

## **Janak Dulari Mehta through Constituted Attorney Shri S.M. Mehta Vs Sh. Ramji Dass through legal representative Smt. Shanta Bhatia**

**Court:** Delhi High Court

**Date of Decision:** Aug. 31, 2010

**Acts Referred:** Civil Procedure Code, 1908 (CPC) " Order 16 Rule 1(3), Order 16 Rule 6, Order 22 Rule 3, Order 22 Rule 5, 151

Constitution of India, 1950 " Article 227

**Hon'ble Judges:** Vidya Bhushan Gupta, J

**Bench:** Single Bench

**Advocate:** Rohan Thawani, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

V.B. Gupta, J.

By way of present petition filed under Article 227 of the Constitution of India, there is challenge to order dated 13th July, 2010, passed by Additional District Judge, Delhi, whereby application of petitioner under Order 22 Rule 5 of CPC (for short as "Code") etc. was

dismissed.

2. Brief facts are that, on 7th May, 1988 Sh. Ramji Dass (since deceased) predecessor-in-interest of respondent herein, filed a suit for Specific

Performance against present petitioner.

3. On 17th March, 2007, Sh. Ramji Dass died. Smt. Shanta Bhatia (respondent) filed an application for impleading her as legal representative,

which was opposed by the petitioner. Vide order dated 31st July, 2008, trial court allowed the application making following conclusions;

(i) On perusal of the record, it is apparent that Shri Ramji Dass described his parentage at some places as son of Shri Ganda Ram and at other

places as son of Shri Rattan Chand. Even in the statement given before the Court in evidence, similar methodology was adopted;

(ii) the defendant has taken preliminary objection No. 1, appears to be on the point of parentage, the issue No. 4 (framed on 2.11.2001) is to this

effect;

(iii) at the stage of evidence, Shri Ramji Dass stepped into the witness box on 1.11.2002 and he had categorically narrated "...the name of my

natural father was Shri Rattan Chand, I was taken in adoption by his real brother Shri Ganda Ram...". in his statement of 1.3.1993 similar version

was elucidated "...Shri Rattan Chand was my father. Shri Ganda Ram adopted me therefore I write Ramji Dass son of Shri Ganda Ram. At

present I am residing 56 Raja Garden New Delhi.

(iv) in other suit filed by Smt. Janak Dulari Mehta, the aforementioned Shri Ramji Dass was impleaded as defendant No. 1 naming him as Ramji

Dass son of Shri Ganda Ram (although Smt. Janka Dulari had not filed any application for bringing legal representative of Shri Ramji Dass in suit

for injunction);

(v) as per applicant and record of plaintiff's case Shri Ramji Dass, narrating his parentage by his natural father Shri Rattan Chand or as adopted

father, son of Shri Ganda Ram is one and the same person but according to defendant it is not so;

(v) the aforementioned conclusions also reflect the stands taken by each of the parties.

However at the time of decision on application Under Order XXII Rule 3 CPC, a prima facie view is to be formed. Considering the statement of

Shri Ramji Dass vis-a-vis formal issue on this point and the opposition of defendant, at this stage application of Smt. Shanta Bhatia is not only

within prescribed time but also the Will dated 8.3.1999 supports to implead her as legal representative of Shri Ramji Dass plaintiff. Accordingly

application stands disposed off in her favour.

4. It is an admitted fact that this order of 31st July, 2008 was never challenged by the present petitioner. Hence, the same has become final.

5. Thereafter, petitioner filed an application on 16th July 2009, Under Order 16 Rule 1(3) read with Order 16 Rule 6 and Section 151 of the

Code for issuance of summons to the witnesses and production of documents.

6. Vide order dated 23rd September, 2009, this application was partly allowed. However, request to summon respondent-Smt. Shanta Bhatia as

a witness was disallowed for following reasons;

As regards witness cited at (x) Smt. Shanta Bhatia, she is legal heir of Shri Ramji Dass and in the position of plaintiff. It is well settled that practice

of summoning by one party, the opposite party as his witness has to be deprecated. Even otherwise, defendant-applicant is to establish own case

and not to rely on the testimony of the legal representative of the plaintiff.

In the given facts and circumstances, I do not find any merit in the contention of the Ld. Counsel for defendant-applicant that Smt. Shanta Bhatia

deserves to be summoned as witness of the defendant. This request is hereby declined.

7. This order of 23rd September, 2009 was also not challenged and the same has thus become final.

8. Petitioner again, filed an application under Order 22 Rule 5 read with Order 12, 16 and section 151 of the Code for issuance of summons to

Smt. Shanta Bhatia to produce relevant documents in her possession to prove her status as legal heir of deceased Sh. Ramji Dass and also to

appear as a witness to give evidence. Vide impugned order, this application was dismissed with costs of Rs. 1,000/-

9. It is contended by learned Counsel for petitioner that trial court wrongly dismissed the application without appreciating the provisions of order

22 Rule 5 of the Code which are mandatory in nature. There is a serious question to be decided as to whether Smt. Shanta Bhatia is the legal

representative of deceased Shri Ramji Dass or not. Smt. Shanta Bhatia has played a fraud by misrepresenting herself to be the daughter and only

legal heir of deceased Shri Ramji Dass who even as per own showing has not passed away.

10. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is

limited.

11. In Waryam Singh and Another Vs. Amarnath and Another, , the court observed;

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in - Dalmia Jain Airways Ltd. Vs. Sukumar

Mukherjee, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their

authority and not for correcting mere errors.

12. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of

India against impugned order is maintainable or not.

13. Order 22 Rule 5 of the Code read as under:

5. Determination of question as to legal representative: Where a question arises as to whether any person is or is not the legal representative of a

deceased plaintiff or a deceased defendant, such question shall be determined by the court; [Provided that where such question arises before an

Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the record

together with evidence, if any, recorded at such trial, its findings and reasons therefore, and the Appellate Court may take the same into

consideration in determining the question.

14. This question as to whether respondent (Smt. Shanta Bhatia) is the legal representative of deceased Shri. Ramji Dass or not, has already been

decided by the trial court, vide its order dated 31st July, 2008. Thereafter, vide application, under order 16 Rule 1(3) read with Order 16 Rule 6

of the Code, petitioner wanted to summon Smt. Shanta Bhatia as a witness. Trial court rightly rejected that application also, vide order dated 23rd

September, 2009.

15. Now, again in the garb of provisions of Order 22 Rule 5 of the Code, petitioner moved application dated 21st April, 2010 praying that Smt.

Shanta Bhatia be summoned to prove her status as a legal heir of deceased Shri Ramji Dass. Trial court rightly, dismissed the application observing

as under:

Learned Counsel for the defendant/applicant has no explanation as to why this order dt. 31.7.2008 was not challenged. Having accepted the

order, at this stage it does not lie in the mouth of the defendant/applicant that the question still arises as to the claim of Smt. Shanta Bhatia to be

legal representative of the plaintiff.

As regards the prayer under Clause (A) and (B), it may be mentioned here that vide order dt. 23.9.2009, request of the defendant/applicant in her

application to summon Smt. Shanta Bhatia has already been declined while observing that the practice of summoning by one party, the opposite

party as his witness is to be deprecated. Order dt. 23.9.2009 has also not been challenged. Therefore, this Court does not find any fresh ground to

summon Smt. Shanta Bhatia as a witness or to call upon her to produce documents as prayed in this application.

It may be mentioned here that the suit pertains to the year 1988. Recording of evidence of the defendant-applicant has concluded on 6.4.2010. It

is only thereafter that present application has been filed. This court finds that the present application has been filed by the defendant/applicant only

with intent to delay the disposal of the suit. Therefore, this application is hereby dismissed with costs of Rs. 1,000/-.

16. The above finding of the trial court that Smt. Shanta Bhatia (respondent) is the legal representative of late Sh. Ramji Dass has attained finality.

After getting two adverse findings in her favour petitioner again filed application under Order 22 Rule 5 of the Code agitating the same issue which

has already been decided against her. Thus, application under Order 22 Rule 5 of the Code is nothing but gross abuse of the process of law.

17. The only motive of the petitioner is just to delay the proceedings pending before the trial court. She had been filing frivolous applications one

after the other and to a certain extent petitioner has been successful in delaying the trial as the suit is pending since 1988, that is, more than 22

years.

18. It is well settled law that those litigants who are in the habit of filing false, bogus and frivolous applications and try to cause obstructions at

every stage of the trial must be dealt with heavy hand. A strong message is required to be sent to those litigants who go on filling frivolous

applications one after another, without any rhyme or reasons. They should be burdened with heavy costs.

19. Thus, present petition under Article 227 of the Constitution of India is nothing but gross abuse of the process of law and same is hereby

dismissed with costs of Rs. 50,000/- (Fifty Thousand Only).

20. Petitioner is directed to deposit the costs by way of cross cheque with Registrar General of this Court, within four weeks from today.

21. List for compliance on 5th October, 2010.

CM Nos. 14549/2010 and 13610/2010

22. Dismissed.