



2024:DHC:5015



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

% **Judgment reserved on: 21.03.2024**
Judgment pronounced on: 08.07.2024

+ **CM(M) 726/2018 & CM APPL. 26153/2018**
RAVI SETIA & ANR

..... Petitioners

Through: Mr. H.S. Phoolka, Sr. Advocate
alongwith Ms. Alakh Kumar and Ms.
Surpreet Kaur, Advocates.

versus

SOM NATH SETIA & ORS

..... Respondents

Through: Mr. Pawanjit S. Bindra, Sr. Advocate
with Mr. Vinayak Marwah, Advocate
for R-1.
Ms. Vidhi Gupta, Advocate for R-1 &
2.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioners are aggrieved by the order dated 05.06.2018 passed by the learned Additional District Judge-03, South District, Saket Court Complex, New Delhi (in short "Trial Court") in CS no.8413/16, titled as "*Som Nath Setia vs. Ravi Setia & Ors.*" whereby the learned Trial Court partly allowed the application moved by the respondent no.1 herein under Section 151 of Civil Procedure Code, 1908 (in short "CPC") seeking the present suit to be adjourned *sine die* and to restrain the petitioners from cross-examining the respondent no.1 herein on the basis of the documents being declared null and void.



2. Petitioners herein are the defendants and the respondent no.1 herein is the plaintiff in CS no.8413/16 which is pending adjudication before the learned Trial Court.

3. To put it succinctly, the relevant facts are that petitioner no.2 had filed a suit titled as "*Surinder Kumar vs. Som Nath & Ors.*" bearing no. 25/1996 before the Civil Judge (Junior Division) & Judicial Magistrate First Class, Pilli Banga, District Hanumangarh, Rajasthan against respondent no.1 and petitioner no.1 seeking a decree of declaration to the effect that parties be declared owners of property no. A-13, Geetanjali Enclave, New Delhi (hereinafter referred to as "suit property"), under a family settlement dated 05.11.1993 whereby the said property fell to the respective shares in terms of the family settlement. Additionally, the petitioner no.1 also prayed for a decree of partition in respect of one half share in the suit property. The above suit was decreed vide judgment and decree dated 12.12.1996 passed by the learned Civil Judge, strictly in terms of family settlement dated 05.11.1993 between the parties.

4. Thereafter, the respondent no. 1 filed a suit bearing CS no.257/2001 titled as "*Som Nath Setia vs. Ravi Setia & Ors.*" before the Court of learned Senior Civil Judge (West), Tis Hazari Courts, Delhi against the petitioners and Delhi Development Authority for declaration, cancellation of documents and permanent injunction, to declare the General Power of Attorney dated 23.07.1993 (in short "GPA") said to be executed by respondent no.1 in favour of Sh. Madan Lal as null and void; a decree of declaration to the effect that Family Settlement dated 05.11.1993 between the petitioner no.1 and petitioner no.2 was null and void and to cancel the same; to pass a decree of declaration against the petitioners declaring that



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the Decree dated 12.12.1996 passed in suit no.25/1996 by the Court of Civil Judge, Hanuman Garh, Rajasthan as invalid, null and void and consequential relief of injunction to restrain petitioner no.1 and respondent no.2 from acting upon the GPA dated 23.07.1993, Family Settlement dated 05.11.1993 and decree dated 12.12.1996; a decree of permanent injunction against respondent no.3 from acting on the aforesaid documents.

5. Vide judgment dated 24.07.2017, the learned Senior Civil Judge decreed the said suit and declared null and void, the GPA dated 23.07.1993, the Family Settlement dated 05.11.1993 and the judgment and decree dated 12.12.1996, passed in CS no.25/1996, by the learned Civil Judge, Rajasthan. Subsequently, the petitioners preferred an appeal against the said judgment & decree, which is pending adjudication before the Court of learned Additional District Judge, South District, Saket.

6. In the meanwhile, the respondent no.1 filed the present suit bearing CS (OS) no.2242/2010, before this Court against the petitioners for declaration and permanent injunction, thereby declaring Agreement to Sell dated 09.10.2009, General Power of Attorney dated 09.10.2009, Special Power of Attorney dated 09.10.2009 and Will dated 09.10.2009 executed by petitioners herein as vendors in favour of respondent nos. 2 and 3 in respect of the suit property as null and void and non-est. On enhancement of pecuniary jurisdiction of District Courts, the said suit was transferred to the learned Trial Court and renumbered as CS no.8413/16. On 05.05.2014, the issues were framed on the pleadings of the parties and respondent no.1 filed his evidence by way of affidavit. Eventually, the cross-examination of PW-1/respondent no.1 commenced on 15.09.2014.



7. During cross-examination, respondent no.1 was asked certain questions regarding execution, cause and effect of the documents to which an objection was raised by the learned counsel for the respondent no.1 on the ground that the said documents have already been declared null and void in suit bearing CS no.257/2001, therefore, questions regarding the same cannot be put to respondent no.1.

8. On 25.11.2017, the respondent no.1 moved an application under Section 151 CPC stating that in view of the pendency of an appeal against the judgment dated 24.07.2017, the present suit be adjourned *sine die* and the petitioners be restrained from cross-examining the PW-1/respondent no.1 based on the documents already declared null and void.

9. Vide impugned order dated 05.06.2018, the learned Trial Court disposed of the said application of respondent no.1 holding that the petitioners could not be permitted to cross-examine respondent no.1 regarding the documents which have been declared null and void by the judgment dated 24.07.2017, in suit no.257/2001. Additionally, the learned Trial Court observed that the suit cannot be adjourned *sine die* as the relief prayed for in the present suit is not same as that in the suit where a judgment dated 24.07.2017 has been passed.

10. The petitioners are aggrieved by the said order of the learned Trial Court and assailed the same before this Court by filing the present petition under Article 227 of the Constitution of India.

Submissions of the petitioners

11. Mr. H. S. Phoolka, learned Senior Counsel for the petitioners submitted that the learned Trial Court failed to appreciate that the judgment dated 24.07.2017 wherein the documents were declared null and void has



not yet attained finality as the appeal against the same is pending. The emphasis of the learned Senior Counsel is on the submission to treat the said documents valid as if no decree is passed, declaring the same as null and void since the appeal against the judgment and decree dated 24.07.2017 is pending adjudication. Reliance is placed on the case titled ***“Malluru Mallappa(D) Thr. Lrs. vs. Kuruvathappa & Ors.”*** [C.A. No. 1485/2020].

12. The learned Senior Counsel further submitted that in case, the petitioner succeeds in the appeal, hence, in order to avoid the recalling of the witnesses, the cross examination may be permitted subject to the order to be passed by the Appellate Court. The correct approach in this case would be while permitting the cross-examination of respondent no. 1, the objections of the respondents with respect to the admissibility of the documents may be recorded by the learned Trial Court and the objections be decided later on. Hence, foreclosing the petitioner’s right to cross-examine respondent no.1 on these documents is premature and illegal.

13. Learned Senior Counsel submitted that no prejudice shall be caused to respondent no.1 in case petitioners are allowed to cross-examine respondent no.1 on documents for collateral purposes and to disprove the truthfulness of testimony of the witness. Moreso, the respondent no.1 has relied upon the so called null and void documents in its evidence affidavit and denial of cross-examination to the petitioners on such documents would cause a serious prejudice to them as the petitioners would be well within their rights to cross-examine the respondent no.1 on the documents, which were subject matter of the earlier suit also.



14. Learned Senior Counsel contended that the learned Trial Court has overlooked the crucial aspect that the opportunity to cross-examine so to confront the witnesses is necessary for resolving the actual dispute between the parties.

15. Learned Senior Counsel also submitted that the learned Trial Court has grossly erred in not appreciating that the findings in the earlier suit decided by the Court of learned Civil Judge (West), Tis Hazari Courts, Delhi cannot operate as res judicata in the present proceedings as the subject matter and prayer sought in the two suits are entirely different and even the parties involved are different.

16. To conclude, Mr. Phoolka submitted that a declaration under Section 31 of the Specific Relief Act constitutes a personal right and cannot be made universally applicable or equated to a right in rem. Hence, the impugned order has resulted in grave and serious miscarriage of justice.

17. Learned Senior Counsel to strengthen his arguments further relied upon the following judgments:

- i. ***M/s Prakash Oil Corporation and Anr. vs. Brij Kishan*** in CM(M) 1002/2018 and CM APPL. 34738/2018, decided on 1st October, 2019.
- ii. ***Bipin Shantilal Panchal vs. State of Gujarat and Anr.***, AIR 2001 SC 1158.
- iii. ***Gujrat Ambuja Cements Ltd. vs. The Mrtp Commission and Ors.***, 2006 72 SCL 363 Delhi.
- iv. ***Brij Prakash Gupta vs. Ashwini Kumar*** in CM(M) 650/2019 & CM APPL. 19603/2019, decided on 6th February, 2020.



Submissions of the respondents

18. On the other hand, respondent no.1 controverted the submissions by contending that on a bare perusal of the plaint, it would show that the documents on the basis of which petitioners assert their right in the suit property have been declared as null and void. As such, the said documents have ceased to exist in the eyes of law. Consequently, the same cannot be put to a witness during cross examination.

19. Mr. Pawanjit S. Bindra, Learned Senior Counsel for the respondent no.1 supported the order passed by the learned Trial Court and submitted that the appeal against the judgment dated 24.07.2017 is pending before the Court of learned Additional District Judge, Saket Courts, New Delhi. Consequently, the aforesaid documents cannot be put during cross examination to the respondent no.1 appearing as witness by the petitioners till disposal of the appeal.

20. Reliance is placed on the following judgments:

- i. ***Murugan & Ors. vs. Kesava Gounder (Dead) through Legal Representatives & Ors., (2019) 20 SCC 633.***
- ii. ***Gorakh Nath Dube vs. Hari Narain Singh & Ors., (1973) 2 SCC 535.***

Reasons and Conclusions

21. I have heard the submissions of both the parties and perused the record.

22. The main objective of cross-examination is to elucidate the truth i.e. to test the credibility of a witness, assess the accuracy, uncover inconsistencies or biases in the testimony of witness of opposite side.



Hence, the purpose is to test the veracity of witness by impeaching its credit.

23. In the present case, the petitioners seek to cross-examine the respondent no. 1 with respect to the documents i.e. GPA dated 23.07.1993, Family Settlement dated 05.11.1993 and a decree dated 12.12.1996 passed in suit no.25/1996 titled as “*Surinder Kumar vs. Som Nath & Ors*” by the Court of learned Civil Judge, Pilibanga, Hanumangarh, Rajasthan. Admittedly, all the aforesaid documents have been declared null and void by the judgment and decree passed by learned Civil Judge, Tis Hazari Courts-07, Delhi in suit no. 257/2001 titled as “*Som Nath Setia vs. Ravi Setia & Ors*” on 24.07.2017. The primary contention of the petitioners is that the aforesaid judgment has yet not attained finality as an appeal against the same is pending, therefore, there is every likelihood of success of the appeal and in these circumstances, it will foreclose the petitioners’ right to cross-examine the respondent no.1 on the said documents, which will result in serious prejudice to it.

24. The effect of appeal to assail an order/judgment has been considered by Hon’ble Supreme Court in ***Malluru Mallappa (D) Thr. LRs. vs. Kuruvathappa & Ors.*** (Supra) and held:

“It is a settled position of law that an appeal is a continuation of proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious



application of mind and record findings contentions.

A first appeal under Section 96 of the CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.”

25. It is noted from the record that first appeal to impugn the judgment dated 24.07.2017 is pending adjudication before the learned ADJ, Delhi, to consider all issues of law as well as fact with evidence, oral and documentary. Hence, the controversy about the validity of the documents declared null and void vide judgment dated 24.07.2017 is still sub-judice.

26. Mr. Phoolka has rightly cogitated the proposition of law that while recording the objection in respect of the non-admissibility/lack of proof of documents during cross examination of a witness in a trial/proceedings, the position of law is settled that the procedure which could be adopted is to record objection with respect to such document, if the court recording the evidence can take a decision on the objections, when it is raised, may decide the objections or may permit the cross examination to continue without prejudice to the objections and thereafter decide the objections at the stage of final arguments.

27. In the present case, the issue before the learned Trial Court is not with regard to exhibiting the documents during examination-in-chief of respondent no.1 but the question is whether petitioners can be permitted to cross-examine respondent no.1 on the documents relied upon by respondent no.1 during his examination-in-chief filed by way of affidavit which have been subsequently declared null and void vide judgment and decree dated 24.07.2017. Respondent no.1 filed his affidavit by way of evidence on 10.09.2014 and amongst others, he disputed the validity of documents i.e.



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Family Settlement, GPA and judgment and decree dated 12.12.1996. The cross-examination of the respondent no.1 with respect to said evidence affidavit is yet to be concluded, therefore, the valid right of petitioners to cross-examine the respondent no. 1 on basis of his affidavit in examination-in-chief cannot be curtailed and the petitioners have a right to put their defence to their adversary.

28. Accordingly, petitioners are permitted to put their defence including the documents as per law while cross-examining respondent no. 1. However, the objections regarding relevancy & admissibility of the documents would be considered by learned Trial Court at the time of hearing the final arguments to be addressed by the parties. Consequently, the petition along with pending application is disposed of.

SHALINDER KAUR, J.

JULY 08, 2024

ss/SU