

Harpyari (Deceased) Thr Her Lr Bharat ... vs Badri Bhagat Jhandewala Temple Society on 5 September, 2024

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

\$~22 & 23.

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FA0(0S) 120/2024 & C.M.Nos.50837-50839/2024
HARPYARI (DECEASED) THR HER LR BHARAT BHUSHAN
SHARMA (PET-IN-PERSON)Ap
Through: Appellant in person.

versus

BADRI BHAGAT JHANDEWALA TEMPLE SOCIETY
.....Res
Through: Mr.Alok Kumar, Sr.Advocate wi
Ms.Manisha A.Narain, Mr.Amit
Kumar Singh, Mr.Varun Maheshw
and Mr.Manan Soni, Advocates

+ FA0(0S) 122/2024 & C.M.Nos.51529-51531/2024
SMT. HARPYARI (DECEASED) THROUGH LR.
Through: Appellant in person.

versus

BADRI BHAGAT JHANDEWALA TEMPLE SOCIETY
.....Res
Through: Mr.Alok Kumar, Sr.Advocate wi
Ms.Manisha A.Narain, Mr.Amit
Kumar Singh, Mr.Varun Maheshw
and Mr.Manan Soni, Advocates.
Mr.J.S

% Date of Decision: 05th Se

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

Signature Not Verified

FA0(0S) 120/2024

Digitally Signed By:JASWANT
SINGH RAWAT
Signing Date:06.09.2024
18:57:47

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeals have been filed on behalf of the appellant-defendant no.1(a) challenging the judgment dated 23rd April, 2024 in CS(OS) No.381/2016, whereby the application under Order VII Rule 14, CPC filed by respondent no.1/plaintiff being I.A. No. 14631/2023 to place on record the pleadings of Suit No.636/1982 was allowed and the application under Order I Rule 10, CPC filed by the appellant/defendant no.1(a) being I.A. 8248/2024 was dismissed.

2. The suit being CS(OS) No.381/2016 has been filed by respondent seeking possession, damages and permanent injunction with respect to Khasra No. 40, Banskoli, Mauza Jhandewalan, Deshbandhu Gupta Road, Paharganj, New Delhi 110055 also known as 10196, Jhandewala Estate, New Delhi ("suit property").

3. The appellant, who appears in person, states that Shrivastav Panchayati Dharamshala, Dargah Shree Peer Ratan Nath Ji, M/s Bhanamal Guljari Lal, DDA, District Magistrate, Central District, Omprakash Sharma, Dwarka Sharma are necessary and proper parties to the suit, as they have significant interests in the suit property and their presence is crucial to unravel the complex web of facts.

4. He states that the respondent-defendant has not been able to show any proof of ownership of the suit property and is relying upon the decision of this Court in Suit No.1679/1982. He contends that the said Suit No.1679/1982 titled Badri Bhagal Jhandewalan Temple Society & Ors v. Delhi Development Authority was a collusive suit, wherein DDA remained FAO(OS) 120/2024 Signing Date:06.09.2024 18:57:47 absent for about five years, which led to its dismissal. He therefore states that DDA is a proper and necessary party to the subject suit.

5. He states that impleadment of District Magistrate, District Central is necessary so that relevant land record of the suit property may be made available. He states that Shrivastava Panchayat Dharamshala, Dargah Shri Peer Ratan Nath Ji, and M/s Bhanmal Gulzari Lal have substantial interest in Khasra No.40 and therefore, they are also required to be impleaded. He further states that similarly, presence of Mr. Omprakash Sharma and Mr. Dwarka Sharma is necessary as they are tenants of the true owner viz Lala Gokal Chand.

6. He points out that in the reply to I.A. No. 14631/2023, the appellant had stated that the Suit No.636/1982 does not exist. He states that the appellant had sought for certified copy of Suit No.636/1982 from the concerned court and found that a different case is registered with the said suit number. He further states that the respondent has failed to produce any evidence or proof of existence of Suit No.636/1982. He states that a copy of the Suit No.636/1982 filed along with I.A No.14631/2023 is a copy of an uncertified copy. He contends that the appellant has been denied a fair opportunity to challenge the authenticity, veracity and relevance of pleadings in Suit No.636/1982.

7. Keeping in view the aforesaid, this Court is of the view that the averments with respect to impleadment of various parties are misplaced. The object of the impleadment of the said parties can be effectively achieved by making them witnesses in the suit and their impleadment is per se not necessary.

FAO(OS) 120/2024 Signing Date:06.09.2024 18:57:47

8. Further, the appellant seeks to challenge the judgment dated 02nd May, 2003 in Suit No.1679/1982. Section 44 of the Indian Evidence Act (Section 38 of the Bharatiya Sakshya Adhiniyam, 2023) provides that any party to a suit or other proceeding may show that a judgment, order or decree referred to in the Section, which has been proved by the adverse party, was delivered by a Court not competent to deliver it or was obtained by fraud or collusion. It is pertinent to mention that no such defence has been taken by predecessor in interest of the appellant and therefore, the appellant cannot be permitted to take such defence at this stage in the suit.

9. The mere fact that pleadings of Suit No. 636/1982 have been taken on record does not mean that the same stand proved. The respondent/plaintiff will be required to prove the same in trial.

10. Accordingly, the present appeals being bereft of merit are dismissed along with the applications.

ACTING CHIEF JUSTICE TUSHAR RAO GEDELA, J SEPTEMBER 05, 2024 KA FAO(OS) 120/2024 Signing Date:06.09.2024 18:57:47