

Sumeet Lal vs Narender Behari Lal Since Deceased Thr ... on 18 May, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA 399/2023

SUMEET LAL

NARENDER BEHARI LAL SINCE DECEASED

THR LRS AND ORS

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

% 18.05.2023 The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 26035/2023 (Exemption)

1. Exemption is allowed, subject to all just exceptions.

2. Application stands disposed of.

CM APPL. 26036/2023 (Exemption from filing decree sheet)

3. This is an application filed by the appellant seeking extension of time to file the decree sheet.

4. For the reasons stated in the application, the same is allowed.

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5. The appellant is directed to file the decree sheet within four weeks.

6. Application stands disposed of.

RFA 399/2023 & CM APPL. 26034/2023 (stay)

7. The appellant, in the present appeal, is challenging the judgment and the order both dated 02.03.2023 passed by learned Additional District Judge-04, South District, Saket Courts, New Delhi in Suit No.CS DJ/6900/2016 (Old Suit No. CS (OS) 2522/2001) titled as 'Sumeet Lal v. Narender Behari Lal (Now deceased) & Ors'.

8. Vide the impugned judgment the learned Trial Court was pleased to dismiss the suit for declaration, partition, injunction and rendition of accounts filed by the appellant against the respondents. Vide the impugned order dated 02.03.2023 the learned Trial Court was also pleased to dismiss the joint application filed by the appellant, respondents No.1(b) and 1(c) and respondents No.3 and 4 (original plaintiff and legal heirs of defendant no.1 i.e. 1(B) & 1(C) and defendant no.3 and 4) under Order XXIII Rules 1 and 3 of the Code of Civil Procedure, 1908 as also the suit filed by the appellant.

9. The facts of the case, in brief, are that late Sh. Shyam Behari Lal, the great grandfather of the appellant, constituted a HUF with his son Sh. Kailash Behari Lal. Sh. Kailash Behari Lal had three sons namely Sh. Yogesh Behari Lal (father of the appellant and respondent No.3 & husband of respondent No.4), Sh. Narender Behari Lal (deceased respondent No.1) and Sh. Virender Behari Lal (deceased respondent No.2). After the demise of late Sh. Shyam Behari Lal, Sh. Kailash Behari Lal became the karta of the Joint Hindu Family consisting of himself and his above mentioned three sons. The joint family held a lot of movable and immovable properties in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/09/2023 at 15:21:07 their names. By selling one of the joint properties at Sohna, Haryana, they acquired a plot bearing No.C-2/61, Safdarjung Development Area, New Delhi. Later, after selling the said property and from the funds thereof, two more properties/flats were purchased. The said plots were Y-14 (First floor), Hauz Khas, New Delhi and T-17 (Ground floor), Green Park, New Delhi. Sh. Yogesh Behari Lal expired on 10.10.1988 leaving behind his wife (respondent No.4), son (appellant) and daughter (respondent No.3). After the death of Sh. Yogesh Behari Lal, the family forced his wife and children to leave the joint family house. Sh. Kailash Behari Lal expired on 15.03.1997 leaving behind the appellant and respondents No.1 to 4 as his legal heirs. The appellant vide legal notice dated 02.04.2000 called upon the respondents No.1 and 2 to partition the properties. The said notice was replied vide letter dated 11.05.2000 wherein respondents No.1 and 2 admitted that three properties i.e. (i) Property at Sohna, Haryana; (ii) Property at Sunder Nagar; and (iii) Property at village Kirlokari, are joint family properties. However, regarding the two flats i.e. Y-14 (First floor), Hauz Khas, New Delhi and T-17 (Ground floor), Green Park, New Delhi, respondents No.1 and 2 relied upon a Will dated 03.07.1996 allegedly executed by late Sh. Kailash Behari Lal bequeathing the above said two flats/properties in favour of respondents No.1 and 2, respectively. The appellant filed a suit for partition, declaration, rendition of accounts and permanent injunction. During the pendency of the said proceedings, respondents No.1 and 2 expired and their legal heirs were impleaded. A settlement was arrived at between the appellant, respondents No.3 and 4 along with

legal heirs of respondent No.1. In view of the said settlement, the joint application under Order XXIII Rule 1 and 3 CPC was filed by the parties. This is a digitally signed order.

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10. Ms. Nandni Sahni, learned counsel for the appellant submits that the parties to the suit had settled all their disputes. Legal representatives of original defendant No.2-late Sh. Virender Behari Lal, his wife and two sons had stopped appearing before the learned Trial Court [impleaded as respondents No.2(a), 2(b) and 2(c)] in September, 2016 and ultimately they were proceeded ex-parte vide order dated 08.08.2017 by the learned trial Court. They had also not led any evidence in the suit and did not oppose the suit filed by the appellant. After respondents No.2(a), 2(b) and 2(c) were proceeded ex-parte on 08.08.2017, the suit was being contested only by respondents No.1(a), 1(b) and 1(c). Unfortunately, respondent No.1(a) namely Mrs. Veena Lal, widow of late Sh. Narender Behari Lal also expired on 08.02.2021 and their two daughters i.e. respondents No.1(b) and 1(c) had contested the suit filed by the appellant. In order to give a quietus to the long drawn litigation, all the parties except respondents No.2(a) to 2(c) compromised their disputes after many rounds of litigations. In view of the same, the parties had filed a joint compromise application before the learned Trial Court on mutually accepted terms and conditions. Learned Trial Court failed to appreciate that even in the compromise application, the rights of respondents No.2(a), 2(b) and 2(c) were protected by the appellant and their share in the suit properties remained intact. Despite the same, the learned Trial Court erroneously rejected the compromise arrived at between the parties and dismissed the suit filed by the appellant on merits.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/09/2023 at 15:21:07. Trial Court erroneously rejected the compromise arrived at between the parties and dismissed the suit filed by the appellant on merits.

11. This matter requires consideration.

12. On the appellants taking steps, issue notice to the respondents.

13. Mr. Gagan Mathur, Advocate accepts notice on behalf of respondents No.1(b) & 1(c).

14. Mr. Vinayak Thakur, Advocate accepts notice on behalf of respondents No.3 & 4.

15. Issue notice to respondents No.2(a), 2(b) and 2(c) through all permissible modes, including electronic as well as dasti, returnable on 18.07.2023.

16. In the meanwhile, the parties are directed to maintain status quo qua title and possession of the suit properties as mentioned in prayer clause of CM APPL. 26034/2023.

17. In the meanwhile, e-copy of the Trial Court record be requisitioned.

GAURANG KANTH, J MAY 18, 2023 N3 This is a digitally signed order.

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