

(2013) 02 DEL CK 0362
In the Delhi High Court
Case No : CM (M) 230 of 2013

Neena Bhagat and Others

APPELLANT

Vs

Laj Sharan Kaur and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 7, 151
Constitution of India, 1950 — Article 227

Citation : (2013) 02 DEL CK 0362

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Anil Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Veena Birbal, J.—The petitioners along with their mother Smt. Jasbir Kaur had filed a suit for possession against the respondents alleging therein that late Sh. Jasbir Singh was the owner of property bearing No. 51, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi. It was alleged that he had tenanted a portion of the said property to late Sh. Sharan Singh, husband of respondent No. 1 and father of respondents No. 2 to 6. It was alleged that after the death of Sh. Jasbir Singh the respondents started misbehaving with the petitioners and as such two legal notices were sent to them for vacating the suit property but of no result. Thereafter, an eviction petition was filed on the ground of 14(1)(h) & (i) of the DRC Act. The said Sh. Sharan Singh expired in 1981 and his LRs were impleaded in the eviction petition and they denied the relationship of landlord and tenant and took the plea of adverse possession. Ultimately, the eviction petition was dismissed by the learned ARC vide order dated 22.4.1999. Thereafter, an appeal was filed before the Rent Control Tribunal which was also dismissed. It was alleged that in view of the aforesaid judgments the status of the respondents in the suit property was that of unauthorized occupant and they had also done some illegal construction therein. Accordingly, a suit for possession

was filed as per the site plan attached with the plaint and for a decree of mesne profits for unauthorized use/occupation charges. As per the petitioners, the respondents did not appear despite being served as such they were proceeded ex parte on 24.7.2003. On 24.12.2009, ex parte judgment and decree was passed in favour of the petitioners/plaintiffs and against the respondents by the learned trial court. On 18.7.2012, possession of suit property was handed over to the petitioners through court process.

2. On 16.11.2012, an application under Order 9 Rule 7 & 13 read with Section 151 CPC was filed by the respondents against the petitioners/decreed holders wherein they had alleged that petitioners/decreed holders along with some court and police officials came to the suit property and dispossessed the respondent No. 1 by breaking open doors and locks and throwing the household articles. The respondent No. 1 called respondent No. 2. They had alleged that they were not aware of any proceedings against them and as such were not aware of passing of any ex parte judgment and decree. Thereupon, an Advocate was engaged who had inspected the file and respondents came to know that a suit for possession and mesne profits was filed against them wherein an ex parte judgment and decree had been passed and in the summons of the said suit their address was given as 51, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi. The said suit was filed in the year 2003. The summons were ordered to be sent to them through ordinary process and registered A.D. post. Respondents had alleged that the summons sent to them through registered cover were not personally served on any of the respondents/JDs and no registered cover in respect of Smt. Bela Bindra i.e. respondent No. 5/JD was found in the court record. Even as per the summons sent through ordinary process there was a report on record that on 29.4.2003 the process server had gone to suit property but found a lock on the main gate and no one was found present despite ringing the door bell. The same process server had again gone on 21.12.2003 and someone from inside the premises had informed that there was nobody in the house and refused to accept the summons. Thereafter, the court ordered for service of summons through affixation and beating of drums on filing the charges. The respondents/JD also stated in their application that the respondents No. 2 to 6 were not residing at the suit property much prior to 2003 and the said fact was known to the petitioners/decreed holders. It was stated that the respondent No. 2 was living at 31-D, MIG Flats, Sheikh Sarai, New Delhi w.e.f. August, 1984 to December, 2002 and thereafter he became resident of B-58, SFS Flats, Pocket-B, Sheikh Sarai, Phase-I, New Delhi. The respondent No. 3 is a resident of United Kingdom for the past 30 years. Respondent No. 4 is a resident of Frankfurt, Germany for the last 30 years. The respondents No. 5 to 6 are both married and have been living with their respective husbands at their matrimonial home since their marriage which took place in 1962 and 1973 respectively. The respondent No. 5 is a resident of Azad market, Delhi. While respondent No. 6 is residing at UK and even her name has been wrongly stated in the memo of parties. It was also averred that the petitioners/decreed holders had given false

affidavits by stating that they were residents of 53, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi. It was alleged that petitioner No. 1/decree holder No. 1 is residing at Western Colony, New Delhi. Petitioner No. 2/decree holder No. 2 is a resident of property No. 48 to 50, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi and petitioner No. 3 has been a resident of 52 & 53, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi. It was alleged that the petitioners/decree holders were aware of the addresses of the respondents and they had played fraud upon the court and deliberately concealed the material fact that respondents/JDs 2 to 6 were not being resident of 51, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi. According to them they were never served with summons and due to that reason they could not defend the suit. The process server never visited their premises and false reports have been procured and as they were not served and there was sufficient cause for not appearing before the court as such impugned judgment and decree be set aside.

3. Petitioners/decree holders opposed the application by filing reply and it was contended that the application was time barred. It was also alleged that the possession was taken peacefully and there was no breaking open of the doors and locks and false allegations have been leveled and they have denied the addresses given in the application in respect of respondents No. 2 to 6.

4. After hearing the counsel for parties, the learned trial court allowed the application. The learned trial court perused the report on the summons. After going through the application and considering the reports of the process server and other material on record allowed the application and set aside the ex parte judgment and decree dated 24.12.2009.

5. Aggrieved with the same, the present petition is filed.

6. Learned counsel for petitioners/decree holders has contended that the application under Order 9 Rule 13 CPC read with Section 151 CPC was time barring application as such court ought not have allowed the same. It is stated that no application for condonation of delay was filed along with the application as such the court ought not have condoned the delay. It is further stated that there was no sufficient cause shown by the respondents/JDs as such the impugned order is illegal.

7. The respondents in the application under Order 9 Rule 13 r/w Section 151 CPC stated that there was no personal service on them and the respondents No. 2 to 6 were not resident of suit property and the petitioners/decree holders have wrongly given their addresses and as such had played fraud on the court. The learned ADJ has observed that in the eviction petition earlier filed by the mother of petitioners/decree holders against the husband of respondent No. 1 an application was filed and on the death of husband of JD No. 1 on 30.4.1981 for bringing on record the LRs of Sh. Sharan Singh i.e. husband of respondent No. 1 wherein reply was filed by respondent No. 1 and respondent No. 2 stating therein

that respondent No. 3 and respondent No. 6 are in UK for the last several years and respondent No. 4 is in Germany since 1978. It was also mentioned there that the address of respondent No. 5 who is residing in Azad market, Delhi is also not correct. After going through the material on record the learned ADJ has observed that the petitioners/decreed holders were aware that the JDs 2 to 6 were not residing at 51, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi and as such their addresses were wrongly given. The learned ADJ has also observed that there is a delay of 9 days in filing the application and after considering the explanation given by the respondents the delay has been condoned. The respondent No. 3 had also placed on record his I-card showing his address as 31-D, MIG Flats, Sheikh Sarai, New Delhi.

8. Learned ADJ has also observed that the suit was filed in the year 2003. The summons were ordered to be issued on 1.4.2003 and next date was 26.5.2003 and on 26.5.2003 the court ordered for service by beat of drums and affixation. The learned ADJ has also gone through the report of the process server and has observed as under:-

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Thus as per report on the summons on 21.5.2003, one person met the process server and he orally stated that there is no person at the house and he refused to receive the summons. This report is dated 21.5.2003. The process server has not mentioned the name of the person and also not mentioned his age in the report. This report is also not signed by any person of the locality. The report dated 21.5.2003 was not considered by the Ld. Presiding Officer of the court and the JDs were ordered to be served through affixation and beat of drums. There is report on summons that on 1.7.03, JDs were served through beat of drums.

9. After going through the reports on record learned ADJ has noted that there is no personal service on respondents.

10. The finding of the learned ADJ that the respondents were not duly served and they were not aware of the pending proceedings is based on material on record. The finding that the petitioners/decreed holders were aware that JDs 2 to 6 were not resident of 51, R.B. Boota Singh Building, Khyber Pass, near Timarpur, Delhi and their address has been wrongly given is also based on material on record. The material on record shows that petitioners had given wrong addresses of respondents No. 2 to 6 in the suit. In these circumstances, no illegality is seen in the impugned order which calls for interference of this court in exercise of its jurisdiction under Article 227 of the Constitution of India. There is nothing on record that the trial court exceeded its jurisdiction or there is any illegality in the impugned order. The petition stands dismissed.