

IN THE HIGH COURT OF DELHI

CRP No.360/2006

Shri S.N.Sapara Appellants
! through: Mr.Valmiki Mehta, Sr. Advocate with
Mr.Sunil Sathyarthi, Mr.Kuldeep
Kumar, Adv.

VERSUS

\$ Shri P.K.Jana & Ors. Respondents
^ through: Mr.S.K.Bhaduri, Adv.

RESERVED ON: 09.1.2008

% DATE OF DECISION: 14.1.2008

CORAM:

*** Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. S.N.Sapra has challenged 2 orders passed by the learned Executing Court. Firstly, he challenges the order dated 6.11.2006 under which his objection to the enforceability of the judgment and decree dated 2.9.2004 has been repelled. The second order under challenge is dated 2.12.2006 wherein similar objections filed by him laying a challenge to the decree

itself has been repelled by the learned Executing Court. The reason which principally flows in both the orders is that earlier on also, S.N.Sapra had filed objections to the execution of the decree which were dismissed vide order dated 27.5.2005. An additional reason is to be found to the effect that similar pleas were negated when his application under Order 9 Rule 13 CPC was dismissed vide order dated 20.5.2005.

2. Respondents hereinafter collectively referred to as 'Janas' and S.N.Sapra are at loggerheads with each other since the year 1994.

3. Property No.M-38, Chittranjan Park, New Delhi was owned by P.K.Jana and his wife Usha Jana on whose death her share in the property was inherited by her 2 children, Sandeep and Saurav. Janas filed a suit for ejectment of S.N.Sapra alleging that he was a tenant under them in respect of the second floor of the property. They alleged that the tenancy stood determined and hence they were entitled to possession thereof. In the said suit S.N.Sapra filed a counter claim. He relied upon a memorandum dated 5.1.1994 and pleaded that the same was an agreement to sell. He pleaded that under the memorandum dated 5.1.1994 he was put in possession of the second floor and that total sale consideration agreed to was Rs.3 lacs. That he paid Rs.30,000/- when memorandum was

executed. He pleaded that from time to time he made further payments. He prayed that a decree may be passed in his favour as under :-

I. That the counter claim be accepted, the decree/order be passed in favour of the defendants directing the plaintiffs to execute the transfer deeds in respect of the flat No.M-38, Chittaranjan Park, New Delhi.

II. A decree for permanent injunction be passed in favour of the defendants restraining the plaintiffs from alienating, transferring, disposing off creating any third party interest and also from interfering with the supply of water and electricity in the said flat.

III. Cost of counter claim be allowed.

Any other and further relief which this Hon'ble Court may deem fit and proper in the circumstances of the case including the dismissal of plaint may also be granted."

4. S.N.Sapra failed to contest the suit filed by Janas. He failed to prosecute his counter claim. Result was that his counter claim was dismissed and Janas obtained an ex-parte decree for possession against him on 4.9.2004.

5. S.N.Sapra filed an application under Order 9 Rule 13 CPC for setting aside of the ex-parte decree. In the said application he pleaded that since the suit for ejectment was based on the premise that he was a tenant but the facts were otherwise, being that, under the memorandum dated 5.1.1994 he was a bona fide purchaser of the second floor, the decree

ought to be recalled.

6. Needless to state, scope of Order 9 Rule 13 CPC was restricted to sufficiency of the cause shown for non-appearance when suit was decreed ex-parte. Finding none, vide order dated 20.5.2005 S.N.Sapra's application under Order 9 Rule 13 CPC was dismissed.

7. S.N.Sapra fought the battle right up to the Hon'ble Supreme Court but failed in his endeavour to have the ex-parte decree set aside.

8. It is this decree which is the subject matter of repeated objections filed by S.N.Sapra from time to time as and when Janas obtain warrants for possession of the property.

9. Simultaneously while prosecuting his application under Order 9 Rule 13 CPC, on 16.12.2004, S.N.Sapra filed a suit for declaration, permanent injunction and specific performance against Janas. The basis of the suit was the memorandum dated 5.1.1994. Relying thereon, S.N.Sapra pleaded that he was in possession of the second floor of the property in question under the memorandum and that from time to time he had paid Janas a total sum of Rs.1,23,600/-. That since total sale consideration was Rs.3 lacs, he pleaded that he was ready and willing to pay the balance sale consideration in sum of Rs.1,76,400/-. He pleaded that he was

entitled to the specific performance of the memorandum dated 5.1.1994.

10. Prayers made in the suit are as under :-

"I) To pass a decree of declaration in favour of the plaintiff and against the defendants whereby declaring that the plaintiff alone is entitled to get the regular sale deed executed from the defendants No.1 and 2 under the terms and conditions of Memorandum of Understanding dated 1-5-94 of second floor flat forming part of property No.M-38, Chittranjan Park, New Delhi more fully shown and described in the site plan annexed with the plaint and the defendants No.3 and 4 have no right, title or claim over the said flat against the plaintiff to meet the ends of justice.

II. To pass a decree of Permanent Injunction in favour of the plaintiff and against the defendants 1 to 4 whereby be pleased to restrain the defendants 1 to 4 their attorneys, agents etc. from selling, transferring or alienating the suit property morefully shown and described in the site plan the second floor forming part of property No.M-38, Chittranjan Park, New Delhi to any other person to meet the ends of justice.

III. To pass a decree of Specific Performance in favour of the plaintiff and against the defendants No.1 and 2 whereby be pleased to direct the defendants No.1 and 2 to accept the balance sale consideration of Rs.1,76,400.00 (Rupees One Lakh seventy six thousands and four hundred) from the plaintiff being balance sale consideration of second floor flat, morefully shown and described in Site Plan forming part of property No.M-38, Chitranjan Park, New Delhi and sign and execute the regular sale deed of suit property at the expenses of plaintiff in favour

of plaintiff and get the same registered in the office of Sub-Registrar concerned

AND/OR IN THE ALTERNATIVE:

On failure of the defendants No.1 and 2 to accept the balance consideration amount from plaintiff, direct the plaintiff to deposit the same in the court payable to defendants 1 and 2 and the Hon'ble Court execute regular sale deed of suit property in favour of the plaintiff to meet the ends of justice.

IV. Costs of suit be also awarded in favour of the plaintiff to meet the ends of justice.

V. Any other and further orders/directions which this Hon'ble Court may deem fit and proper into the circumstances of the case be also passed in favour of the plaintiff to meet the ends of justice."

11. It may be noted that S.N.Sapra did not mention in the said suit that he had raised a counter claim in the suit filed by Janas for his ejectment. He did not disclose that the said counter claim was dismissed in default.

12. Surprisingly enough S.N.Sapra chose not to prosecute the suit. It also suffered dismissal in default. No application for restoration has been filed till date.

13. When the decree dated 2.9.1994 was put into execution S.N.Sapra filed objections to the execution of the decree. Vide order dated 27.5.2005 the said objections were dismissed. It be noted that the objection filed by S.N.Sapra was to the effect that the decree for ejectment being based on the

premise that he was a tenant, he was entitled to protect his possession under the memorandum dated 5.1.1994.

14. Since order dated 27.5.2005 is not under challenge and has attained finality, I need not go into the legality or otherwise of the said order dated 27.5.2005.

15. S.N.Sapra thereafter resorted to a third action. He filed a civil suit on the original side of this Court praying that the decree dated 2.9.2004 was a result of fraud and it be declared a nullity. Fraud pleaded was that Janas had not disclosed to the Court that they had entered into the memorandum dated 5.1.1994.

16. The said suit registered as CS(OS) No.2202/2006 was dismissed as withdrawn stating that S.N.Sapra intended to raise objections permissible in law to resist execution of the decree.

17. He once again, and as noted above, repeatedly filed objections to the execution of the decree. The first objection (in fact the second for the reason the first was dismissed vide order dated 27.5.2005) was dismissed vide order dated 6.11.2006. The second (in fact the third) objection was dismissed vide order dated 2.12.2006.

18. The conduct of S.N.Sapra is to be deprecated. He is resorting to successive litigation. He is guilty of not

prosecuting his remedies as per law. He cannot keep on flogging a dead horse.

19. The submission made by learned senior counsel for S.N.Sapra that the decree for ejectment obtained by Janas is on the premise that S.N.Sapra's possession was that of a tenant can be successfully resisted to by S.N.Sapra by pleading and proving independent title is neither here nor there for the simple reason S.N.Sapra has lost his right to raise the said plea in as much as his right to specifically enforce the memorandum dated 5.1.1994 on which relies is no longer available to him for the reason firstly his counter claim wherein a decree as prayed for in para 3 above stands dismissed, though in default. Secondly, the suit for specific performance filed by him in which prayers made were as noted in para 10 above stands dismissed, though in default. His remedies to specifically enforce the agreement to sell as of today is barred by limitation.

20. Further, the so called fraud alleged by S.N.Sapara is not of the kind which vitiates the decree dated 2.9.2004.

21. The reason thereof is that admittedly, a fact admitted by S.N.Sapra, he had executed a rent agreement with the Janas. In his counter claim and in his suit, S.N.Sapra pleaded that the rent agreement was a part of various

documents which included the memorandum dated 5.1.1994 executed between the parties. He pleaded that the real transaction was an agreement to sell and not a lease. In other words, S.N.Sapra required the Court to consider and decide as to what was the true nature of the transaction between the parties. All relevant documents were placed before the Court. Pleadings in relation thereto were made by the parties. If S.N.Sapra chose to suffer ex-parte decrees and also chose to abandon the counter claim filed by him as also the subsequent suit seeking decree for specific performance, he must suffer the consequences.

22. Besides, S.N.Sapra cannot keep on filing same set of objections as and when decree holder applies for warrants for possession. As noted hereinabove, the first set of objections filed by him were dismissed vide order dated 27.5.2005. He did not challenge the said order. It was thus impermissible for him to have filed the subsequent 2 objections on similar lines which were dismissed vide impugned orders dated 6.11.2006 and 2.12.2006.

23. I find no merits in the petition.

24. The same is dismissed with costs in sum of Rs.25,000/- imposed upon the petitioner and granted in favour of the respondents.

25. LCR be returned forthwith.

January 14, 2007
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PRADEEP NANDRAJOG
JUDGE