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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 35/2023 & CM APPL. 11617/2023**

PARESH DANDONA

..... Appellant

Through: Mr. Suhail Dutt, Sr. Advocate with
Mr. Azhar Alam and Mr. Sankalp
Goswami, Advocates

versus

SUKRUTI DUGAL & ORS.

..... Respondents

Through: Mr. Saurabh Kripal, Sr. Advocate
with Mr. Aehsas Puri, Mr. Atul TN
and Mr. K. Pallavi, Advocates for R-1
Mr. Amit Sibal, Sr. Advocate with
Mr. Sunil Choudhary, Advocate for
R-2
Mr. Satinder Singh Mathur, Advocate
for R-3.
Mr. Rajat Sehgal and Mr. Samyak
Jain, Advocates Mr. Siddharth Singh,
Advocate for R-4 & R-5

Reserved on: 14th March, 2024

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Date of Decision: 22nd May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present appeal has been filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 ('CPC') read with Section 10 of the Delhi High Court Act, 1966, challenging the impugned judgment dated 9th January, 2023, passed in CS (OS) No. 649/2018, whereby the learned Single



Judge dismissed the I.A. No. 8363/2020, filed by the Appellant herein under Order XXXIX Rule 4 of the CPC seeking vacation of the *ex-parte* ad-interim order dated 21st December, 2018.

2. The Appellant herein is Defendant No.3, the Respondent No.1 is the Plaintiff, the Respondent No.2 is the Defendant No.1 and Respondent No.3 is Defendant No.2, in the suit proceedings. The underlying civil suit has been filed seeking partition of the immovable properties and other ancillary reliefs.

Submissions of the counsels for the parties

3. Mr. Suhail Dutt, learned Senior Counsel for the Appellant/Defendant No. 3 stated that the Appellant and Respondent No. 2/Defendant No.1 in the present appeal are the son and daughter respectively, of late Mr. S.N. Dandona¹ and late Mrs. Shyam Kumari Dandona² ('parents'). He stated that the Appellant's parents jointly owned the entire property bearing no. E-25, Vasant Marg, Vasant Vihar, New Delhi ('Vasant Vihar property'); whereas, the property bearing no. 275, Lower Ground Floor, Kailash Hills, New Delhi ('Kailash Hills property'), was owned exclusively by the Appellant's father (collectively referred to as 'subject properties'). He stated that after the demise of the parents, the Appellant filed a suit for partition in the year 2010, being CS (OS) No. 1175/2010, before this Court, qua the subject properties.

3.1. He stated that it is a matter of record that an interim injunction order dated 3rd June, 2010, was passed in the aforesaid suit for partition, restraining Respondent No. 2 herein from parting with possession or

¹ Died on 25th March, 2008

² Died on 5th February, 2010



creating any third-party rights in the subject properties. He stated that the suit was initially contested by Respondent No. 2 by relying upon alleged Wills of the parents, however, after some negotiations, the parties arrived at a settlement and a detailed written settlement was filed before the learned Single Judge vide I.A. No. 2435/2015, filed under Order XXIII Rule 3 of CPC, duly supported with affidavits. He stated that the said settlement was confirmed by the parties before the learned Single Judge and consequently, the said Court allowed the I.A. No. 2435/2015 and passed a decree for partition in terms thereof on 4th February, 2015 ('consent decree'). He stated that the Appellant paid a sum of Rs. 65 lacs as stamp duty towards his share for drawing up the decree.

3.2. He stated that the consent decree was drawn up after due deliberations and consultation with Respondent No. 2, her children i.e., Respondent Nos. 1 and 3 herein and her advocate. He stated that the said fact is duly recorded at paragraph 'G' in the application bearing I.A. No. 2438/2015.

3.3. He stated that as per the consent decree for partition, (i) the first floor, second floor and terrace in Vasant Vihar property and (ii) entire Kailash Hills property, fell to the share of Respondent No. 2 ('Respondent No. 2's portion'). He stated that further, only the basement and ground floor in Vasant Vihar property fell to the share of the Appellant herein ('Appellant's portion').

3.4. He stated that Respondent No. 2 had agreed to purchase the Appellant's portion for a consideration of Rs. 34.5 crores³, which was payable within 3.5 years. In addition, in the interim, Respondent No. 2 was

³ As per paragraph N of I.A. No. 2438/2015 in CS (OS) No. 1175/2010



permitted to have possession of the Appellant's portion as a licensee, subject to payment of license fee of Rs. 4 lacs per month⁴ to the Appellant.

3.5. He stated that Respondent No. 2 failed, both to purchase the Appellant's portion within the agreed period and to make payment of the license fee. He stated that in these circumstances, the Appellant filed an execution petition before this Court i.e., Ex. P. No. 96/2018, on 12th November, 2018, seeking recovery of the possession of his portion and the license fee with interest. He stated that *vide* order dated 13th February, 2019, the Executing Court issued warrants of possession in favour of the Appellant and against Respondent No. 2.

3.6. He stated that it was in these circumstances, with intention to interfere and obstruct the execution of the consent decree and the warrants of possession, the Respondent No. 2 colluded with Respondent No. 1 (i.e., her daughter) to file the underlying suit i.e., CS (OS) No. 649/2018, for partition of the properties of her grandparents on the plea that the said properties are HUF properties. He stated that the existence of the consent decree dated 4th February, 2015 passed in CS (OS) No. 1175/2010, was suppressed in the plaint filed in CS (OS) No. 649/2018. He stated that thus, the learned Single Judge was misled into passing the *ex-parte* ad-interim order dated 21st December, 2018.

3.7. He stated that significantly, the learned Single Judge *vide* order dated 21st December, 2018, had further directed all the parties to file their respective affidavits disclosing the 'present status' of the properties set out in the plaint. He stated that the Respondent No. 2 initially delayed the filing

⁴ As per paragraph Y and Z of I.A. No. 2438/2015 in CS (OS) No. 1175/2010



of the affidavit and subsequently, filed it after two years on 19th November, 2020, wherein she admitted that she has already disposed of all the properties that fell to her share under the consent decree dated 4th February, 2015, on or before the year 2015 itself. He stated that the said twin facts of passing of the consent decree and its implementation by Respondent No. 2 were material facts, which were suppressed in the plaint filed in CS (OS) No. 649/2018.

3.8. He stated that the Respondent No. 1 has not amended the plaint to challenge the sales effected by Respondent No. 2 with respect to the properties received by her under the consent decree dated 4th February, 2015, nor sought any direction for deposit of the sale proceeds received by Respondent No. 2 from the sale of the said properties. He stated that this evidences that the intent of the underlying suit was to deprive the Appellant herein of the fruits of the consent decree.

3.9. He stated that the ad-interim order dated 21st December, 2018, passed in the underlying suit operates only to prevent the implementation of the warrants of possession issued vide order dated 13th February, 2019, in the execution proceedings, so as to enable Respondent No. 2 to continue to enjoy the possession of the Appellant's portion in gross violation of the consent decree dated 4th February, 2015; and without payment of the stipulated license fees of Rs. 4 lacs per month.

3.10. He stated that the affidavit dated 19th November, 2020, evidencing the fact that Respondent No. 2 had sold the properties, which fell to her share under the consent decree, were not available before the Division Bench



when it heard and decided RFA (OS) No. 86/2019⁵ on 16th January, 2020; as it came on record only after Respondent No. 2 filed her affidavit dated 19th November, 2020. In addition, he stated that the falsity of Respondent No. 1's affidavit dated 18th February, 2019, also came to light after Respondent No. 2 filed her affidavit dated 19th November, 2020. He stated that the first floor of the Vasant Vihar property stood sold in the year 2012 as per the affidavit of Respondent No. 2 and, therefore, the affidavit of Respondent No. 1 stating that she is residing in a room on the first floor is false to her knowledge. He stated that the learned Single Judge while passing the impugned judgment failed to take into consideration the effect of material suppression and falsity of the statements in the plaint and affidavits filed by Respondent No. 1/Plaintiff and her mother, Respondent No. 2. He stated that the said Respondent Nos. 1 and 2 have made patently false statements, to overreach the execution process and the underlying suit amounts to abuse of process of Court.

3.11. He stated that Respondent No. 1 is admittedly married and residing at her matrimonial home bearing No. M-51, Lajpat Nagar, Part – II, New Delhi – 110024 ('matrimonial home'). He stated that the ad-interim order dated 21st December, 2018, was therefore, operating only to protect the possession of Respondent No. 2.

3.12. He stated that the Appellant to show his *bona fides*, made a statement before the learned Single Judge that he be permitted to recover possession of his share in Vasant Vihar property and he undertook that he will not create any third-party rights or part with possession till the pendency of the suit;

⁵ filed against judgment dated 23rd September, 2019 passed by learned Single Judge in CS (OS) No. 649/2018, rejecting the plaint.



however, the judicial process cannot be permitted to be abused by Respondent No. 2 in the manner sought to be done in this case. He stated that Respondent No. 2 is in exclusive possession of the Appellant's portion, without payment of license fee, which is in teeth of the consent decree dated 4th February, 2015.

3.13. He stated that the contents of Respondent No. 2's affidavit dated 19th November, 2020, shows that she sold first floor⁶ and second floor⁷ of Vasant Vihar property in the year 2012. He submitted that it is a matter of record that *vide* order dated 3rd June, 2010, this Court in CS (OS) No. 1175/2010 had restrained Respondent No. 2 from parting with possession or creating third-party rights qua her portion in the subject properties. He stated that in the year 2012, the said interim order was in operation and, therefore, the execution of aforesaid sales by Respondent No. 2 was in violation of the interim order. In this regard, he also relied upon the statement of Respondent No. 2, as recorded in paragraph 3(E) of I.A. No. 2438/2015 filed in CS (OS) No. 1175/2010, wherein Respondent No. 2 affirmed on oath that there were no third-party rights in the suit properties which included the first and second floor of the said Vasant Vihar property. He stated that thus, it is apparent that Respondent No. 2 not only violated and disobeyed the interim order dated 3rd June, 2010, but also made a false statement before this Court in the I.A. No. 2438/2015 filed in CS (OS) No. 1175/2010.

3.14. He stated that the contents of Respondent No. 2's affidavit dated 19th November, 2020, in the underlying suit and her affidavit dated 02nd February, 2015, filed in CS (OS) No. 1175/2010, cannot stand together and

⁶ Vide sale deed registered on 14th December, 2012

⁷ Vide sale deed registered on 22nd November, 2012



show that the affidavit dated 02nd February, 2015, was false. He stated that in addition, the Respondent No. 2 by refusing to vacate the Appellant's portion in the Vasant Vihar property is acting in wilful breach of the undertaking given by her to the Court vide affidavit dated 02nd February, 2015, filed in CS (OS) No. 1175/2010. He stated that, however, the learned Single Judge failed to take note of these glaring inconsistencies, which are admitted by the Respondents and wrongfully dismissed the Appellant's application seeking vacation of the ad-interim order dated 21st December, 2018.

3.15. He stated that as is evident from the terms of the consent decree dated 4th February, 2015, the Respondent No. 2 received a larger portion of the subject properties left behind by the parents. He stated that even assuming without admitting that the said properties were HUF properties, the Respondent No. 2 negotiated a larger share of the properties and to that extent, her branch of family received a larger share and no prejudice was caused to Respondent No. 1 herein with the passing of the consent decree dated 04th February, 2015. He also stated that assuming a HUF existed, the Respondent No. 2 being the Karta of the HUF of her family could have consented to the partition recorded on 4th February, 2015, as the partition with a larger share is concededly beneficial to the said group. He stated that these facts were not considered by the learned Single Judge while rejecting the I.A. No. 8363/2020.

4. In reply, Mr. Amit Sibal, learned Senior Counsel appearing for Respondent No. 2/Defendant No. 1, was heard on 19th February, 2024 and 13th March, 2024. He stated that he had instructions to state that the appeal may be allowed and the interim order dated 21st December, 2018, be



vacated. He stated that the Respondent No. 2 derives no advantage from the grant of status-quo order dated 21st December, 2018.

4.1. He stated that Respondent No. 2 is estranged from Respondent No. 1/Plaintiff. He stated that Respondent No. 2 is opposed to the suit itself and has in her written statement prayed for dismissal of the suit. He stated that it's the stand of Respondent No. 2 that the suit filed by Respondent No. 1 is frivolous and not maintainable. He stated that, therefore, this Court may not entertain the impression that the underlying civil suit filed by Respondent No. 1 is collusive between Respondent Nos. 1 to 3.

4.2. He stated that the execution proceedings initiated by the Appellant i.e., Ex. P. No. 96/2018, can be independently continued. He stated that Respondent No. 2 admitted to the validity of the consent decree dated 4th February, 2015 and did not dispute that she is bound by it.

4.3. He stated that Respondent Nos. 2 and 3 are in exclusive possession of the basement and ground floor of the Vasant Vihar property. He stated, on instructions, that however, the Respondent No. 2 is unwilling to vacate the Appellant's portion and she is also not in a financial condition to pay the license fee of Rs. 4 lacs per month, as agreed to under the consent decree dated 4th February, 2015.

4.4. He stated that the ad-interim order dated 21st December, 2018, be vacated and issue of recovery of possession and payment of license fee be determined by the concerned Court in Ex. P. No. 96/2018.

4.5. He stated that it is a matter of record that the properties inherited by Respondent No. 2 from her parents under the consent decree dated 4th February, 2015, all stand sold by her on or before the year 2015. He relied upon the contents of the affidavit dated 19th November, 2020, filed by



Respondent No. 2, making the said disclosure.

5. In reply, Mr. Saurabh Kirpal, learned Senior Counsel for Respondent No. 1/Plaintiff was heard on 19th February, 2024 and 13th March, 2024. He stated, on instructions, that the Respondent No.1/Plaintiff had no objection if the interim order dated 21st December, 2018, is set aside. He stated that Respondent No. 1's concern is limited to the extent that Respondent No. 2 should secure the interests of Respondent No. 1 in the properties inherited by Respondent No. 2 from her parents i.e., Plaintiff's grandparents. He stated that, therefore, this Court while vacating the order dated 21st December, 2018, may issue appropriate directions to secure the potential 1/6th share of the Respondent No. 1 in the estate of her grand-parents.

5.1. He stated that the Respondent No. 1 is married and is residing at her matrimonial home Lajpat Nagar.

5.2. He stated that sale of the first floor of the Vasant Vihar property by Respondent No. 2 on 14th December, 2012, is admitted. He stated that the Respondent No. 1/Plaintiff admitted that the assertion made by her in the affidavit dated 18th February, 2019, that she is residing or using a portion of the first floor is incorrect. He fairly stated that the averments with respect to physical possession made in the plaint [at paragraph nos. 10 and 13] were pleaded for justifying the payment of fixed court fees.

5.3. The Respondent No. 1 was directed to file a fresh affidavit with respect to her stand on the physical possession of Vasant Vihar property. The Senior Counsel for Respondent No. 1/Plaintiff has handed over a fresh affidavit dated 14th March, 2024 wherein, it is stated that the Respondent No. 1 is residing at her matrimonial home in Lajpat Nagar and she also uses one room for residence at the ground floor and the portion in the basement



of the Vasant Vihar property as work space for her consultancy work. Mr. Saurabh Kirpal, the learned Senior Counsel for Respondent No. 1 fairly admitted that the contents of this application were contrary to his submissions recorded on 13th March, 2024, wherein it was admitted that Respondent Nos. 2 and 3 were in exclusive possession of the Vasant Vihar property.

5.4. He also fairly admitted that the contents of the affidavit dated 14th March, 2024, are contrary to the contents of the earlier affidavit dated 18th February, 2019, filed by Respondent No. 1.

6. Learned counsel for Respondent No. 3/Defendant No. 2 did not address any oral arguments and adopted the submissions of learned Senior Counsel for Respondent No. 2.

Findings and analysis

7. We have heard the learned Senior Counsel for the parties and perused the record.

8. As noted above, the learned Senior Counsel appearing for Respondent No. 2 has conceded to allowing the appeal and vacating the ad-interim order dated 21st December, 2018. In fact, he submitted that as per Respondent No. 2, the underlying suit itself is frivolous and ought to be dismissed. He also conceded that the consent decree dated 04th February, 2015, is valid and binding on Respondent No. 2. The learned counsel appearing for Respondent No. 3 adopted the submissions of learned Senior Counsel appearing for Respondent No. 2.

9. Separately, the learned Senior Counsel for Respondent No. 1 as well conceded to allowing the appeal and vacating the ad-interim order dated 21st December, 2018; he, however, stated that this Court may pass appropriate



directions for securing the 1/6th share of Respondent No. 1 in the suit properties left behind by her grandparents. He stated that since the Respondent No. 2 has already sold the properties, which fell to her share under the consent decree dated 4th February, 2015, the Respondent No.1's share be secured in the manner deemed fit.

10. Pertinently, *vide* order dated 29th January, 2024, the Respondent Nos. 1 to 3 were directed to remain personally present in Court. In pursuance thereto, the parties were present before this Court and the aforesaid statements were made by the Senior Counsel on the parties' instructions on 19th February, 2024 and 13th March, 2024.

11. In addition to the aforesaid concession of Respondent Nos. 1 to 3, even on merits, it is noted that the underlying suit has been filed by Respondent No.1/Plaintiff for seeking partition of three properties i.e. Vasant Vihar property, Kailash Hills property and plot at Dehradun. The Respondent No.2's affidavit dated 19th November, 2020 confirms that first floor and second floor of the Vasant Vihar property and the entire Kailash Hills property has been sold by her and the sale consideration has been received by her exclusively. Similarly, the plot at Dehradun has been sold by Mr. S.R. Duggal, father of Respondent No.1 and sale proceeds received by him exclusively. The Respondent No.2 and Mr. S.R. Duggal are parents of Respondent No. 1 and she is not aggrieved by the said sale(s) undertaken by them and has accepted them. The Respondent No.1 is claiming her rights in the estate of her grandparents through the branch of her mother i.e., Respondent No.2. Ex facie, the Respondent No.2 and her husband, Mr. S.R. Duggal, have already received a substantial share of the subject properties and this share is far in excess of 50%, which the branch of Respondent No.2



would be entitled to, even as a final relief in the underlying suit.

12. Thus, the only remaining properties are the basement and the ground floor of Vasant Vihar property, which fell to the share of the Appellant under the consent decree. The said share is *ex-facie* far less than 50%, which Appellant and his family branch would be entitled to in case the underlying suit filed by Respondent No.1 is decreed. The Appellant is, therefore, entitled to recover the possession of his portion as per consent decree and enjoy the same during the pendency of the suit. The continuation of the ad-interim order dated 21st December, 2018, is inequitable and not merited in the facts of the case. There is no ground made out to justify the enjoyment of this portion of the Vasant Vihar property by Respondent No.2 during the pendency of the suit. On the contrary, the Respondent No.2's continued occupation is in violation of the terms of consent decree.

13. The Respondent No.1 in her affidavit dated 18th February, 2019, to a pointed direction from the learned Single Judge has stated that she is not aware about the title and possession of the other two properties i.e., Kailash Hills and Dehradun property. However, in her amended plaint filed subsequently on 12th March, 2019, the Respondent No. 1 at para 13 has continued to assert that she is in possession of the said properties.

14. Similarly, in her affidavit dated 18th February, 2019, she stated that she is unaware about the current status of the title of Vasant Vihar property and further asserted that she is in possession of the basement and first floor of the property. The Respondent No. 2, in her affidavit dated 19th November, 2020 has stated that first floor and second floor of the Vasant Vihar property stood sold in the year 2012. Thus, the fact that title and possession of the first floor and second floor of the Vasant Vihar property is with some third



parties was to the knowledge of Respondent No. 1/Plaintiff. However, despite the same Respondent No. 1/Plaintiff in her unamended plaint dated 14th December, 2018 and amended plaint dated 12th March, 2019, at paragraph 11 has asserted that she has access to the entire house at Vasant Vihar.

Respondent No. 1's assertion of residence at Vasant Vihar property is prima facie untenable due to her marital status and actual physical residence at matrimonial home

15. The Respondent No. 1 has admitted that she is married to Mr. Amrit Singh Chopra and resides with him in her matrimonial home at Lajpat Nagar. However, in the plaint and the affidavit dated 18th February, 2019, it is asserted that she also continues to reside at her maternal home i.e., in the Vasant Vihar property with her husband and family. This assertion as regards residence at maternal home has been made in the plaint at paras 4 and 10 and the affidavit dated 18th February, 2019, is an attempt to mislead the learned Single Judge to believe that she is actually residing at the Vasant Vihar property and there is threat to her actual physical dispossession. Though, in the immediately preceding para no. 3 of the plaint, it is also alleged that she is residing at her matrimonial home. Inconsistent pleas have been taken in the plaint to secure the ad-interim order dated 21st December, 2018.

16. In our considered opinion, this plea taken by Respondent No. 1 is incorrect in law. The phrase 'residence' has statutory implications and was considered by Supreme Court while construing Section 19(2) of the Hindu Marriage Act, 1955, to hold, that a place, which a person chooses to reside permanently at, is his/her legal and actual residence. The Court held that a place where a person has gone for casual or temporary visit cannot be called



his/her residence. The relevant portion of the Supreme Court judgment in *Smt. Jeewanti Pandey v. Kishan Chandra Pandey*⁸ reads as under:

“12. In order to give jurisdiction on the ground of “residence”, something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the court in which the respondent is sued, is his natural forum. The word “resides” is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense “residence” is more or less of a permanent character. **The expression “resides” means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has fixed home or abode. In Webster's Dictionary, “to reside” has been defined as meaning “to dwell permanently or for any length of time”, and words like “dwelling place” or “abode” are held to be synonymous. **Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same.** If a person has no established home and is compelled to live in hotels, boarding houses are houses of others, **his actual and physical habitation is the place where he actually or personally resides.**”**

13. It is plain in the context of clause (ii) of Section 19 of the Act, that the word “resides” must mean the actual place of residence and not a legal or constructive residence; it certainly does not connote the place of origin. The word “resides” is a flexible one and has many shades of meaning, but it must take its colour and content from the context in which it appears and cannot be read in isolation. **It follows that it was the actual residence of the appellant, at the commencement of the proceedings, that had to be considered for determining whether the District Judge, Almora, had jurisdiction, or not.** That being so, the High Court was clearly in error in upholding the finding of the learned District Judge that he had jurisdiction to entertain and try the petition for annulment of marriage filed by the respondent under Section 12 of the Act.”

(Emphasis supplied)

17. The Supreme Court in *Bhagwan Dass and Anr. v. Kamal Abrol and*

⁸ (1981) 4 SCC 517



*Ors.*⁹ further explained the meaning of the expression ‘residence’ and held that the *de facto* residence is the place where a person regularly resides and is different from the place where he/she is connected by mere ancestral connections. The relevant portion of the said judgment reads as under:

*“11. From the aforesaid analysis it is apparent that the word “residence” is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of “residence”. There are two classifications of the meaning of the word “residence”. First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word “residence” as given in Black's Law Dictionary, 8th Edn. It is given that the word residence means bodily presence as an inhabitant in a given place. **Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage.**”*

(Emphasis supplied)

18. Therefore, the Respondent No.1/Plaintiff is actually physically residing at her matrimonial home with her husband at Lajpat Nagar, which is her de-facto residence. The Respondent No. 1 is not a resident of the maternal home at Vasant Vihar property as alleged by her, even assuming that she has any ancestral connection to it and the Respondent No. 1 would, therefore, not be affected by the execution of the consent decree. This is in addition to the fact that during the course of arguments before us, the learned senior counsel for Respondent Nos. 1, 2 and 3 admitted that Respondent No. 2 and 3 are the persons, who are actually physically residing at the Vasant Vihar property. It is thus, evident that legal pleas,

⁹ (2005) 11 SCC 66



which are contrary to the factual situation, have been taken in the plaint by Respondent No. 1, which were admitted by Respondent Nos. 2 and 3 only to obstruct the proceedings in Ex. P. 96/2018.

19. Therefore, the only conclusion this Court can arrive at in view of the inconsistent and false pleas taken by the Respondent No. 1/Plaintiff in her unamended plaint, amended plaint, affidavit dated 18th February, 2019 and affidavit dated 14th March, 2024¹⁰, is that she has taken a false and incorrect stand with respect to her actual physical possession of the Vasant Vihar property.

20. Therefore, in view of the aforesaid statements made by the counsels for Respondent Nos. 1 to 3 and the findings above, the impugned judgment dated 9th January, 2023 is set aside and consequently, the ad-interim order dated 21st December, 2018, is hereby vacated. The Appellant is, however, bound down to his statement that on recovering possession he will not create any third-party rights in his portion till the pendency of the underlying suit.

21. The Appellant is consequentially at liberty to forthwith proceed with the proceedings in Ex. P. 96/2018, to recover the possession of his portion and the license fee in terms of the consent decree and it is clarified that the pendency of the underlying suit will not be relied upon by Respondents to impede the said execution.

Directions w.r.t securing share of Respondent Nos. 1 and 3

22. Under the consent decree dated 4th February, 2015, the Respondent No. 2 received the first floor and second floor of the Vasant Vihar property and the entire share in the Kailash Hills property. In contrast, the Appellant was entitled to receive only the basement and the ground floor of the Vasant



Vihar property.

23. The Respondent Nos. 1 is claiming her share in the estate of her grandfather on the plea of HUF through Respondent No. 2's branch of family and not through the Appellant's branch. Respondent No.3 is also admitting the alleged claims of Respondent No.1. Assuming, the Respondent Nos. 1 and 3 are entitled to their claim of succession on the plea of HUF, they will be entitled to succeed on partition of the HUF estate on per stirpes basis; consequently, the alleged HUF estate would be divided equally between the family branch of the Appellant and Respondent No.2 respectively. And, between Respondent Nos. 1 to 3, they would not be entitled to more than 50% of the HUF estate.

24. The Respondent No. 2 has admittedly sold the properties, which fell to her share under the consent decree dated 04th February, 2015 and received sale consideration(s). As noted above, the Respondent No.2 *ex-facie* received a larger share in the estate than Appellant i.e., far in excess of 50%. Thus, in order to secure the interests of the Respondent Nos. 1 and 3 herein, the Respondent No. 2 is directed to disclose on affidavit the details of the entire sale consideration(s) received by her during the sale of the first floor and second floor of Vasant Vihar property and Kailash Hills property; and she is further directed to deposit 2/3rd of the said sale consideration with the Registrar General within four weeks along with interest thereon at 10% per annum from the date of respective sale. The said 2/3rd deposit is towards the shares of Respondent No. 1 and Respondent No. 3 since ostensibly they are alleging that the subject properties were HUF properties and pressing for the

¹⁰ Filed in present appeal FAO(OS) 35/2023



relief of partition. Since, Respondent No.2 has already realised more than 50% of the estate, she is liable to secure the alleged claims of Respondent Nos. 1 and 3.

25. To sum up, we have issued the following directions to the parties, in this judgment:

25.1. The impugned judgment dated 09th January, 2023 passed in CS(OS) 649/2018 is set aside and consequently, the ad-interim order dated 21st December, 2018, stands vacated.

25.2. The Appellant is at liberty to proceed with the execution proceedings in Ex. P. 96/2018 to recover the possession of his portion and license fees as per consent decree dated 04th February, 2015. The Appellant is, however, bound down to his statement that on recovering possession he will not create any third-party rights in his portion till the pendency of the underlying suit.

25.3. The Respondent No. 2 is directed to deposit 2/3rd of the sale consideration (received by her by the sale of the first and second floor of Vasant Vihar property as well as Kailash Hills property), with the Registrar General within four weeks along with interest thereon at 10% per annum from the date of respective sale to secure the interest of Respondent Nos. 1 and 3.

26. Accordingly, with the aforesaid directions the appeal stand allowed and the pending applications stand disposed of.

Initiation of Suo Moto Criminal Contempt Proceedings against Respondent Nos. 1 to 3

27. The matter, however, cannot rest here as in the egregious facts of the present case, upon perusal of the pleadings and the affidavits filed by Respondent Nos. 1 to 3, we are of the considered opinion that Respondent



No. 2's actions exhibit that she has abused the legal process and the institution of the underlying suit i.e., CS (OS) No. 649/2018, has been strategized by her in collusion with Respondent Nos. 1 and 3, to obstruct the execution of the consent decree dated 4th February, 2015, which is the subject matter of implementation in Ex. P. No. 96/2018.

28. The abuse of legal process and collusion between Respondent Nos. 1 to 3 becomes evident from the contents of the affidavit dated 19th November, 2020, filed by Respondent No. 2 as well as her written statement¹¹ and affidavit dated 19th November, 2020 filed by Respondent No. 3 on one hand and the contents of the amended plaint as well as Respondent No.1's affidavit dated 18th February, 2019, on the other hand.

29. The Respondent No. 1 in her original¹² and amended¹³ plaint at paragraph 11 made a categorical assertion of 'fact' that she has access to the entire house at E-25, Vasant Vihar (i.e., basement, ground floor, first floor and second floor) and all other properties (i.e., Kailash Hills property and the plot at Dehradun) for which partition is sought. The said plaint has been duly verified and affirmed by Respondent No. 1 by furnishing an affidavit in support thereof. The learned Single Judge persuaded by the said assertions in the plaint passed the *ex-parte* ad-interim order dated 21st December, 2018, directing the parties to maintain status-quo with respect to title and possession of said properties.

30. However, the Respondent No.2's affidavit dated 19th November, 2020 states that the first floor and second floor of the Vasant Vihar property stood

¹¹ 3rd November, 2020

¹² 14th December, 2018

¹³ 12th March, 2019



sold by her vide registered sale deeds in the year 2012. It is stated therein that the property at Kailash Hills stood sold by her vide registered sale deed¹⁴ in the year 2015. It is further stated that the property at Dehradun stood sold by her husband Mr. S.R. Duggal in the year 2015. The contents of this affidavit [of the Respondent No. 2] dated 19th November, 2020, are not disputed by Respondent No. 1. The contents of Respondent No. 2's affidavit are also confirmed by Respondent No. 3.

31. In light of the undisputed contents of Respondent No. 2 and 3's affidavit dated 19th November, 2020; the positive assertion made by Respondent No. 1 in her plaint at paras 3, 10, 11 and 13 that she has access to and is in possession of the subject properties was a fact, false to her personal knowledge. The Respondent No. 1 in the verification clause of the plaint and the affidavit in support thereof has stated that the contents of paragraph 3, 10 and 11 are true to her knowledge; however, now in view of the admitted falsity of the said assertions, it is established that the Respondent No. 1 has perjured herself. Further, the assertion by Respondent No. 1 in her affidavit that she is residing on the 'first floor' and using a portion of the basement of the Vasant Vihar property is also falsified by the contents of Respondent No. 2's affidavit dated 19th November 2020, which states that the first floor stood sold by her in the year 2012. The paras 3, 10 and 11 of the amended plaint filed in CS (OS) No. 649/2018 reads as under:

"3. That the Plaintiff is a law abiding and peace loving citizen having full faith in law of land and is residing presently residing at property bearing No. 25, Vasant Vihar, New Delhi and also at her matrimonial home i.e. M-51, Lajpat Nagar, Part-II, New Delhi- 110024 after her marriage. It is stated that the plaintiff herein is in the possession of the Vasant Vihar property and is having 1 room to herself at the ground floor for residence

¹⁴ Registered agreement dated 11th September, 2015



purpose and a portion in the basement which she is using as her office for her consultancy work and also assisting her husband in his publication business. He in the business of IAS coaching centres. He runs IAS coaching centres. The plaintiff marriage was solemnized with Mr. Amrit Singh Chopra on dated 28/02/2016.

...

10. That as the **plaintiff is using the portion of the basement and the first floor**, she has come to know around last week of November, 2018 that the property is being sold and this was proved further by the regular visits of the local property dealers of the area. It is further submitted that the defendant has further stated that the property is being sold and in order to protect her share of suit property she is seeking the indulgence of this Hon'ble court by way of this present suit.

11. That the Defendants are attempting to create and trying to interfere with the share and possession of the plaintiff in the suit property which the plaintiff is legally entitled to. **That the plaintiff has been in actual physical possession of the property i.e. E- 25, Vasant Vihar, New Delhi and she has the access of the entire house at- E- 25, Vasant Vihar, New Delhi and all other properties as mentioned above.**

...

13. That it is submitted that since the plaintiff and the defendants are having the constructive, physical and notional possession of the suit properties and are having share in the HUF / suit properties ...”

(Emphasis Supplied)

32. Pertinently, the Respondent No.3/Defendant No.2 as well in his written statement¹⁵ has submitted that he fully supports the case of Respondent No.1/Plaintiff. He admitted the contents of para 11 of the amended plaint to the effect that Respondent No.1 has access to the entire Vasant Vihar property, which as observed above is false and has thus, perjured himself.

33. Further, in the affidavit of 18th February, 2019, Respondent No. 1, in departure from averments at paras 11 and 13 of the unamended plaint, admitted that she is unaware about the present status of title and possession of the properties at Kailash Hills and Dehradun. However, in spite of the

¹⁵ Dated 20th October, 2020.



same, in the subsequent amended plaint filed on 12th March, 2019, the Respondent No.1 did not amend the paras 11 and 13 of the plaint and retained her assertion with respect to her ‘actual’ physical access to all the properties including at Vasant Vihar, Kailash Hills and Uttaranchal. The verification and affirmation of unamended plaint, which contains statement of facts false to the knowledge of the Respondent No. 1, makes her liable for contempt.

34. The CPC was amended w.e.f. 01st July, 2002 and sub-rule (4) was added to Order VI Rule 15 therein, making it mandatory for the party verifying the pleading to furnish an affidavit in support of the same. The object of this amendment was to fix responsibility for assertions made in the plaint on the person who verifies the pleading; and this is to ensure that false allegations are not made freely and recklessly. False verification is an offence punishable under Section 191 and 193 of the Indian Penal Code (‘IPC’). The unamended and amended plaints filed by Respondent No. 1/plaintiff are both verified and supported with accompanying affidavits.

35. The Supreme Court in ***Re: Suo Moto proceedings against R. Kaurppan, Advocate***¹⁶ held that sanctity of the affidavits has to be preserved and protected by discouraging filing of irresponsible statements, without any regard to accuracy. This is especially so in cases where the adjudication is dependent upon the statement of facts. It is a matter of law that for deciding an application under Order XXXIX Rule 1 and 2 CPC and Order XXXIX Rule 4 CPC, the civil Court relies upon the statement of facts made in the pleadings to arrive at a prima facie view. The Respondent No. 1/Plaintiff,

¹⁶ (2001) 5 SCC 289 (Paras 13, 15, 16 and 17)



however, in the present case filed false affidavit in support of her unamended plaint¹⁷, filed the false affidavit dated 18th February, 2019 and amended plaint¹⁸, which led the learned Single Judge in the underlying suit to pass the ad-interim order dated 21st December, 2018 and continue the said order. The sole effect of the ad-interim order dated 21st December, 2018, was that the execution of the consent decree dated 04th February, 2015, was obstructed and Respondent No. 2's possession in the ground floor and basement of Vasant Vihar property was wrongfully protected, without payment of license fee.

36. No other suit property, which fell to the share of Respondent No. 2 under the consent decree dated 04th February, 2015, was impacted by the said ad-interim order; as Respondent No. 2 had already sold all the properties by the year, 2012 and 2015 as is evident from her affidavit dated 19th November, 2020.

37. The fact that Respondent No. 1/Plaintiff was aware about the said alienation of subject properties can be inferred from her affidavit dated 18th February, 2019 and more importantly from her conduct since, the Respondent No. 1/Plaintiff after receiving the affidavits dated 19th November, 2020 of Respondent Nos. 2 and 3 did not seek any direction to the said Respondent Nos. 2 and 3 and her father Mr. S.R. Duggal to deposit the sale consideration of the disposed of suit properties in this Court. This omission of the Respondent No. 1 is evidence of the fact that she is in cahoots with Respondent Nos. 2 and 3; and the continuation of the suit is only intended to obstruct the execution proceedings in Ex. P. No.96/2018.

¹⁷ Dated 14th December, 2018

¹⁸ Dated 12th March, 2019



38. Similarly, with respect to Respondent Nos. 2 and 3 we are constrained to observe that the record evidences that the underlying suit has been filed by Respondent No. 1 to avoid the eviction of Respondent Nos. 2 and 3 from the Vasant Vihar property in the execution proceedings. The underlying suit was filed on 14th December, 2018 and the rejection of plaint vide order dated 23rd September, 2019, was contested before the Division Bench in RFA (OS) No. 86/2019 at the hearing dated 16th January, 2020 on the categorical premise that ‘all’ the properties at Vasant Vihar, Kailash Hills and Dehradun were all available for partition (as on 16th January, 2020). The Respondent Nos. 1 and 2 were duly represented in the said appeal by senior counsel and at no stage it was disclosed to the Division Bench hearing the said appeal that Respondent No. 2 had disposed of and monetized her portion of inheritance received under the consent decree dated 04th February, 2015, which includes Vasant Vihar property and Kailash Hills. So also, the sale of the Dehradun property by Mr. S.R. Duggal, the father of Respondent No. 1 was suppressed from the Division Bench

39. However, the affidavit(s) dated 19th November, 2020, subsequently filed by Respondent Nos. 2 and 3 respectively, shows that they were both aware that Respondent No. 2’s share in Vasant Vihar property and Kailash Hills stood sold in the year 2012 and 2015 respectively. The sale of the assets, which fell to the share of Respondent No. 2 under the consent decree dated 04th February, 2015, showed that Respondent No. 2 had implemented the said decree and received her share of the estate of parents. The said facts were material and were withheld/suppressed by Respondent Nos. 2 and 3 from the Division Bench which heard RFA (OS) No. 86/2019 and passed the order dated 16th January, 2020. Suppression of these material facts by



Respondent Nos. 2 and 3 was intended to interfere with the administration of justice as it influenced the decision making by the Division Bench in RFA(OS) 86/2019; in addition to overreaching the execution proceedings in Ex. P. No. 96/2018.

40. Further, with respect to Respondent No. 2, it is seen that she had filed an affidavit dated 02nd February, 2015 in CS(OS) No. 1175/2010 in support of I.A. No. 2438/2015, wherein she had given an ambiguous undertaking to the Court that she will honour the terms of the settlement and fulfil her obligations. She had further expressly represented to the Court that the Vasant Vihar property is free from encumbrances and all her family members have confirmed their acceptance of the settlement terms. However, in her affidavit dated 19th November, 2020 she has now disclosed that she had sold the Vasant Vihar property in the year 2012 itself and in her written statement in the present suit she has supported the Respondent No. 1/Plaintiff by stating that Respondent Nos. 1 and 3 were not made aware about the settlement recorded in I.A. No. 2438/2015 and consent decree dated 04th February, 2015. The entire tone and tenor of the written statement in the underlying suit is in tacit support of the plaint even though ostensibly learned senior counsel for Respondent No. 2 stated that Respondent No. 2 is opposing the plaint. The fact of sale of first floor and second floor of Vasant Vihar property by Respondent No. 2 in the year, 2012 leads to inevitable conclusions (i) this material fact was suppressed in CS (OS) No. 1175/2010 and (ii) the said sales were undertaken in gross violation of the subsisting interim order dated 03rd June, 2010 passed in CS (OS) No. 1175/2010. The Respondent No. 2's conduct is brazened and makes a mockery of the judicial process.



41. Thus, upon a careful perusal of the proceedings in CS (OS) No. 1175/2010, RFA (OS) No. 86/2019 and the underlying suit i.e., CS (OS) No. 649/2018, we are of the opinion that Respondent No. 2 herein has absolutely no regard for the authority of the Court, orders of the Court, the sanctity of the pleadings filed in the Court proceedings and has instead abused the legal process to interfere with the administration of justice of the Ex. P. No. 96/2018. In this attempt of Respondent No. 2, she has been ably supported by her daughter Respondent No. 1 and her son Respondent No. 3, who have without any fear of perjury and contempt, filed false pleadings and false affidavits to build a ruse of internal conflict to hoodwink the Court. The fairness of the Court procedure has been successfully abused by Respondent No. 2 to nullify the effect of the consent decree dated 04th February, 2015.

42. The Supreme Court in ***Dhananjay Sharma v. State of Haryana and Ors.***¹⁹ held that filing of the false affidavit or making a false statement on oath in Court amounts to Criminal Contempt of Court. The relevant portion reads as under:

“38. Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as “the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial

¹⁹ (1995) 3 SCC 757



proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In *Chandra Shashi v. Anil Kumar Verma* [(1995) 1 SCC 421: 1995 SCC (Cri) 239] the respondents produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed: (SCC pp. 423-24, paras 1 and 2)

“The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.”

(Emphasis supplied)



43. Similarly, the Supreme Court in *K.D. Sharma v. SAIL*²⁰ held that the party guilty of suppression of material facts is liable to guilty for contempt of Court for abusing the process of the Court. The said observations of the Court though made in light of a writ petition, are equally attracted to the pleadings under consideration in the present case as they are supported by an affidavit and the initiation of the suit proceedings by the Court is based on the truthfulness of the pleadings therein. The relevant portion reads as under:

38. *The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.*

39. *If the primary object as highlighted in Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.*

(Emphasis supplied)

²⁰ (2008) 12 SCC 481



44. The consent decree dated 4th February, 2015, was intended to put a finality to the disputes between the Appellant and Respondent No.2. The settlement agreement, which formed the basis of said consent decree, was lawful and had the imprimatur of the Court. The Respondent No.2 acted upon the said decree and monetized her inheritance by selling the estate which fell to her share²¹. She was thus, aware that she was bound by the said decree and would not be able to resist the execution of warrants of possession. She was also aware that she could not challenge or dispute the binding nature of the said consent decree. It is, therefore, apparent that she strategized a false claim by her daughter – Respondent No.1 by filing the suit to obstruct the execution of the warrants. The authority of Courts lies in the fact that there is a finality to the orders passed by the Court and that no person is allowed to act in breach of the orders of the Court. The Respondent No.2, however, has by suppressing material facts before the Division Bench in RFA (OS) 86/2019 and tacitly supporting Respondent No.1, has overreached the consent decree dated 4th February 2015 and thereby intended to lower the majesty of Court, which cannot be countenanced.

45. In the findings recorded above, the Respondent No.1/Plaintiff, Respondent No. 2 and Respondent No. 3 are thus *prima facie* guilty of Criminal Contempt for filing false pleadings and affidavits as well as suppression of material facts. Respondent No. 1 has filed false pleadings in the underlying suit CS(OS) 649/2018 and in RFA (OS) 86/2019. Respondent No. 2 has filed false pleadings in CS(OS) No. 1175/2010 and CS(OS) 649/2018 as her stand in the pleadings in both the suits are



inconsistent and mutually destructive. Respondent No. 3 is guilty of suppression of material facts from the Division Bench in RFA (OS) 86/2019 as the facts disclosed in affidavit dated 19th November, 2020 were not disclosed to the Division Bench. Accordingly, issue notice to Respondent Nos. 1 to 3 to show-cause as to why proceedings for criminal contempt under Section 2(c) read with Section 12 of the Contempt of Courts Act, 1971 be not initiated against them for filing of false affidavits, false pleadings, and suppression of material facts. The Registry is directed to register *Suo Moto* Criminal Contempt Case and proceed accordingly.

46. A copy of this order be served on Respondent Nos. 1, 2 and 3. The Respondent Nos. 1, 2 and 3 are directed to file their reply affidavit within four weeks.

47. List the matter for further proceedings in the criminal contempt proceedings before this Bench on 12th July, 2024.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

MAY 22, 2024/hp/aa/MG

²¹ As is evident from the affidavit dated 19th November, 2020.