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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 29th November, 2024

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C.R.P. 353/2024 & CM APPLs. 69685/2024, 69686/2024

SUJATA JAIN & ANR. THRU ATTORNEYHOLDER SH NIKESH JAINPetitioners

Through: Mr. Anuj Jain, Advocate.

versus

ANIL KUMAR JAIN & ORS.Respondents

Through: Mr. Dinesh Kumar Gupta & Mr. Vidit Gupta, Advocates for R-1 & LR of R-2.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CM APPL. 69716/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The Application is disposed of.

C.R.P. 353/2024

1. Civil Revision Petition under *Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC, 1908")* read with *Section 151 CPC, 1908* has been filed on behalf of the Petitioner through SPA (LRs of deceased Defendant, Shri J.P. Gupta) to challenge the Order dated 14.11.2024 whereby the Application under *Order XVII Rule 3 of CPC, 1908*, has been allowed and right to cross examine the Respondents has been granted to Ms. Sujata Jain and Ms. Kumkum Goyal, the Revisionists.

2. *Admittedly*, Shri J.P. Gupta who was the father of the Revisionists, was the owner of property bearing No. 52, AGCR



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Enclave, situated in Village Karkardooma, Illaqa Shahdara, Delhi (*hereinafter referred to as "Suit Property"*) having been allotted this plot by AGCR Co-operative Housing Building Society Ltd. on which building was constructed by Shri J.P. Gupta.

3. He entered into an Agreement to Sell dated 07.12.1994 in favour of Shri Anil Kumar Jain (Respondent herein) for a sale consideration of Rs.9,75,000/-. Rs.2 lakhs were paid while the balance amount of Rs.7,75,000/- was to be paid on or before 31.01.1995 by Shri Anil Kumar Jain and Shri J.P. Gupta was to hand over the physical and vacant possession of the property to Shri Anil Kumar Jain and execute the requisite documents.

4. Shri Anil Kumar Jain in terms of the Oral Agreement, paid Rs.11,971/- through cheque dated 30.12.1994 as conversion charges to be paid to DDA to convert the property from lease hold to freehold.

5. According to Shri Anil Kumar Jain, he on 30.01.1995, paid the balance sum of Rs.7,25,000/- in cash at the house of Shri J.P. Gupta for which Shri J.P. Gupta gave a Receipt dated 07.12.1994 for the entire sale consideration of Rs.9,25,000/-. The Sale Deed was to be executed but Shri Anil Kumar Jain requested Shri J.P. Gupta that the name of his brother's wife Smt. Usha Rani Jain be also included as purchaser of the property.

6. At the time of drafting of the Agreement to Sell, Shri Anil Kumar Jain realised that Shri J.P. Gupta had agreed to sell only 1st Floor (terrace) and mezzanine rights of 1st floor and not the super structure that already existed on the first floor. Consequently, a fresh document was sought to be executed but Shri J.P. Gupta agreed to do



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so only if the sale consideration would be mentioned as Rs.2,25,000/- even though the sum of Rs.9,75,000/- stood paid.

7. A fresh Agreement to Sell for the first floor of the property in question along with the super structure and the right to mezzanine, was executed on 30.01.1995 by Shri J.P.Gupta in favour of Shri Anil Kumar Jain for Rs.2,25,000/-. Further documents by way of GPA, Will, Receipt of Rs.2,25,000/-, SPA, Surrender Deed, Indemnity Bond, etc. were also executed in favour of Shri Anil Kumar Jain. Further, the possession was also handed over to him on 30.01.1995, after receiving the balance sale consideration of Rs.38,029/-. Since then, Shri Anil Kumar Jain and his family has been in possession of the Suit Property.

8. On 07.09.1995, a Conveyance Deed was executed by DDA in favour of Shri J.P. Gupta which was registered on 29.02.1996. However, till then the prices of the property increased and Shri J.P. Gupta in the year 1997 told Shri Anil Kumar Jain to take back his money and to vacate the property. This led to the disputes.

9. The Defendant Shri J.P. Gupta thus, filed a *Civil Suit No.397/1998 (renumbered as CS (OS) No. 1146/2006) for Declaration, Possession, Injunction and Mesne profits against Shri Anil Kumar Jain.*

10. Shri Anil Kumar Jain on the other hand filed a *Civil Suit No.2527/1998 (renumbered as CS (OS) 1787/2016) seeking Specific Performance of Agreement to Sell and Declaration.*

11. Since both the Suits pertained to the same Suit Property, they got consolidated by Order dated 11.10.2006 of this Court.



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12. **CS (OS) No.1146/2006** (Suit filed by Shri J.P. Gupta) was taken as the **lead suit** and joint issues were framed in the said Suit. It was further directed that the evidence shall be recorded in the lead Suit. It was also observed that Shri J.P. Gupta shall lead the evidence in respect of the issues for which the onus has been placed by him. Shri J.P. Gupta failed to adduce evidence despite opportunities and this Court *vide* Order dated 22.07.2008 closed the right of Shri J.P. Gupta to adduce evidence on the issues for which onus had been placed on him.

13. Shri Anil Kumar Jain then filed his Affidavit of Evidence as DW-1 in the Lead Suit, but no cross examination of Shri Anil Kumar Jain was done and their right to cross examine Shri Anil Kumar Jain was closed *vide* Order dated 12.01.2012. Thereafter, Shri Anil Kumar Jain closed their evidence in Civil Suit No.1147/2006 i.e. the Lead Suit filed by Shri J.P. Gupta.

14. Thereafter, while the Suits were pending, Shri J.P. Gupta died on 19.03.2011 and no substitution of his legal heirs was done in the lead Suit i.e. 1146/2006 filed by him. This suit filed by Shri J.P. Gupta was held to have abated, by Order dated 06.08.2012.

15. The Civil Suit No.1787/2016 filed by Shri Anil Kumar Jain for Specific Performance and Declaration, however, survived and was continued.

16. Thereafter, the confusion arose about there being no evidence led by the Plaintiff *Shri Anil Kumar Jain* in his Civil Suit No.1787/2016 as it was contended on behalf of the Revisionists (legal heirs of Shri J.P. Gupta) that the evidence was tendered by the



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Plaintiff in the Lead suit which is evident from the fact that he tendered evidence as DW-1. Plaintiff has not led any evidence in his own suit.

17. Furthermore, the lead Suit stood abated in 2012 and there was no Order of de-consolidation. There being no evidence in the present Suit, the Revisionists cannot be asked to cross examine the Plaintiff by taking his evidence tendered as DW-1 in the Suit filed on behalf of the J. P. Gupta, as the evidence in the Suit filed by Shri Anil Kumar Jain.

18. *The learned District Judge* considered all the contentions and observed that because the two Suits were consolidated, the evidence tendered by Shri Anil Kumar Jain even though he was defined as DW-1, pertained to both the Suits. Reference to the lead Suit was being made because the original documents had been filed in the said Suit. However, even though the lead suit i.e. CS (OS) No. 1146/2006 got dismissed, the Suit of the Plaintiff bearing CS (OS) No. 2527/1998 still survived and he cannot be deprived of his right to prove the evidence.

19. Therefore, the right to cross examine the Plaintiff by the Revisionists, even though got closed way back in 2012, was granted to them in the interest of justice. The Application and the matter was listed for cross examination of Shri Anil Kumar Jain, Plaintiff in CS (OS) No. 1787/2016 by the Revisionists.

20. *Aggrieved by the said Order, the present Revision Petition has been filed.*

21. *It has been vehemently contended on behalf of the Revisionist*



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that the very fact the Affidavit of Evidence of Shri Anil Kumar Jain was tendered as DW-1 in the Suit filed by Shri J.P. Gupta, it is evident that the Evidence was confined to that particular Suit which has got dismissed on 06.08.2012. The evidence tendered by Shri Anil Kumar Jain in that Suit, cannot be deemed to be the evidence pertaining to his own suit. Since no evidence has been tendered by Shri Anil Kumar Jain in his own Suit, there can be no question of his cross examination by the Revisionists. Therefore, the Order of the learned District Judge is erroneous and needs to be set aside.

22. *Learned counsel on behalf of the Respondent*, Shri Anil Kumar Jain, however, has contended that even though the lead Suit got dismissed but it did not deprive the Plaintiff, Shri Anil Kumar Jain to lead evidence in his own Suit. Merely because the Evidence was consolidated and was being recorded in the Suit in which Shri Anil Kumar Jain was a Defendant, the nomenclature adopted for his testimony was 'DW' does not imply that it was intended to be only in respect of the lead Suit.

23. It is, therefore, submitted that the impugned Order of the learned District Judge does not merit any interference and the present Revision is liable to be rejected.

24. **Submissions Heard and record perused.**

25. To consider chronologically, Shri J.P. Gupta had filed his first Suit while the second Suit for Specific Performance got filed by Shri Anil Kumar Jain. Both pertained to the same suit property in respect of which Shri J.P. Gupta claimed possession, while Shri Anil Kumar Jain in his Suit sought Specific Performance of the Agreement to Sell.



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26. As is evident from the Order dated 11.10.2006 of this Court, since the controversy pertained to the same Suit Property, this Court consolidated the two suits and the Civil Suit No. 1146/2006 that was filed by Shri J.P. Gupta, was taken as the lead Suit since all the documents had been filed in the said Suit.

27. The issues were jointly framed for both the Suits.

28. It was specifically directed that the evidence shall be opened by Shri J.P. Gupta. It is quite evident that there were two Suits but the direction was to record the evidence in one Suit. Shri J.P. Gupta failed to adduce any evidence while Shri Anil Kumar Jain tendered his affidavit though nomenclatured as 'DW-1'.

29. It is evident from the Order dated 11.10.2006 that whatever be the nomenclature, Shri Anil Kumar Jain appeared as a witness both in defence of the Suit filed by Shri J.P. Gupta and also in support of his own Suit seeking Specific Performance of Agreement to Sell. The contents of Affidavit of Evidence would also make this evident.

30. The lead Suit filed by Shri J.P. Gupta eventually got dismissed on account of abatement as after his demise his LRs did not seek impleadment. Even though the Suit of Shri J.P. Gupta got dismissed in 2012, it would not *ipso facto* imply the rejection of the suit of Shri Anil Kumar Jain as well. The evidence since consolidated, pertained to both the suits.

31. The Revisionists have incorrectly asserted that the Evidence of Shri Anil Kumar Jain did not pertain to his own Suit. The learned District Judge has rightly observed that the Evidence of Shri Anil Kumar Jain has to be read in his own Suit. Furthermore, though the



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right to cross examination of the Revisionists (Defendants) in the Suit of Shri Anil Kumar Jain, had been closed way back in 2012 but in the interest of justice they have been permitted to cross examine Shri Anil Kumar Jain.

32. Merely because the Affidavit of Evidence was tendered in the lead Suit of Shri J.P. Gupta, would not imply that the Evidence led by Shri Anil Kumar Jain in the consolidated Suits, was confined only to the lead Suit.

33. The learned District Judge has rightly held the evidence of Shri Anil Kumar Jain to be pertaining to his own civil Suit No. 1787/2016.

34. There is no infirmity in the Order of the learned District Judge.

35. The Revision is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 29, 2024

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