



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

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Judgment reserved on: 24.01.2024
Judgment pronounced on: 01.04.2024

+ CM(M) 1207/2016, CM APPL. 43877/2016--stay
ABNASH CHANDER CHADHA Petitioner
Through: Mr. J. C. Mahindru, Adv.

versus

BALBIR KUMAR CHADHA & ANR Respondents
Through: Mr. Gigi George, Mr. Gaurav Shawel
and Mr. Dheeraj Singh, Advs.
alongwith respondent.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India, 1950 for setting aside the impugned order dated 14.09.2016 passed by the learned Additional District Judge-04, Patiala House Courts, New Delhi (hereinafter referred to as "Trial Court") in CS (OS) No. 120/2016 titled as "*Shri Abnash Chander Chadha vs. Shri Balbir Kumar Chadha and Anr.*" wherein the learned Trial Court dismissed the application filed by the petitioner under Order XIII Rule 1(3) of Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") for summoning of witness from the office of Airport Authority of India with record.



2. For the purpose of adjudication of the present petition, the relevant facts are that Mr. Abnash Chander Chadha/petitioner herein, Mr. Balbir Kumar Chadha/respondent no. 1 herein and Mr. Ashwani Kumar Chadha/respondent no. 2 herein are the legal heirs of Late Mr. Prakash Chander Chadha and Late Mrs. Prakash Devi Chadha.

3. During their lifetime, the parents of the parties had acquired several properties i.e. i) A property located at B-98, Naraina Vihar, New Delhi; ii) A property bearing no. 50545-50546, situated in Chaman Ganj, Roshanara Road, Sabzi Mandi, Delhi; iii) A residence at Bhola Nath Bazar, Uppar, Pacca Danga, Jammu Tawi, J&K; iv) Two shops at Panthirithi Chowk, Jammu, J&K and an additional shop at Moti Bazaar Chowk, Pacca Danga, Jammu, J&K (hereinafter referred to as “suit properties”). The suit properties mentioned above are in dispute in the present case.

4. It is the case of the petitioner that upon joining the Department of Railways in 1954, he dedicated his entire income towards the household expenses and for acquiring the further assets. In 1966, the Delhi Development Authority (hereinafter referred to as “DDA”) allotted a plot bearing no. B-98 measuring 125 square yards in Naraina Vihar in the name of respondent no. 1 and the entire payment of the plot was done using funds sourced from the petitioner and from the Hindu Undivided Family (hereinafter referred to as “HUF”) headed by the father of the parties.

5. Thereafter, the petitioner along with his father undertook the construction of the aforesaid property which was completed in 1969. A three-storey house was erected on plot bearing no. B-98 with the specific



arrangement that the ground floor would belong to the petitioner, the first floor would belong to respondent no. 1 and the second floor to respondent no. 2. Additionally, the parents retained the right to stay with either of the parties as deemed suitable.

6. It is further the case of the petitioner that the respondents lacked the means to earn or deposit such funds with DDA for the acquisition of the plot and subsequent construction on the aforesaid property because during this period, respondent no. 1 was employed as a helper in the departmental canteen of the Ministry of Agriculture and respondent no. 2 was a student. Therefore, to finance this construction, a loan of Rs. 30,000/- which was given to Shri J.R Bhasin against his property bearing no. E-30, Kalkaji was recalled. Further, the construction was successfully completed with the funds from HUF along with major contribution from the petitioner's side.

7. In 1993, the parties reached a mutual agreement or oral partition regarding the property at B-98, Naraina Vihar, New Delhi. This agreement took place after the petitioner's retirement from government service in June 1992, necessitating him to surrender his government accommodation and relocate to the above-mentioned property.

8. It is the case of the petitioner that after the death of Late Mr. Prakash Chander Chadha in 1998, the petitioner requested the respondents for partition of assets left behind by their parents. However, the respondent no. 1 in collusion of respondent no. 2 refused to do the same. Thereafter, respondent no. 1 sent a legal notice dated 11.03.1999 claiming exclusive ownership of the aforesaid property. Petitioner replied to the said legal



notice on 18.03.1999. Subsequently, respondent no. 1 initiated a suit seeking possession of the property at B-98, Naraina Vihar, New Delhi against the petitioner.

9. As a counterblast, petitioner filed a suit against the respondents for partition, declaration and rendition of the accounts. In the suit, the petitioner prayed for a decree for partition regarding the suit properties left by the parents of the parties, wherein the parties have 1/3rd share each; a decree for declaration confirming the said oral partition and a decree for rendition of accounts of all the moveable assets including fixed deposits and rental income.

10. On 30.10.2002, the respondents filed their written statements, contending that the above-mentioned property is registered in the name of respondent no. 1, who purchased the plot from DDA using his own money and subsequently constructed the building on it. Petitioner filed his replication reiterating that the payment for the construction of the house was made by him from the joint HUF fund and as per the oral partition, he is in possession of the ground floor.

11. Vide order dated 09.09.2010, the learned Trial Court closed the evidence of the petitioner. On 16.04.2016, the petitioner filed an application under Order XIII Rule 1(3) CPC before the learned Trial Court for summoning of witness from the office of the Airport Authority of India, New Delhi with relevant record for the purpose of confronting the records.



12. It is the case of the petitioner that the respondents have falsely alleged in their affidavit that the respondent no. 1 was an accountant in the Ministry of Agriculture and in order to refute this fact, the petitioner had filed the said application to summon the official from the office of the Airport Authority of India, Rangpuri, New Delhi with directions to bring with him the original service record of respondent no.1 who was appointed as a helper in the departmental canteen of Ministry of Agriculture and later on promoted to lower division clerk with Warehousing Corporation and finally retired as deputy cashier from Warehousing Corporation in June, 2002.

13. Respondents filed a reply vehemently opposing the aforesaid application on the ground that allowing the said application will amount to reopening of the petitioner's evidence which was closed in 2010. Further, the respondents submitted that the petitioner had filed the application at a very belated stage.

14. The learned Trial Court vide impugned order dated 14.09.2016 dismissed the application under Order XIII Rule 1(3) CPC filed by the petitioner and held that there is no reasonable ground provided by the petitioner for filing the application at a belated stage. Further, the learned Trial Court was of the view that the evidence of the petitioner was closed way back in 2010 vide order dated 09.09.2010 and since then the matter is going on for respondent's evidence. Aggrieved by this order, the petitioner preferred the present petition.



Submissions by the petitioner

15. Learned counsel for the petitioner submitted that the learned Trial Court has grossly erred in passing the impugned order without any valid reason and failed to appreciate that the application seeking to summon the witness from the office of Airport Authority of India along with record for the confrontation could not have been denied and it would in no way reopen the evidence of the petitioner.

16. It is submitted that no prejudice shall be caused to the respondents if the aforesaid documents are summoned and taken on record. Instead, the documents would assist the learned Trial Court in deciding whether the respondents had the potential to contribute towards either the purchase of the plot or the construction on the said plot.

17. It is submitted by the learned counsel that the provisions outlined in Order XIII Rule 1(3) of CPC explicitly state that such documents can be produced for the purpose of cross-examining witnesses of the opposing party or provided to the witness solely to refresh their memory. Therefore, given these circumstances, the learned Trial Court should have allowed the application to summon the record.

18. It is submitted that the learned Trial Court has failed to appreciate that even under the provisions of Sections 139 to 146 of The Indian Evidence Act, the said documents could have been produced for confrontation and to expose the falsehood of the respondent no. 1.



19. It is further submitted that the respondent no. 1 has falsely claimed that the initial payment for the allotment of the plot at Naraina Vihar was made in cash by him. However, upon summoning the records from the office of the DDA for confrontation, it was established on record that the payment was made via a Bank Draft. Therefore, it is submitted that the entire stance adopted by the learned Trial Court in refusing to allow the record to be summoned for confrontation purposes is erroneous and cannot be upheld in accordance with the law.

Submissions by the respondent no. 1

20. Conversely, learned counsel for the respondent no. 1 submitted that the present petition is a sheer abuse of process of law which has been filed to harass the respondents. It is submitted that from the inception of the suit, the petitioner has a clear intention to prolong the proceedings by way of seeking adjournments based on various grounds and by filing frivolous and baseless applications aimed at delaying the trial. It is evident from the records that the very purpose of the petitioner is to deprive the respondents of their rightful entitlement to the peaceful possession and ownership of the properties in question. Further, it is submitted that the petitioner has been successful in his effort to drag the suit as the same is pending disposal since its initiation in September 1999. Consequently, the continued pendency of the suit has subjected the respondents to ongoing harassment, mental anguish, and undue pressure.

21. It is further submitted that the petitioner failed to include the said official witness in the list of witnesses. The application filed by the



petitioner to summon this witness along with the relevant record for confrontation purposes was not maintainable because it was filed at a considerably delayed stage. Further, the application was filed not only after the conclusion of the petitioner's evidence but even after the evidence of respondent no. 1 had been concluded.

22. Learned counsel for respondent no. 1 submitted that earlier the petitioner had filed an application vide I.A. No. 14658 of 2009 under Section 65(c) & 66 of Indian Evidence Act read with Section 151 of CPC seeking permission to lead secondary evidence which was dismissed by this Court vide its order dated 14.04.2010 after imposing a cost of Rs. 10,000/-. Thereafter, the evidence of respondent no. 1 was closed on 17.09.2015. Further, it is submitted that the petitioner had cross examined all the witnesses of respondent no. 1. Now, at this stage of the trial, the present application seeking the summoning of a witness will lead to a protracted trial.

23. It is further submitted by the learned counsel of the respondent no. 1 that there was neither an HUF formation in the family nor the petitioner had any capacity to save and contribute any funds towards the purchase of land or construction of the house. As already stated, the purchase of the plot and construction there on was done from the joint funds of respondent no. 1, who was employed as an accountant in the departmental canteen of the Ministry of Agriculture and his late first wife Mrs. Parvesh Chadha, who was gainfully employed as a teacher and imparting private tuition to the students.



24. It is further submitted that the present application lacks clarity and is silent in respect of the purpose for summoning and the petitioner has not given any reason whatsoever as to why he wishes to summon the official with record.

Reasons and conclusions

25. Perusal of the impugned order would indicate that sufficient reasons have not been provided by the learned Trial Court while dismissing the application moved on behalf of the petitioner to summon the witnesses. It has only been observed that *“keeping in view the facts and circumstances of the case, I do not find any ground at this belated stage to allow the plaint to summon the witness as prayed in the instant application. The application of the plaintiff is hereby dismissed”*.

26. Pertinently, the learned Trial Court has adopted a very casual approach while disposing of the application without recording relevance of the witness/record required to be produced. The official from the office of Airport Authority of India, Operational Complex, Rangpuri, IGI Airport with original service book of respondent no. 1 is prayed to be summoned vide the application moved on 12.04.2016. From the application, it is discerned that the application is being moved to prove that respondent no. 1 was appointed as a helper in the Canteen of Ministry of Agriculture and later on, promoted as Lower Division Clerk with Warehousing Corporation and finally retired as Deputy Cashier from Warehousing Corporation in June, 2002, thereby to rebut that respondent no. 1 was working as



Accountant as claimed by him. Therefore, the relevancy of the record to be summoned cannot be doubted.

27. Ideally, the petitioner should have been diligent to summon the record at the time when his own evidence was being recorded or atleast at the time of examination of respondent no. 1 examined as DW-1/1 as at that time, he had also summoned record from the office of Delhi Development Authority to confront DW-1/1.

28. Nonetheless, the objective of procedural law is to ensure administration of justice and the interpretation should always aim to do substantial justice between the parties and the same cannot be overlooked. As it is trite that all the rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties, provided that the other party can be well compensated in terms of order of cost.

29. Having considered the above submissions and the Trial Court record and moreso, that the suit was filed in the year 1999, being a very old case, the petition is allowed subject to cost of Rs. 15,000/- to be paid by the petitioner to the respondents before the learned Trial Court on the next date of hearing. Accordingly, order dated 14.09.2016 of the learned Trial Court is hereby set aside. The petitioner is granted only one opportunity to summon the record as prayed vide application dated 16.04.2016 and to examine the official witness, who shall appear with the record and the respondents shall have sufficient opportunity to cross-examine the said official witness with record. Learned Trial Court shall ensure that witness with record is preferably summoned by the petitioner on the next date of



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hearing before it or on any other date convenient to it and shall not defer the examination of official witness to any other date than the date fixed by the learned Trial Court at the first instance.

30. In view of the above, present petition along with pending application is allowed.

SHALINDER KAUR, J.

APRIL 01, 2024/ss