no. 3 as the sole witness, however, did not produce any other witness in their defence. The defendants' evidence was closed vide order dated 27.07.2023. In the meanwhile, the application moved on behalf of the respondents under Order VI Rule 17 CPC was allowed and the amended written statement was taken on record. The matter thereafter was notified for final arguments, to be heard on 05.09.2023.

31. According to the petitioner, he had engaged a new counsel after 27.07.2023 and on his advice, moved the application under Order VII Rule 14 of the CPC on 05.09.2023. Needless to say, the petitioner has not shown any reason with respect to two documents i.e. application filed by respondent no. 1 and voter ID card of respondent no. 1, for not placing on record these documents, although being in his possession even at the time of



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institution of suit. The petitioner has given explanation only with respect to the audio clipping not being placed on record earlier. Noticeably, respondent no. 1 has not stood in the witness box and defendant's evidence has been closed. Moreso, respondent no. 1 does not seem to be aggrieved with sale of properties as she has not instituted any suit for cancellation of sale deeds executed by her in favour of respondent nos. 3 and 4 namely Mrs. Radha Garg and Mr. Uma Mittal. Not only has the petitioner moved the application at a belated stage when the case is ripe for hearing final arguments but has also failed to point out any cogent relevancy of the audio clipping of respondent no. 1 specifically when the sale deeds are not challenged by respondent no. 1, therefore, no purpose would be served by allowing the pendrive to be place on record.

32. Considering the aforesaid, no illegality could be found with the impugned order. Consequently, the petition is dismissed.

SHALINDER KAUR, J.

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