



2024:DHC:7353



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

% **Date of order: 9th September, 2024**

+ **C.R.P. 197/2018, CM APPL. 37920/2018 & CM APPL. 24208/2019**

BHANU PRAKASHPetitioner

Through: **Mr.Charan Singh and Ms.Renu Rani,**
Advocates

versus

JAI PRAKASHRespondent

Through: **Mr.Vijay Kinger, Ms.Roopa Nagpal**
and Mr.Krishna, Advocates
alongwith respondent

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ("CPC" hereinafter) has been filed on behalf of the petitioner seeking setting aside of the order dated 7th June, 2018 passed by the learned District and Sessions Judge, Shahdara, Karkardooma Courts, Delhi in Appeal no. 545/2018.

2. The brief facts of the instant matter that led to the filing of the instant revision petition are as follows:

- (i) The petitioner/defendant and the respondent/plaintiff are brothers, and sons of late Smt. Tulsi Devi, who died intestate,



2024:DHC:7353



leaving behind the property bearing no. 128, Chandu Park, Ram Nagar, Delhi-110051 (“suit property” hereinafter). Pursuant to the same, all the nine legal heirs became joint owners/coparceners of 1/9th share each, in the said suit property, after which the petitioner came into the possession of the second floor in the said suit property.

- (ii) Subsequently, dispute arose between the parties, aggrieved by which the respondent/plaintiff instituted a civil suit bearing no. 9628/2016, against the petitioner/defendant, before the learned JSCC-ASCJ-GJ, Shahdara, Karkardooma Courts, Delhi (“learned Trial Court” hereinafter), thereby, seeking recovery of Rs. 13,165/- along with *pendente lite* and future interest.
- (iii) The respondent/plaintiff in the aforesaid suit contended that the defendant/petitioner failed to pay the bill towards the BSES electricity connection and the Delhi Jal Board (“DJB” hereinafter) water connection, while the respondent paid an amount to the tune of Rs. 8,425/- towards DJB w.e.f. 18th July, 2011 till 26th July, 2014 and an amount of Rs. 17,910/- towards BSES electricity connection w.e.f. 27th June, 2011 asserting that these payments were made for common services utilized by both the parties.
- (iv) The learned Trial Court, *vide* order dated 18th January, 2018, allowed the aforesaid suit and decreed it in favour of the respondent.



(v) Aggrieved by the aforesaid order, the petitioner preferred an appeal which was dismissed by the learned District and Sessions Judge, Shahdara, Karkardooma, Delhi (“learned Appellate Court” hereinafter) *vide* the order dated 7th June, 2018 (“impugned order” hereinafter).

(vi) In view of the aforesaid, the present petition has been filed seeking setting aside of the said impugned order.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is *void ab initio* as the learned Appellate Court failed to appreciate the fact that the learned Trial Court exceeded its jurisdiction by passing the order dated 18th January, 2018.

4. It is submitted that the original suit was civil in nature and it ought to have been adjudicated by the District Court, East District, Delhi, in terms of the information dated 6th July, 2018, received through Right to Information Act, 2005 (“RTI Act” hereinafter), and that only criminal cases fall under the Shahdara District, i.e., the learned Trial Court herein.

5. It is submitted that the learned Appellate Court failed to appreciate that in view of a registered relinquishment deed dated 5th October, 2012, the respondent has no *locus standi* and no legal right to claim recovery from the petitioner as the respondent has already relinquished his share in the suit property in favour of his father namely Sh. Chander Pal Singh.

6. It is submitted that the learned Appellate Court failed to appreciate that the petitioner had been paying half the electricity bill to his father, i.e., Sh. Chander Pal Singh, and the said electricity along with the water facility



2024:DHC:7353



was being jointly consumed by all the four parties residing in the suit property, i.e., the respondent, his father, a tenant and the petitioner, and therefore, the respondent was liable to pay 1/4th share in the bills for the same. It is submitted that the learned Appellate Court failed to take into consideration that the petitioner is in possession of one small room in the suit property with minimal consumption of civic amenities, whereas, the electricity bills with regard to the same mysteriously varied each month, raising suspicion of meter tampering in order to extort unreasonable amount from the petitioner.

7. It is submitted that the learned Appellate Court erred in dismissing the appeal and by ignoring the *mala fide* intention of the respondent as the original suit also suffered from non-joinder of a necessary party, namely BSES, i.e., the electricity provider, to the suit in view of the fact that the respondent is seeking recovery in name of the electricity bill.

8. It is further submitted that the respondent, in collusion with the father of the parties, who is a builder and a property dealer by profession and earns an income of Rs. 1,00,000/- per month, illegally sold their ancestral land, without the consent of the petitioner, which portrays the *malafide* intent of the respondent.

9. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition may be allowed and reliefs be granted as prayed.

10. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the



2024:DHC:7353



learned Appellate Court has rightly adjudicated the appeal.

11. It is submitted that the impugned order was passed after thorough consideration of the facts and circumstances of the case and no illegality or irregularity arises out of the impugned order, therefore, the instant petition is liable to be dismissed being bereft of any merits.

12. It is submitted that the learned Appellate Court properly adjudicated the appeal by taking into consideration that the petitioner failed to pay the bill towards the BSES electricity as well as the DJB water connection, while the respondent paid an amount to the tune of Rs. 8,425/- towards DJB and an amount of Rs. 17,910/- towards BSES electricity connection.

13. It is submitted that the learned Appellate Court carefully examined the evidence placed on its record and appreciated the testimony of DW2, i.e., Sh. Man Singh, who was a tenant in the suit property, wherein it is stated that the bills were duly paid by the respondent to his father, which further establishes his case.

14. It is further submitted that possession of property and payment of the electricity bill as well as the water bill were admitted by the petitioner in his written statement and thus, the impugned order has been passed in accordance with the settled position of facts and law.

15. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

16. Heard the learned counsel for the parties and perused the material placed on record.

17. It is the case of the petitioner that the learned Appellate Court



exceeded its jurisdiction by failing to consider that the respondent had already relinquished his share in the suit property in favour of their father, rendering the respondent ineligible to claim recovery from the petitioner. Furthermore, the petitioner contends that he has already paid half the bill to his father, which was not taken into consideration by the learned Appellate Court.

18. It is also argued on behalf of the petitioner that the learned Trial Court did not have the territorial jurisdiction to adjudicate the aforesaid suit for recovery and the same should have been tried under the East District, Delhi.

19. In rival submissions, learned counsel for the respondent argued that the impugned order was passed after due consideration of the fact that the petitioner duly failed to substantiate his claim by bringing on record any documentary evidence of the alleged payments, therefore, it is contended that no illegality exists in the impugned order.

20. In view of the same, the limited question for adjudication before this Court is whether the learned Appellate Court erred in law by dismissing the appeal filed by the petitioner and whether the learned Appellate Court ignored the fact that the petitioner has paid the money to his father.

21. Before delving into the merits of the case, it is imperative for this Court to peruse the findings of the learned Appellate Court in dismissing the appeal filed by the petitioner, the relevant extracts of which are as under:

“5. "Appellant contends that the impugned order is perverse and ignored the law. The impugned order is non-speaking. Plaintiff had no rights in the property, and the appellant herein was paying the rents to his father. The Ld. Court below failed to



take note that there were four users, and the liability is one-fourth. The meter is still in the name of the deceased mother. There is a suit pending for partition before the Ld. ADJ, East. Plaintiff further admitted that he is not a shareholder in property no. 128, Chandu Park. His father had taken Rs. 5,000/- for maintenance from the appellant. BSES is not made a party, and this court has no territorial jurisdiction.

6. Notices were issued, and the respondent appeared through counsel. Heard the Ld. Counsel Sh. Vishal Khanna for the appellant and Sh. J.K. Khullar for the respondent. Trial court records were summoned and perused.

7. After hearing the Ld. Counsel, the only issue that arises in this appeal is, "Whether the impugned order is perverse, opposed to the facts and law, and thus liable to be set aside?"

Contentions of the appellant:

8. The Ld. Counsel for the appellant vehemently submits that the plaintiff has no locus standi to have filed the present suit since he had executed a relinquishment deed. It is also vehemently argued that the evidence of DW-2 would conclusively establish that the amounts were paid by the defendant to the father of the parties. Therefore, the entire premise on which the suit is decreed is opposed to the facts and law.

9. On the other hand, the Ld. Counsel for the respondent submits that the cross-examination of the defendant himself conclusively establishes that he does not have documentary evidence to show having paid electricity charges at 50% to his father till February 2015. His possession is also admitted. Further, it is argued that there are many cases pending and that the evidence of DW-2 is not creditworthy to presume the payment. He prays for the dismissal of the appeal.

Answers to the issue in appeal :

10. It was argued that the plaintiff had no locus standi to have filed the suit. After having taken this contention, the defendant ought to have explained how the plaintiff is disabled from filing



the suit. He urged that on 05.10.2012, the plaintiff relinquished the property in favor of his father. It should be kept in mind that the present suit is filed not to enforce the right over the property but only to recover the charges under civic amenities consumed by the defendant. Even if the relinquishment is presumed, the liability of the user to pay the consumption charges cannot get vanquished. The liability is admitted in the written statement itself at para 4 of the preliminary objections that the defendant paid charges up to February 2015. Therefore, the liability cannot be erased.

11. The second contention is that the evidence of DW-2 would show that the amounts were paid to the father of the parties. According to DW-2, the defendant paid Rs. 50,000/- to the father of the parties for maintenance. This is clearly seen in the examination-in-chief itself at Ex. DW2/A, though DW-2, who claims to have lived for 20 years as a tenant, averred that Rs. 50,000/- was paid towards maintenance as well as electricity and water charges.

At the same time, DW-2 admitted in the cross-examination, "I have no personal knowledge of the said case of maintenance." Therefore, the ground urged by the appellant's counsel that the plaintiff has no locus to file the suit cannot be accepted in view of the plaintiff having proved through cogent evidence that the electricity and water charges were paid by producing documentary evidence at Ex. PW1/1 (14 pages) and Ex. PW1/2 (43 pages of electricity bills) and the legal notice at Ex. PW1/3.

12. The defendant in the trial court, who had taken up the contention that he paid the amounts to his father, ought to have examined his father, Chander Pal Singh, which he did not. His father was the proper person to have corroborated the testimony of DW-1. The defendant did not examine this key witness.

13. In the circumstances, the contention of the plaintiff in the trial court that the defendant-appellant is liable to pay the



amount since he admitted paying the electricity charges is proved on record and is highly probable, supported by cogent documentary evidence. The defendant, who contended that he paid his part of the liability towards the consumption of civic amenities, ought to have taken the receipts as proof of such payment, especially in the circumstances where the parties have been litigating for quite some time for the partition of the properties. Suffice it to say that after going through the evidence available on record, the reasoning given by the Ld. Court below in arriving at its conclusions does not suffer from perversity or illegality. The impugned judgment and decree thus cannot be set aside.

Consequently, the following:

ORDER

The appeal stands dismissed. The Judgment and decree in suit no. 9628/16 dated 18.01.2018 on the files of Ld. JSCC - ASCJ - GJ, Shahdara, Delhi, is hereby affirmed. There shall be no order as to costs in this appeal. Decree be prepared accordingly."

22. A bare perusal of the impugned order reveals that the learned Appellate Court examined the evidence placed before it and framed certain issues to evaluate whether the claim of the respondent herein, to recover the charges under civic amenities consumed by the petitioner/appellant, was valid despite the alleged relinquishment of share in the suit property, and whether the evidence presented was sufficient to substantiate the claims.

23. It is observed that the learned Appellate Court noted various inadequacies and shortcomings in the appeal filed by the petitioner as he ought to have examined the key witness, i.e., Sh. Chander Pal Singh, the father of the parties, as it is claimed that the petitioner paid his share to him.



Accordingly, it was held by the learned Appellate Court that the petitioner herein ought to have taken receipts of the alleged payment of his share to substantiate his claim, specifically when there are several ongoing disputes between the parties, including a suit for partition.

24. It is also observed from the impugned order that the evidence brought on record by the petitioner herein, such as the testimony of DW2, i.e., Sh. Man Singh, who is alleged to have been a tenant in the suit property, is unreliable for the reason that he had failed to produce any proof of address as mentioned in his affidavit. Therefore, in light of absence of any credible evidence, the learned Appellate Court held that the contention of the petitioner that he was liable to pay only 1/4th share towards the bills does not hold any merit.

25. In view of the abovesaid observations, the learned Appellate Court held that the case of the respondent herein is highly probable and has been duly proved by placing on record cogent documentary evidence, i.e., the water and electricity bills which reflect that he has paid the amount towards the electricity and water charges. Moreover, the said bills have not been challenged by the petitioner in the cross examination. Therefore, the learned Appellate Court found no illegality or perversity in the order dated 18th January, 2018, passed in the original suit and thus, upheld the same in the appeal.

26. In the instant appeal, the petitioner has challenged the respondent's *locus standi* to file the suit for recovery. It is the case of the petitioner that by way of a relinquishment deed dated 5th October 2012, the respondent



2024:DHC:7353



relinquished his right in the suit property in favour of their father. However, it is observed by this Court that the original suit was filed for the recovery of civic charges for amenities consumed by the petitioner and not for enforcement of any property rights.

27. In view of the abovementioned contentions, this Court observes that in paragraph no. (e) of the instant petition as well as paragraph no. 4 of his written statement in the original suit, the petitioner has duly accepted liability for the consumption of civic amenities. The same has also been duly noted by the learned Appellate Court that it is an admitted fact that the petitioner was consuming water and electricity, charges for which were being paid jointly by the parties.

28. Therefore, the petitioner's contention to challenge the respondent's *locus standi* to recover these charges, does not hold any water, especially in view of the fact that the respondent has already substantiated his claim of duly paying the charges for electricity bills and water bills by producing cogent evidence.

29. Further, the petitioner has contended that the learned Appellate Court erred by failing to take into consideration that four parties were residing in the suit property and he was liable to pay only 1/4th of the share in the total electricity and water bills, and that he has paid half of the total amount towards the same to his father.

30. On the aforesaid aspect, this Court concurs an opinion which is consistent with the reasoning of the learned Appellate Court that the petitioner, in order to substantiate his claim, ought to have obtained receipts



2024:DHC:7353



of the aforesaid payment as proof, especially in view of the continuous and ongoing disputes between the petitioner and his father regarding the partition of the family properties.

31. With regard to the petitioner's argument that he was liable only for the payment of 1/4th of the electricity and water bills, in view of the fact that apart from him, the respondent, their father and a tenant also resided in the suit property, it is observed by this Court that the petitioner has failed to provide any explanation for having paid half of the total charges nor has he furnished any proof that he was liable for only 1/4th of the amount.

32. It is further observed from the perusal of the impugned order that the contention of the petitioner that he is liable to pay only 1/4th share of the total amount towards water and electricity bills is baseless as the testimony of DW2, i.e., Sh. Man Singh, who is alleged to be a tenant in the suit property, is not reliable because he has failed to produce any documentary evidence to prove that he was a tenant in the suit property.

33. Therefore, this Court is of the view that the learned Appellate Court rightly held that the petitioner has failed to substantiate his claim in light of the fact that the testimony of DW2 is not reliable. Furthermore, this Court observes that the petitioner has failed to examine Sh. Chander Pal Singh, the father of the parties, as a witness, to substantiate his claim which implies that the reasoning given by the learned Appellate Court is in accordance with the law.

34. Insofar as the case of respondent is concerned, this Court is of the considered view that the same has been duly established in light of the



2024:DHC:7353



cogent documentary evidence produced by the respondent, i.e., the water and electricity bills, which reflect that the charges towards the aforesaid civic amenities have been paid on his behalf. It is also pertinent to note that the abovementioned bills have admittedly not been challenged in the cross examination by the petitioner.

35. Summarily stated, this Court finds no merits in the petitioner's arguments as he has failed to bring on record any proof of payment of 50% of the electricity and water bills as alleged by him, as well as failed to examine the key witness, i.e., his father in the same regard. In view of the above said, the petitioner's case is rejected being bereft of any merits.

36. The petitioner herein has also argued that the learned Appellate Court failed to take into consideration that the learned Trial Court did not have the jurisdiction to adjudicate the suit. Therefore, in assessing the merits of the submissions, at the outset, it is necessary to advert to the provisions of Section 21 (1) of the CPC, which is reproduced herein below for reference:

"21. Objections to jurisdiction. —4[(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice."

37. The aforesaid provision postulates that no objection with regard to the territorial jurisdiction shall be entertained by any appellate or revisional Court and the same has to be raised before the Court of first instance at the earliest possible opportunity. Moreover, it is only where there is a



2024:DHC:7353



consequent failure of justice that an objection as to the place of suing can be entertained.

38. This aim behind the abovementioned provision is to significantly protect the interest of the defendant, however, he is duty bound to raise the issue of territorial jurisdiction at the earliest opportunity in order to ensure that the aforesaid provision isn't misused by way of appeals and revision petitions for re-adjudication of the suit. Furthermore, the power conferred under Section 21 of the CPC is a discretionary one and the Courts are not obligated to transfer a suit, even upon meeting of all the requirements herein.

39. The above said settled position of law has been enunciated in a number of judgments passed by the Hon'ble Supreme Court as well various High Courts, including the case of ***Harshad Chiman Lal Modi v. DLF Universal Ltd.***, (2005) 7 SCC 791, wherein, the Hon'ble Supreme Court emphasized that objections to jurisdiction must be taken at the earliest opportunity. Failure to do the same precludes raising the said objection at a later stage.

40. Similarly, in ***Kiran Singh v. Chaman Paswan***, AIR 1954 SC 340, it was observed by the Hon'ble Supreme Court that once a case has been adjudicated on its merits and a judgment has been rendered, it should not be set aside purely on technical grounds. The Court held that objections regarding territorial jurisdiction are technical in nature, and the policy of the legislature is to treat them accordingly.

41. With regard to the facts of the instant case, the petitioner herein is also challenging the impugned order by stating that the same is *void ab initio* as



2024:DHC:7353



the learned Trial Court exceeded its territorial jurisdiction in terms of the information dated 6th July, 2018, received under the RTI Act, which states that the cases of civil nature shall be filed in accordance to the area of concerned Sub-Divisional Magistrate. Learned counsel for the petitioner has contended that upon receiving the aforesaid information it was noted that the present case which is arising out of the area/locality called 'Chandu Park' comes under the East District, and therefore, the adjudication of the suit by the learned Trial Court was not as per the jurisdiction conferred upon it.

42. With regard to the issue of territorial jurisdiction raised on behalf of the petitioner, by relying upon the information under the RTI Act, it is duly observed by this Court that the same was not raised before the learned Trial Court in the original suit and the aforesaid contention with regard to the territorial jurisdiction has been contested for the first time in the present case.

43. Keeping in view the aforesaid discussions on law with regard to the provision of Section 21(1) of the CPC, as well as the supporting case laws, it is observed that the petitioner ought to have raised the jurisdictional issue before the Court of first instance at the earliest opportunity possible.

44. In view of the fact that no case is made out on merits in the instant petition as well as the law laid down by the Hon'ble Supreme Court in **Kiran Singh (Supra)**, this Court is of the view that no objection can be raised merely on technical grounds such as the territorial jurisdiction in the instant case. This Court is of the considered view that the case of the petitioner does not survive on merits and the captioned revision petition is merely a misuse



2024:DHC:7353



of the process of law wherein the petitioner is raising baseless grounds to prolong the litigation unnecessarily.

45. It is imperative to note herein that the scope of Section 115 of the CPC is limited. Thus, while exercising the revisional jurisdiction conferred upon the High Court, the Courts shall not interfere with the findings of the Court below unless there is a material irregularity or illegality which is apparent on the face of the record.

46. In view of the foregoing discussions, this Court does not find any force in the arguments of the learned counsel for the petitioner to interfere with the impugned order. Therefore, taking into consideration the observations made by this Court in the preceding paragraphs, the impugned order dated 7th June, 2018, passed by the learned District and Sessions Judge, Shahdara, Karkardooma Courts, Delhi, is, hereby, upheld.

47. Accordingly, the instant petition along with pending applications, if any, stands dismissed.

48. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 9, 2024

dy/sm/ryp

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 23.09.2024
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C.R.P. 197/2018

Page 16 of 16