

\$~A-17 (2019)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 8th November, 2021
+ **C.R.P. 272/2019 & CM APPL. 51182/2019**
ASHOK KUMAR SHARMA Petitioner
Through: Mr. Bharat Gupta & Mr. Varun
Tyagi, Advocates.
versus
SUSHIL CHANDER SHARMA & ORS Respondents
Through: Mr. Subhash Sharma, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned order dated 23rd October, 2019, passed by the Id. ADJ-12, Central District, Tis Hazari Courts, Delhi, by which the application under Order VIII Rule 1A of the CPC, was dismissed by the Trial Court. By the said application the Defendant in the suit/ Petitioner herein, sought to place on record certain documents.
3. The brief background is that a civil suit bearing *Suit No. 514/2008* for possession and recovery of arrears of mesne profits and damages, was filed by Mrs. Shakuntala Devi – wife of Late Mr. Rajinder Pal Sharma against the Defendant – Mr. Ashok Kumar Sharma. Mr. Rajinder Pal Sharma and Mr. Ashok Kumar Sharma are brothers. The suit property is the first floor of the property bearing No. H-72, Shivaji Park, Punjabi Bagh, New Delhi-110026. The suit was tried before the Id. ADJ, and the Plaintiff examined four witnesses and closed his evidence. The Defendant examined three witnesses

including an official from the Army Base Workshop, Delhi Cantt., to bring on record documents relating to the appointment, salary and pension of Mr. Rajinder Pal Sharma and Late Mr. Jaswant Rai Sharma. Thereafter, the matter was fixed for final arguments.

4. Around the time when submissions were being heard, it appears that the Defendant realized that some documents which were on record had not been exhibited through the evidence of DW-4, who was the witness from the Army. DW-5 was also examined, however, ld. counsel for the Defendant did not confront the documents to the official from the Army, and completely missed out the fact that the application for placing on record additional documents was yet to be adjudicated, and the same continued to remain pending. It was during the final hearing then that the application was pressed before the Trial Court and the Trial Court primarily held that the Defendant had adequate opportunity to place his evidence on record, and thus at this belated stage, he cannot be permitted to lead evidence. The copy of the impugned order passed by the ld. ADJ reads as under:

“Further arguments heard. During arguments, it is pointed out by counsel for defendant that on 08.03.2019 an application w/o 8 Rule 1 A CPC was filed by the defendant to take on record certain documents and prove the same as per law. But the said application has not been disposed off till date. He submits that there are some documents in the said application which are necessary for the disposal of the case. Hence, the defendant be permitted to take these documents on record and prove the same.

Ld. Counsel for the plaintiff has opposed the same on the ground that after filing of the said application the defendant did not press the said application and led further defence evidence and

closed DE on 07.06.2019 and therefore, he cannot be allowed to say that the application has not been disposed off though formally no order has been passed to dispose off the same.

I have heard the submissions of Ld. Counsel for parties and perused the record. Considering the facts that after filing of the application defendant evidence was led and thereafter DE was closed vide separate statement of counsel for defendant and case was fixed for final arguments on 07.06.2019, hence, now no ground is made out for allowing the said application as it would amount to re-opening of the defendant evidence. Further Ld. Counsel for defendant submits that he want to prove only two documents which pertains to the salary of Rajinder Pal but after perusing the said application, I found that there is no mention that he wants to prove any of the documents relating to DW Rajinder Pal. In these circumstances, application u/o 8 Rule 1 A CPC is dismissed.”

The present petition has been preferred, challenging this order.

5. The submission of Mr. Gupta, ld. counsel for the Defendant, is that the case of the Defendant before the Trial Court is that the suit property is an HUF property, as Mr. Rajinder Pal Sharma did not have the capability to purchase the property, which he wishes to prove through the salary slips, etc.

6. On the other hand, ld. counsel for the Plaintiff – Mr. Sharma submits that these are nothing but delaying tactics, and the suit has been pending since 2008, i.e. for more than 13 years. Thus, the Plaintiff being a senior citizen, the matter ought to be expedited.

7. Heard ld. Counsels for the parties and perused the record.

8. Upon perusing the application for additional documents, there can be no doubt that the application has been pressed at the belated stage. All the

documents which were annexed with the application for additional documents filed before the Trial Court, could have been easily confronted to the witness – DW-4, who was summoned by the Defendant. However, for whatever reason, the said witness was not confronted and the application continued to remain pending without the documents being taken on record. One of the documents which was annexed to the application shows the details of the basic pay drawn by Mr. Rajinder Pal Sharma, in the form of a chart, for the period - January, 1950 to 30th September, 1977. This document has been duly attested by Lieutenant Colonel/Major from the Legal Cell of the Army Base Office. The said documents could have been easily confronted to the witness who appeared from the Army at that stage. However, the counsel seems to have completely missed out the same. At the stage of final arguments, the Id. counsel for the Defendant appears to have realised that this application continues to remain pending, and the documents were not taken on record. Hence the delay for the last two years has taken place

9. Though, this Court is usually not inclined to allow evidence at the stage of final arguments, considering the fact that these documents were already on record with an application, and it only appears to have been a mistake by the counsel for the Defendant, this Court is of the opinion that a litigant ought not to suffer due to the same.

10. The Plaintiff is a senior citizen who undoubtedly wishes for expeditious disposal. Thus, having perused the record and the application along with the documents thereto, this Court is inclined to only allow two pages of the documents i.e. page nos. 317 and 318, which is a letter dated 12th April, 2008, issued by the Army Base Workshop attaching therewith the

details of the basic pay of Mr. Rajinder Pal Sharma in a chart form, to be permitted to be proved.

11. Accordingly, the following directions are issued:

- (i) These two pages i.e., page nos. 317 and 318, which are already on record are permitted to be proved by the Defendant in accordance with law. No other documents are being permitted to be taken on record.
- (ii) For the said purpose, the Defendant is permitted to summon any concerned official from the Legal Cell of the Army Base Workshop, so that the genuineness of these documents can be established.
- (iii) For the said purpose, one date shall be fixed by the Trial Court. This permission is being given to the Petitioner herein, subject to payment of Rs.10,000/- as costs to the Plaintiff.
- (iv) If on the date fixed, the concerned witness is not summoned or does not appear, since these documents are stated to be obtained under RTI, the Defendant shall be permitted to produce one witness to prove how these documents were procured. The said witness shall be cross-examined by the Plaintiff in one session itself and the matter shall immediately thereafter proceed for final arguments.
- (v) An attempt shall be made by the Trial Court to adjudicate the suit within a period of six months from the date of next hearing.

12. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J

NOVEMBER 8, 2021

Rahul/AK