



2024:DHC:10040



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 05th December, 2024

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C.R.P. 337/2024 & CM APPL. 66923/2024**JAI PRAKASH**

S/o Shri Chhoti Singh,
RZ-61/350, Jagdamba Vihar,
West Sagarpur, South West Delhi,
Delhi

.....Petitioner

Through: Ms. Monisha Handa, Advocate
(DHCLSC).

versus

1. SMT. ANITA DEVI

W/o Shri Virender Singh,
R/o 422/394, Gali No. 12,
Shivpuri, West Sagarpur,
New Delhi

.....Respondent No. 1

2. THE DY. COMMISSIONER

M.C.D., Najafgarh Zone,
Near Pani Ki Tanki,
Najafgarh, Delhi

.....Respondent No. 2

3. THE S.H.O.

P.S. Sagarpur,
Delhi

.....Respondent No. 3

Through: Mr. Siddhant Nath, SC & Mr.
Bhavishya Makhija, Advocate for
R-2.
Mr. Manish Mohan, CGSC with Mr.
Jatin Teotia, Mr. Mohit Bangural &



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Mr. Samarth Talesara, Advocates for
R-3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. *The present Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC, 1908") has been filed on behalf of the Revisionist/Defendant No. 1/ Jai Prakash to challenge the Order dated 04.09.2024 vide which Application u/O XV1 Rule 1(3) of CPC, 1908 to examine two Official witnesses and Application under S. 45 of the Indian Evidence Act, 1972 to examine one Handwriting Expert, were dismissed.*
2. The learned District Judge dismissed the Application for examination of hand writing expert by holding that the same has been filed at a belated stage when the trial has been pending at the stage of D.E. since 2019.
3. The Application for examination of the *two Official Witnesses* was dismissed by observing that there was no reference to these documents in the List Of Witnesses filed on behalf of the Revisionist/Defendant No. 1 and he cannot spring a surprise on the opposite party in the later stage of the trial. It was further observed that the relevancy of these documents, was also not made out and the Application was dismissed.
4. *Learned counsel on behalf of the Revisionist/Defendant No. 1* has contended that the two witnesses from the Office of Sub-Registrar and Municipal Corporation of Delhi (MCD) are material to establish the exact nature of the subject property and whether it was amenable to sale/transfer by virtue of GPA, ATS, etc.



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5. Moreover, Smt. Prem Lata, mother of the Revisionist/Defendant No. 1, ostensibly acquired ownership and title of the Property bearing Plot No. 61, measuring 37 ½ sq. yards, Khasra No. 350, situated in the Revenue Estate of Village Nasirpur, Delhi, *Abadi* known as Jagdama Vihar, West Sagarpur, Delhi (*hereinafter referred to as* “subject property”) by virtue of GPA, Agreement to Sell and Receipt dated 11.03.1992, executed in her favour by her husband Late Shri Chhoti Singh. When these documents are forged and fabricated, Smt. Prem Lata had no right or title of any nature to sell the subject property further to any other person.

6. It is further argued that the witnesses sought to be examined are all material witnesses and if he is not permitted to examine the witnesses, he would be deprived of an opportunity to bring on record the material facts and evidence.

7. In support of her assertions, reliance has been placed upon the decision in Gopala Krishna Murthy vs. B. Ramachander Rao and Ors., MANU/AP/0042/1973.

8. **Learned counsel for the Respondent No. 1/Plaintiff** has, however, vehemently contended and contested the present Revision Petition and submitted that neither is the relevancy of the documents, which are sought to be produced, is established nor is there any justification to examine the Handwriting Expert at this stage of the trial since the Suit was filed in the year 2012 and the evidence of the Respondent No. 1/Plaintiff got concluded in 2019. The matter is pending at the stage of Revisionist/Defendant No. 1. Such Applications have been rightly dismissed by the learned District Judge.

9. ***Learned counsel on behalf of the Respondent No. 2/Union of India*** has taken a ***preliminary objection*** that the Revision Petition under Section



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115 of CPC, 1908 against the impugned Order dated 04.09.2024 is not maintainable.

10. It is further argued that the Impugned Order dated 04.09.2024 does not suffer from any infirmity and the Revision Petition is liable to be dismissed.

11. Submissions heard and the record perused.

12. At the outset, though a *Preliminary Objection* has been taken that the Revision Petition is not maintainable against the Impugned Order dated 04.09.2024 *vide* which the summoning and examination of the witnesses by the Revisionist/Defendant No. 1 has been denied and impugned Order should have been challenged under Article 227 of the Constitution of India, it is observed that such hyper technicalities cannot be allowed to stand in the way of considering the issue at hand, on merits. Thus, the present Revision Petition impugning the Order dated 04.09.2024 is taken up for consideration under Article 227 of the Constitution of India, 1950.

13. The *Application under Section 45 of the Indian Evidence Act, 1872 read with Section 151 of CPC, 1908* have been filed on behalf of the Revisionist/Defendant No. 1 in 2024, to examine the handwriting Expert.

14. To understand the controversy and also the relevancy of the examination of the witnesses as sought by the Revisionist/Defendant No. 1, it would be pertinent to refer to the brief background of the case.

15. The Respondent No. 1/Plaintiff has filed the *Suit for Recovery of Possession and Permanent and Mandatory Injunction against the Revisionist/Defendant No. 1* in respect of the subject property on the basis of the *registered Sale Deed dated 12.01.2011*, executed in her favor by one Shri Gopi Nath.



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16. It is not in dispute that the subject property was originally purchased by Late Shri Chhoti Singh by virtue of GPA and Agreement to Sell dated 11.01.1988 from its owner. Apparently, Late Shri Chhoti Singh transferred the subject property to his wife, Smt. Prem Lata, on the basis of *GPA, Agreement to Sell and Receipt dated 11.03.1992*.

17. It has been submitted that Smt. Prem Lata sold the subject property to her two sons, namely, Revisionist/Defendant No. 1 and Shri Mahesh Kumar by virtue of GPA and Agreement to Sell dated 06.12.1996. Thereafter, Shri Mahesh Kumar sold his 50% share in the subject property to Shri Rakesh Kumar *vide* GPA and Agreement to Sell etc., who in turn sold the subject property to Shri Gopi Nath *vide* GPA and Agreement to Sell dated 28.07.1997. Finally, the subject property got sold to the Respondent No. 1/Plaintiff by virtue of a registered Sale Deed dated 12.01.2011, who is seeking her title in the suit property thereunder.

18. The Revisionist/Defendant No. 1 has further asserted that Shri Mahesh Kumar, his brother, died intestate 14.03.1998, in road accident during the lifetime of Smt. Prem Lata, his mother. Since Shri Mahesh Kumar died issueless, the subject property came to the share of Smt. Prem Lata and the Revisionist/Defendant No. 1, being the two surviving legal heirs, became owners of to the extent of 50% share in the suit property, each. Consequently, after the demise of Smt. Prem Lata on 20.07.2006, the Revisionist/Defendant No. 1, being the only legal heir, has become the absolute owner of the subject property and no right, title or interest was ever created in favor of the Respondent No. 1/Plaintiff.

19. The defendant No.1 has thus, asserted that the mother never became owner of the subject property and any ostensible sale transaction through her



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is non est.

20. The Respondent No. 1/Plaintiff has examined all the witnesses and the plaintiff evidence was closed on 06.02.2019. Thereafter, the matter has been pending at the stage of evidence of the Revisionist/Defendant No. 1, who has examined 8 witnesses.

21. ***The Revisionist/Defendant No. 1*** has questioned the genuineness of the GPA, Agreement to Sell and Receipt dated 11.03.1992 allegedly executed by his father Late Shri Chhoti Singh, the original owner of the subject Property in favor of his wife, Smt. Prem Lata (mother of the Revisionist). Thus, he intends to examine the Handwriting Expert to verify the thumb impression of Late Shri Chhoti Singh on the alleged GPA, Agreement to Sell and Receipt dated 11.03.1992, to prove that the Respondent No.1/ Plaintiff does not have a clear title with respect to the suit property.

22. ***Considering the controversy in hand and to settle all the disputes forever, the present Revision Petition is partly allowed for examination of the Handwriting Expert by Revisionist/Defendant No. 1, subject to cost of Rs. 25,000/-, to be paid to the Respondent No. 1/Plaintiff.***

23. For the purpose of examination of the Handwriting Expert, the Revisionist/Defendant No. 1 shall move an appropriate Application for the Handwriting Expert to take the photographs of the requisite documents.

24. The *Report of the Handwriting Expert* shall be submitted with the copy to the opposite party and the entire evidence be concluded by the Revisionist/Defendant No. 1 within three months.

25. *The Application under Order XVI Rule 1(3) of CPC, 1908* for summoning the witnesses from the Office of Sub-Registrar-IX, District



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South West, Delhi and from the Office of Town Planning Department of MCD was also filed by the Revisionist.

26. The first Official Witness-Record Clerk/any official from the office of Sub- Registrar is required to prove the relevant Standing Departmental Instructions in respect of unauthorized, regularized colonies and unauthorized colonies yet to be regularized, aside from proving various Minutes of Meetings of Sub-Registrar held on 08.03.2011. Similarly, the second Official Witness - Record clerk/any official from the office of Town Planning Department of Municipal Corporation of Delhi to prove the Layout Plan of unauthorized regularized colony, Sagarpur.

27. *Insofar as the witness from the Office of Sub-Registrar to produce the Minutes of the Meeting with Sub-Registrar held on 08.03.2011; Order dated 04.05.2010 of Shri D.M. Spolia, Principal Secretary (Revenue) and Divisional Commissioner, Delhi; Minutes of the Meeting with Deputy Commissioners held on 04.08.2005; Order dated 08.02.2011 of Shri D.M. Spolia, Divisional Commissioner/Inspector General Registration, Delhi; List of unauthorized colonies pending regularization before NCT of Delhi till date; and List of regularized colonies of Delhi till date and the status of Khasra No. 350, Village, West, Sagarpur, Delhi, is concerned, these are Gazette Notifications and public documents, the certified copies of which which can be produced by the Revisionist/Defendant No. 1. Moreover, the documents sought to be produced about the Colony being unauthorized is not even relevant to the controversy in the Suit. Therefore, the witness from the Sub-Registrar's Office is not required.*

28. *The second witness sought to be examined is from the Office of Town and Planning Department of MCD to prove the lay out plan of unauthorized*



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Colony, Sagarpur West, Pankha Road, Municipal Zone Najafagarh, Delhi. However, again this Lay Out Plan is not material for the purpose of deciding the issues in the Suit.

29. *The aforesaid two witnesses who are now sought to be examined by the Revisionist/Defendant No. 1 have no relevancy and, therefore, have been rightly dismissed by the learned District Judge.*

30. Accordingly, the present Revision Petition along pending Application(s), if any, is disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 5, 2024
S.Sharma