

**HIGH COURT OF DELHI****Bench: Hon'ble Ms. Justice Manmeet Pritam Singh Arora****Date of Decision: 20 November 2023****CM(M) 1895/2023, CM APPL. 59347/2023, CM APPL. 59348/2023, CM APPL. 59349/2023, CM APPL. 59350/2023 & CM APPL. 59351/2023****VIKAS MOHAN****..... Petitioner****versus****RAJINDER SINGH (DECEASED)****THROUGH LRS. AND ORS.****.... Respondents****Legislations:**

Article 227 of the Constitution of India

Order VIII Rule 1A, Code of Civil Procedure, 1908 (CPC)

Section 151, Code of Civil Procedure, 1908 (CPC)

**Subject:** Admission of Photographic Evidence in a Civil Suit Involving a Dispute Over the Date of Construction of a Structure ('Kholki').**Headnotes:****Civil Procedure – Admission of Photographic Evidence – Relevance of Photographs in Determining the Date of Construction of 'Kholki'**

The petitioner sought to introduce three black and white photographs as evidence to establish the pre-existence of a structure ('kholki') in a civil dispute. The photographs, depicting the petitioner's late grandfather and the 'kholki', were crucial in disputing the respondents' claim of unauthorized construction on a specific date. The High Court allowed the submission of these photographs for consideration in the case, subject to proper verification and authentication in accordance with the law. [Para 1, 2, 6, 8, 10]

**Evidence – Delay in Submitting Evidence and Its Effect on Veracity**

The High Court noted the delay in the petitioner's submission of photographic evidence but allowed their inclusion in the trial. It emphasized that the trial court should consider the delay's impact on the evidence's credibility during its evaluation. The court also preserved the respondents' right to rebuttal evidence and verification of the photographs' authenticity. [Para 9, 10, 12]

**Costs – Imposition for Delayed Submission of Evidence**

Acknowledging the procedural delay caused by the late submission of evidence, the High Court directed the petitioner to pay costs to the respondents, emphasizing the importance of timely compliance with procedural norms in civil litigation. [Para 11]

**Trial Procedure – Further Examination and Rebuttal Opportunity**

The High Court ordered the petitioner's presence for further examination and cross-examination, and reserved the respondents' right to lead rebuttal

evidence. This directive ensured a fair trial and the opportunity for both parties to present their cases fully. [Para 12]

#### Judicial Neutrality – Non-Prejudicial Consideration of Evidence

The High Court clarified that it had not formed any opinion on the contentions or the veracity of the photographs submitted. This statement upheld the principle of neutrality and ensured an unbiased evaluation of the evidence by the trial court. [Para 13]

#### Disposition – Conditional Allowance of Petition

The petition was allowed with specific directions regarding the submission of evidence, the payment of costs, and the conduct of the trial, ensuring a comprehensive consideration of all relevant factors in the dispute. [Para 14]

#### Referred Cases:

#### Representing Advocates:

For the Petitioner: Mr. Siddharth Aggarwal and Mr. Gaurav Sindhwani, Advocates.

For the Respondents: Mr. Prakash Chandr and Mr. Onkareshwar Kandpal, Advocates

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## **J U D G M E N T**

### **MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 07.11.2023 passed by Civil Judge-02, West, Tis Hazari, Delhi ('Trial Court') in Suit No. 848/2016, titled as **S. Rajinder Singh v. Vikas Mohan**, dismissing the application filed by the Petitioner herein under Order VIII Rule 1A and Section 151, of the Code of Civil Procedure, 1908 ('CPC') seeking permission to place on record three (3) black and white photographs filed at page Nos. 84 to 86 (Annexure P-7) to this petition.

1.1. The Petitioner is defendant no.1 and Respondent Nos.1, 2 and 3 are the plaintiffs in the civil suit.

1.2. The civil suit has been filed by the plaintiffs' inter-alia for mandatory injunction, recovery of damages on 08.11.2005.

2. The learned counsel for the Petitioner states that in the site plan filed with the plaint, Respondent Nos. 1 to 3 have alleged that the portion identified as 'Mark A' in the site plan was carved out by the Petitioner herein on 10.11.1993.

2.1. He states that, however, it is the defence of the Petitioner herein that the said area 'Mark A' which is identified as '*kholki*' has been in existence for

a very long time and was also in existence during the lifetime of grandfather of the Petitioner herein i.e., late Mr. Ram Murti Lal.

2.2. He states that late Mr. Ram Murti Lal died on 04.09.1992. He states that the three (3) photographs, which are now sought to be placed on record were taken during the lifetime of late Mr. Ram Murti Lal and he can be seen in these photographs. He states that in these photographs the '*kholki*' is visible and it is this '*kholki*' which has been shown as 'Mark A' in the site plan annexed with the plaint.

2.3. He states that the negatives of these three (3) photographs have been filed on the record of the Trial Court.

2.4. He states that, therefore, the said photographs are relevant for determination of the issue whether 'Mark A' was dug up on 10.11.1993 as alleged in the plaint or not.

2.5. He has also during the course of oral hearing handed over enlarged copies of the photograph filed at page 86 of this petition, using the same photograph. He states that in this enlarged photograph, the '*kholki*' is seen at 'Mark A' and is visible in the photograph as per the Petitioner.

3. In reply, learned counsel for the Respondents states that in view of the fact that these photographs were readily available with the Petitioner and considering that the Petitioner has been extensively cross examined, there is no infirmity in the order of the Trial Court disallowing these documents to be brought on record, at this stage.

3.1. He states that without prejudice to his rights and contentions, in case this Court is considering permitting the said photographs to be taken on record, the right of the Respondent Nos. 1 to 3 to lead rebuttal evidence be reserved.

3.2. He, further, states that the Respondents do not admit to the veracity of the claim of the Petitioner raised by relying upon these photographs.

4. This Court has considered the submission of the learned counsel for the parties and perused the record.

5. In this suit one of the issues arising for consideration is the date of construction of the '*kholki*'. The existence of the '*kholki*' is not in dispute. It is the contention of Respondent Nos. 1 to 3 that the said '*kholki*' was constructed unauthorisedly on 10.11.1993. Whereas it is the defence of the Petitioner herein that the '*kholki*' was in existence since the time of his forefathers.

6. The '*kholki*' for which the mandatory injunction is sought in the plaint, is admittedly as on date located in Shop no. 1603 The area in which the '*kholki*' exists has been demarcated as 'Mark A' on the site plan. The Petitioner

seeks to place on record the said three (3) photographs of Shop No. 1603 to prove this fact of pre-existence of the 'kholki'.

7. In view of the contention of the Petitioner that the gentleman seen in these photographs is his grandfather i.e., late Mr. Ram Murti Lal who expired on 04.09.1992, the photographs in question would show the state of affairs as they existed prior to 04.09.1992. On the other hand, Respondent Nos. 1 to 3 have contended in the plaint that the cause of action arose on 10.11.1993.

8. In the considered opinion of this Court, the said photographs would be relevant for adjudicating the rival claims of the parties; subject to the Petitioner proving the said photographs in accordance with law.

9. However, the effect of delay on behalf of the Petitioner in placing these photographs on record after the Petitioner has been extensively cross examined by the Respondents; will be duly considered by the learned Trial Court at the time of the appreciation of the evidence and more specifically with respect to the veracity of this evidence.

10. Accordingly, the three (3) photographs along with their negatives (additional documents) are permitted to be brought on record. The Petitioner is directed to file his additional affidavit limited to proving the said additional documents. The said additional affidavit will be e-mailed to the learned counsel for Respondent Nos. 1 to 3 before 7 P.M. today.

11. The Petitioner will be pay costs of Rs. 20,000/- to Respondent Nos. 1 to 3 before the Trial Court on 21.11.2023.

12. The Petitioner will remain present for his further examination and cross examination before the Trial Court on 21.11.2023; and after the conclusion of the said evidence, the Respondents herein will have further opportunity of leading rebuttal evidence, if so advised. Liberty is reserved to Respondent Nos. 1 to 3 to have the negatives of these photographs verified after seeking permission from the Trial Court.

13. It is clarified that this Court has not expressed any opinion on the contentions raised by the Petitioner in this petition with respect to the veracity of the photographs sought to be placed on record or its contents. All rights and contentions of the Respondent Nos. 1 to 3 are kept open.

14. With the aforesaid directions, the present petition is allowed. Pending applications stand disposed of.

\*Disclaimer: Always compare with the original copy of judgment from the official website.