



2025:DHC:4496



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 05.05.2025***+ **C.R.P. 242/2023**

VED KUMARI@ VAIJANTI MALAPetitioner

Through: Mr. N.K. Aggarwal, Adv. with
Petitioner in person.

versus

BHARAT BHUSHAN AND ORS.Respondents

Through: Mr. Vishal Bansal, Adv. for R-1 to 4.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugning the order dated 15.05.2023 [hereinafter referred to as "Impugned Order"] passed by the learned ADJ-07, Central District, Tis Hazari Court, Delhi in CS. No. 69/23. By the Impugned Order, the suit filed by the Petitioner for partition, possession, permanent and mandatory injunction has been dismissed at the threshold without even issuing notice in the matter by the learned Trial Court.

2. Learned Counsel for the Petitioner submits that previously, there was a proceeding filed by the Petitioner in respect of property bearing no. 5323/67, Raiger Pura, Karol Bagh, Delhi [hereinafter referred to as "property no. 5323/67"] and movable assets of the father of the Petitioner and Respondent No. 1 and 3 to 5 (who are siblings) and that matter was settled between the parties before the Delhi Mediation Centre, Tis Hazari Court, Delhi.



3. Subsequently, the present case being CS No. 69/23 captioned ***Ved Kumari @ Vaijanti Mala v. Bharat Bhushan and Ors.*** [hereinafter referred to as “second suit”] has been filed in respect of Flat no. 10/6730, Dev Nagar, Karol Bagh, New Delhi admeasuring 100 sq. yds. and two flats i.e., first and second floor of property bearing nos. 51-D, DDA Flats, Pandav Nagar, Delhi [hereinafter referred to as “suit properties”] which are stated to have been purchased from the money which belongs to the father of the Petitioner.

4. Learned Counsel for the Respondents submits that the challenge in the present Appeal is without merit. He submits that all the disputes inter se the parties *qua* inheritance from their father have been settled between the parties in terms of the mediation settlement agreement dated 09.12.2016 [hereinafter referred to as “Settlement Agreement”] and thus the suit is not maintainable.

5. By the Impugned Order the learned Trial Court has dismissed the suit of the Petitioner on the first hearing itself without issuing Notice to the Respondent.

5.1 Learned Trial Court has held that the suit has been filed by the Petitioner is on the basis of the alleged right/share of the Petitioner in the property no. 5323/67, which was also the subject matter of the earlier suit filed on 03.10.2012 captioned as ***Ved Kumari v. Bharat Bhushan & Ors.*** [hereinafter referred to as “first suit”]. Since the first suit was dismissed as withdrawn on the basis of the Settlement Agreement, the learned Trial Court has given a finding that the second suit is barred by Order XXIII Rule 1(3) of the CPC and is not maintainable.



6. The second suit has been filed seeking partition, possession, permanent and mandatory injunction and rendition of accounts for property bearing No. 10/6730, Dev Nagar, Karol Bagh, New Delhi admeasuring 100 sq. yds. and two flats i.e., first and second floor of property bearing nos. 51-D, DDA Flats, Pandav Nagar, Delhi. It is the case of the Petitioner before this Court that the property no. 5323/67 was sold for a consideration of Rs.6 crores. The prayers in the second suit are set out below:

“i. a preliminary decree for partition determining respective shares of Plaintiff and Defendant nos. 1, 3 to 5 in respect of suit properties bearing flat no. 10/6730, Dev Nagar, Karol Bagh, New Delhi ad measuring 100 sq. yds and two LIG flats i.e Ist & IInd Floor of property bearing nos. 51-D, DDA Flats Pandav Nagar, Delhi and further appoint a Local Commissioner with directions to report the partition of the suit properties by metes and bounds; and

ii. a preliminary decree of rendition of accounts in favor of the Plaintiff and Defendant Nos. 1, 3 to 5, in respect of all the monies and receivables of whatever nature arising out of the estate of Late Sh. Harish Chander and the Plaintiff undertakes to pay the requisite court fee on the decretal amount which may be determined by this Hon'ble Court; and

iii. final decree for partition and respective possession of the suit properties bearing flat no. 10/6730, Dev Nagar, Karol Bagh, New Delhi ad measuring 100 sq. yds and two LIG flats i.e Ist & IInd Floor of property bearing nos. 51-D, DDA Flats Pandav Nagar, Delhi may be passed in favour of the Plaintiff and against the Defendant Nos. 1, 3 to 5; and”

6.1 It is set out in the plaint of the second suit that the above-mentioned properties have been purchased out of sale proceeds from the sale of other movable and immovable property which were owned by the father of the Petitioner, including property No.5323/67.

7. At this stage, it is apposite to also set out the prayers in the first suit which are below:

“i) Whereby an order for the cancellation of the Sale Deed executed in



favour of the Defendant no. 6 be passed in respect of the bearing no. 5323/67, Raiger Pura, Karol Bagh, New Delhi,

ii) Whereby an declaring the sale Deed in respect of the bearing no. 5323/67, Raiger Pura, Karol Bagh, New Delhi as null and void.

iii) Whereby a Decree for the partition be passes and decide the share of the Plaintiff in the share of Lt. Sh. Harish Chander father of the Plaintiff and Defendant No. 1 to 4 in the property bearing no. 5323/67, Raiger Pura, Karol Bagh, New Delhi and in the other movable and immovable property of Late Sh. Harish Chander, And further all the Defendants be jointly and severally directed to hand over the peaceful and vacant possession of 1/5th share in the suit property;

iv) Whereby a Decree of possession for the respective share of the Plaintiff in respect of the above said property bearing no, 5323/67, Raiger Pura, Karol Bagh, New Delhi and all the movable and immovable properties of Late. Sh. Harish Chander be passed;

v) To pass an order/ Decree of permanent Injunction thereby restraining the Defendants or their agents be restrained from interfering in the peaceful possession of the Plaintiff's share;

vi) Allowing the cost of the present suit."

8. Clearly, the cause of action and the prayers in the first suit and the present suit are separate, while both the suits relate to different properties of the predecessor-in-interest of the Petitioner and the Respondents. In addition, the second suit also seeks a decree for rendition of accounts in favour of the Petitioner (Plaintiff) and Respondent No 1 and 3 to 5 (Defendant Nos.1 and 3 to 5) in respect of all movable properties arising out of the estate of the father of the Petitioner and Respondent No 1 and 3 to 5 (Defendant Nos.1 and 3 to 5).

9. The Settlement Agreement which was executed before the Delhi Mediation Centre, Tis Hazari Court, Delhi clearly states that the settlement was with respect to the case at hand therein and the first suit has been settled



between the parties in the sum of Rs. 5 lakhs. It further states that the first suit will be withdrawn by the Petitioner once the amount is received.

9.1 The Settlement Agreement, in addition, states that no payments are due between the parties in respect of the property no. 5323/67 and the Petitioners will have no right, title or interest in the property no. 5323/67. It is apposite to set out the relevant extract of the Settlement Agreement below:

“Mediation proceedings held. I conducted joint as well as separate single sessions with both the parties. Both the parties have settled the present case amicably as per the following terms & conditions:

1) The present case has been settled between the parties amicably for Rs.5,00,000/- (Rupees Five Lacs Only) as full and final settlement.

2) It is stated by the parties that out of the total settled amount, the defendants have already paid Rs.2,00,000/- to the plaintiff in October, 2016. The same is accepted and acknowledged by the plaintiff. It is agreed that the remaining amount of Rs.3,00,000/- shall be paid by the defendants to the plaintiff by way of cheque/DD on 14.12.2016 before the referral court.

*3) It is settled that after payment/receipt of the settled amount and after compliance of the terms of this settlement, **the parties shall make appropriate statements before the Court concerned for withdrawal of the present suit in terms of the present settlement.***

*4) It is settled that after payment/receipt of the settled amount, the plaintiff **Ved Kumari or her LRS shall have no right, title or interest in the suit property.***

*5) It is settled that after payment/receipt of the settled amount there shall remain no case/claim/dispute/difference due between the plaintiff and defendants whatsoever and that none of the parties or their LRS shall file any other case/claim/complaint/etc. **against each other in future qua the suit property.***

*6) Since the matter stands settled in the mediation Centre so the petitioner **shall be entitled for refund of the court fee,** if any as per Section 16 of the Court Fee Act. of the Of St & Sessions.*



7) The parties have entered into the present settlement/agreement without any pressure, coercion, fear or undue Influence from any side.

8) The parties shall remain bound by the terms of present settlement and that the parties shall co-operate for performance of the same.”

[Emphasis supplied]

10. The record reflects that pursuant to the Settlement Agreement, on 14.12.2016 the Petitioner had unconditionally withdrawn the first suit seeking the leave of the learned Trial Court.

11. By the Impugned Order learned Trial Court while relying on the pleadings and documents annexed with the plaint has held that the present suit is barred by Order XXIII Rule 1(3), CPC and is accordingly not maintainable.

11.1 Order XXIII Rule 1(3), CPC is set out below:

“1. Withdrawal of suit or abandonment of part of claim.

...

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim.

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.”

11.2 Order XXIII Rule 1(3), CPC sets out that if the Court is satisfied that the suit may fail by reason of some formal defect or if there are sufficient grounds for allowing the Plaintiff to institute a fresh suit, it may permit the Plaintiff to withdraw the suit with liberty to institute a fresh suit.



12. By the Impugned Order learned Trial Court has dismissed the suit as being barred by the provisions of Order XXIII Rule 1(3), CPC. The findings set out that since by an Order dated 14.12.2016 the Petitioner had withdrawn the first suit without seeking any leave from the learned Trial Court in terms of the Order XIII Rule 1(3), CPC and property no. 5323/67 was subject matter of the first suit, the present suit is barred by the provisions of Order XXIII Rule 1(3), CPC.

13. The learned Trial Court has held that from the pleadings and documents annexed, the suit is barred under Order XXIII Rule 1(3), CPC. Since Order XXIII Rule 1(3)(b), CPC is inapplicable, it is presumed that the learned Trial Court has found the suit to contain a formal defect. There are however no findings on any such defect in the Impugned Order.

14. As stated above, the settlement that took place between the parties was with respect to only property no. 5323/67 in the first suit. The second suit has been filed seeking partition of the suit properties and also for rendition of accounts in favour of Petitioner and Respondent No. 1 and 3 to 5 in respect of all movable properties arising out of the estate of the father of the Petitioner. The cause of action, subject matter of the second suit and the relief claimed is different from that of the first suit. The reasoning of the decision are however elusive.

15. The Impugned Order is accordingly set aside. This, however, will not preclude the Respondents from taking all defences as are available to it before the learned Trial Court. The rights and contentions of the parties are left open in this behalf to be agitated before the learned Trial Court.

16. The parties shall appear before the learned Trial Court on 08.07.2025.



2025:DHC:4496



17. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 5, 2025/r/ha

[Click here to check corrigendum, if any](#)