

* **HIGH COURT OF DELHI : NEW DELHI**

+ **IA No.10911/2006 in CS (OS) No.690/2005**

% Reserved on : 2nd February, 2009

Decided on : 11th September, 2009

Sardar Harjit Singh ...Plaintiff
Through: Mr. J.P. Gupta, Adv. with Mr. Girish
Aggarwal, Adv.
Versus

Sardar Ravel Singh & Ors. ...Defendants
Through : Mr. Kirti Uppal, Adv. with Mr. Vaibhav
Sharma, Adv. for Def. Nos.1-3
Mr. Raja Bariwal, Adv. for Def. No.5

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The application IA no.10911/2006 under Order VI Rule 17 read with Section 151 CPC filed by the plaintiff no.1 when listed before this Court for disposal on 02.02.2009, Shri Kirti Uppal, appearing on behalf of the defendant nos.1 to 3, has raised an objection that in view of order dated 04.05.2006 and 03.01.2007, the suit itself is not maintainable and the question of maintainability of the suit should also be decided along with the application.

2. I have heard the learned counsel for the parties on both the aspects of the matter.

3. The brief facts are that the two plaintiffs namely Shri Harjit Singh and Sh. Narender Singh, who are the sons of Sardar Ravel Singh, (defendant no.1 herein, deceased now), and brothers of defendant nos.2 and 3, Shri Daljit Singh and Sh. Gurmeet Singh, have filed the suit for partition and permanent injunction praying therein that a preliminary decree for partition be passed declaring that the plaintiffs have one half share in part of property no.9/56, Kirti Nagar Industrial Area, New Delhi.

4. The main contention of the plaintiffs in the suit is that out of joint family funds and earnings of joint family business, the defendant no.1 acquired properties i.e. (a) 217-218, Double Storey, New Rajinder Nagar, New Delhi and (b) 9/56, Kirti Nagar Industrial Area, New Delhi. The property no.217-218, Double Storey, New Rajinder Nagar, New Delhi was acquired by defendant no.1 in the joint names of defendant no.1 and his wife Smt. Rajinder Kaur where the plaintiffs and defendants along with Smt. Rajinder Kaur were residing. According to the plaintiffs, the said property was mortgaged for carrying on partnership business with Punjab & Sind Bank in which defendant no.2 was also a partner, who then retired and took his share in both movable and immovable properties and went abroad leaving the family in difficulties.

5. The plaintiffs submit that with a view to clear the liability of the Bank as regards the partnership business on 18.08.1994, a family settlement/agreement in respect of residential property no.217-218,

Double Storey, New Rajinder Nagar, New Delhi was arrived at in which the defendant no.1 acknowledged the rights of the plaintiffs and defendant no.3. No share was given to the defendant no.2 as he was settled abroad and had already taken his share in the properties.

7. According to the plaintiffs, the defendant no.1 and his wife Smt. Rajinder Kaur entered into a collaboration agreement in 1994-95 for construction of the entire property and as per the family settlement, possession was also handed over by the plaintiffs in compliance of their obligations. The plaintiff no.1 submits that he had cleared the liability of the Bank towards the partnership business and the car loan and was therefore entitled to receive the same.

8. Various litigations were pending between the parties and efforts were made to settle the controversies but the matter could not be settled as the defendant nos.2 and 3 never agreed on anything on account of their desire to derive undue benefits out of the dispute.

9. The plaintiffs submit that all the parties approached Sant Gurmukh Singh Ji [defendant no.4 herein] for his intervention in the dispute and the parties, after duly weighing all the possibilities, agreed to draft a proposal for part of property no.9/56, Kirti Nagar Industrial Area, New Delhi and the said proposal was duly signed by the parties in the presence of defendant no.4 on 28.10.2003. According to the plaintiffs, once the terms had been settled and signed by the parties, the said settlement was binding upon them.

10. The plaintiffs submit that as per the terms and conditions agreed upon, the part of property no.9/56, Kirti Nagar Industrial Area,

New Delhi, which is owned by the family, its ownership rights have to be divided in equal parts of 50% each, with an option to the plaintiffs to choose between either of the parts subject to the conditions as specified in the said agreement. However, since the defendant no.1 refused to abide by the terms to which they had agreed, the present suit has been filed for partition and permanent injunction thereby declaring the plaintiffs to be the owners of one half share in respect of part of property no.9/56, Kirti Nagar Industrial Area, New Delhi.

11. Along with the suit, the plaintiffs filed an interim application being IA no.3993/2005 and the matter was listed before the court on 18.05.2005 when the court issued summons in the suit to the defendants for 30.05.2005 and also issued notice in the interim application for the same date.

12. On 30.05.2005, no one appeared on behalf of the defendant no.4 and he was proceeded against ex parte. Time was granted to the defendant nos.1 to 3 to file the written statement and reply to the interim application and the matter was listed on 27.07.2005.

13. On 27.07.2005, no one appeared before the court from either side. The defendant nos.1 to 3 were proceeded against ex parte and the interim application being IA no.3993/2005 was allowed in terms of the prayer which reads as under :

“.....defendants be restrained by an ad-interim ex-parte interim injunction from transferring, alienating or encumbering part of property no.9/56 Kirti Nagar Industrial Area, New Delhi to an outsider except the plaintiffs.....”

14. On 21.10.2005, when the matter was listed before the court,

the defendant nos.1 to 3 filed the application being IA no.5968/2005 under Order IX Rule 7 CPC praying for setting aside the order of ex parte proceedings dated 27.07.2005. The said request was not opposed and the ex parte proceedings were set aside. The matter was thereafter adjourned to 28.02.2006 for disposal of all pending applications.

15. The case of the defendants is that the suit of the plaintiffs is without any cause of action, the plaintiffs have also not come before this court with clean hands and have suppressed the material facts from this court. It is stated that the defendants No.1 to 3 received the summons/notices of this suit on 26th May, 2005 and thereafter they entered appearance before this court on 30th May, 2005. On 30th May, 2005 this court adjourned the date of hearing for 27th July 2005 and the suit was fixed for filing written statement on behalf of the defendants as well as for hearing of the interim application and till that date there were no interim orders against the defendants.

16. It is stated in the written statement that during the pendency of the aforesaid suit, the plaintiff No.1 entered into four agreements with one Ms. Jaspal Kaur wife of Baljit Singh R/o 81, Furniture Block, Kirti Nagar, New Delhi. Two agreements were entered on 21st May, 2005, third agreement was made on 28th June, 2005 and fourth agreement was made on 15th July, 2005 in respect of four different portions. In the said premises, a partnership firm M/s. Oriented Woolen Mills were tenants in which plaintiff No.1 and Smt. Rajinder Kaur, wife of defendant No.1 and mother of the plaintiff was the partner. By virtue of the said four agreements, the plaintiffs have vacated and handed over the possession

of the suit property to Smt. Jaspal Kaur in spite of the fact that the plaintiff no.1 had given an undertaking in the court of Shri Naveen Arora, Civil Judge, Delhi in the case bearing no.370/2001 [old no.51/1997] titled as Smt. Harjinder Kaur V/s. Harjit Singh by making statement in the said court on 23.01.1998, to the following effect:-

“Statement of Shri Harjit Singh Defendant, on SA without prejudice to my rights and pleadings in Suit no.640/97 pending before the Hon’ble High Court, I make my statement that I will not construct anything in portion shown red colour measuring 45 X 51’ in the site plan attached with the plaint filed by the plaintiff nor I have any intention to do any construction in the red portion in the site plan without the consent of the plaintiff Smt. Rajinder Kaur, partner of the firm. I further submit that I will not use red colour area mentioned above as per site plan any of her purpose except for running a business of Oriental Woolen Mills Partnership firm. I will not part with or transfer or sell the red colour portion as shown in the site plan to any other person without the consent of the plaintiff. The site plan is an integral part of the statement which has been filed by the plaintiff.”

17. The statement of Smt. Rajinder Kaur (plaintiff in suit No. 370/2001, wife of deceased defendant No.1 herein) was also recorded on 23.01.1998, which reads as under:-

“Statement of Defendant recorded. Ld. Counsel for plaintiff states that he will seek further instructions w.r.t. matter pending in the Hon’ble High Court as well as w.r.t. measurement, if any. He also states that he will study the file and advise the client as to whether the amendment application is likely to be filed or not. The Defendant may not file the WS by that date.

18. The defendants submit that the plaintiff no.1 has not disclosed the aforesaid facts in the present proceedings of the suit nor the said fact was disclosed in the replication. Both the plaintiffs

maintained silence about the above said facts in the proceedings with ulterior motives. The plaintiff No.1 also did not mention the understanding given by him in the pending suit.

19. There is no dispute that the plaintiffs were/are out of possession on the date of passing of the interim order, still the plaintiffs failed to disclose this fact. It is disclosed that the plaintiff no.1 had received an amount of Rs.26 lac in terms of the four agreements with Smt. Jaspal Kaur for vacating and handing over the suit premises to her.

20. It is also stated in the written statement that defendant No.1 was the sole and absolute owner of the property bearing No. 9/56, Kirti Nagar Industrial Area, New Delhi. The said property was acquired by deceased defendant No.1 out of his own funds, savings and profits of business in the year 1962 through registered sale deed. Initially the property was purchased in the name of M/s. Kishan Singh Nawal Singh of which the plaintiff and his cousin brother Gurbax Singh were the partners and the size of the property was 2800 sq.yds, however, after agreement there was a dissolution of the firm in 1972 and the total plot was divided into two shares with mutual understanding of the partners. 1700 sq. yd came to the share of defendant No.1. A part of the said plot was sold in the year 1984 and finally the property consisted of 680 sq.yds. The defendant No.1 at all times remained the owner in possession of the property. The plaintiffs and other family members of the defendant No.1 had no right, title or interest in the aforesaid property.

21. The defendant No.1 had been showing the property as his

self acquired property in his income tax returns since the time of its purchase. The defendant No.1 had already gifted land measuring 311 sq.yds approximately back portion out of his portion of the said property i.e. 9/56, Kirti Nagar Industrial Area which is under the tenancy of M/s. Machine and Instruments to Gurmit Singh S/o Gurmail Singh vide registered gift deed document No. 10497 in Additional Book No. Vol.10375 on Pages 104 to 112 on 16th July 2002 in the office of Sub Registrar, Delhi.

22. In view thereof, the defendant No.1 became the owner of the remaining portion of the property i.e. 369 sq.yds approximately and agreed to sell and transfer the entire remaining portion of the property for a sum of Rs.25 lakhs to Smt. Jaspal Kaur W/o Sh. Baljit Singh. The consideration has been received by way of three cheques dated 19th May, 2005 and sale deed was executed in this regard. By virtue of the said transaction, the defendant No.1 has handed over the symbolic and possessory rights of the tenanted premises consisting of six shops on main road, one hall area of 45 x 51 adjoining six shops and one hall and three shops A-4 and 5 which is under the tenancy of Oriental Wollen Mills @ Rs.670/- pm excluding other charges, shops 1,2 and 6 which are on the ground floor which are under the tenancy of other tenants of the vendee Smt. Jaspal Kaur with the right to receive and realize rents from the said tenants and directly deal with them at her own level.

23. It is further stated in the written statement that the plaintiffs have not disclosed the said fact before this court that the suit property had already been sold through a registered sale deed dated 25th May,

2005 being the sole, absolute and exclusive owner of the said property.

24. The plaintiff No.1 admittedly handed over the possession of the suit property to Smt. Jaspal Kaur and received consideration of Rs. 26 lakhs for vacating the same. The contention of the defendant No.1 is that the present suit of the plaintiffs has become infructuous as plaintiffs are seeking decree for partition in respect of the suit property without having any right, title or interest therein or other reliefs as mentioned therein. It is further stated that since now the plaintiffs were/are out of possession, therefore, the suit of the plaintiffs is left without any cause of action. It is averred that plaintiff No.1 has vacated and handed over the possession without the consent of Smt. Rajinder Kaur who was one of the partners of the firm.

25. Shri Kirti Uppal, learned counsel for the defendant nos.1 to 3, has argued that the plaintiff no.1 has incorrectly pleaded in para-23 of the plaint that the plaintiff no.1 was residing in the property in dispute and that the plaintiff no.2 is also in part possession of the suit property. Both the plaintiffs have conspired with each other in order to defeat the claim of the defendant no.1(father of the plaintiffs) and his wife, Smt. Rajinder Kaur (mother of the plaintiffs), who is the partner of M/s. Oriental Woolen Mills. Mr. Kirti Uppal has further argued that the plaintiffs have already handed over the possession of the entire premises, which was let out by the defendant no.1 to the firm M/s. Oriental Woolen Mills and the question of claiming the part possession of the suit property by the plaintiff No.2 does not arise under these circumstances.

26. It is argued by Mr. Uppal that it appears that the plaintiffs might have earlier created some fabricated documents by virtue of which the plaintiff no.1 further created some documents in favour of plaintiff no.2 and in joint conspiracy handed over the possession of the shop by subletting the same to a firm M/s. Delhi-Uttranchal Transport Company and one of the shops to his wife Smt. Harvinder Kaur and in view thereof, both plaintiffs have done wrong and illegal acts in order to harm defendant no.1 and his wife, Smt. Rajinder Kaur.

27. He further argued that both the plaintiffs had received a huge amount from the said Smt. Jaspal Kaur and both the plaintiffs had not only handed over the possession of the entire premises but also received an amount of Rs.26 lac as consideration for vacating the entire suit premises.

28. It is also argued by Mr. Uppal that in spite of the understanding reached by the parties that the plaintiffs shall withdraw the suit pending, the plaintiffs still did not disclose to this court on 27.07.2005 that the above mentioned understanding had been reached by them despite the execution of application under Order XXIII Rule 1 CPC filed in the Court. It is argued that now plaintiffs are out of possession because they had already handed over the possession of the suit premises to Smt. Jaspal Kaur and in view thereof, the present suit has become infructuous and is liable to be dismissed.

29. He has raised the objection that in view of the order dated 4th May, 2006 and 3rd January, 2007 the suit filed by the plaintiffs itself is not maintainable.

30. In order to decide the objection raised by the defendants, it is appropriate to analyze the said order. The order dated 4th May, 2006 reads as under:-

“The plaintiff filed the suit for partition against defendants 1,2 and 3 along with the application for injunction against defendants 1,2 and 3 to restrain them from alienating the property. The application was allowed on 27th July 2005 and order in terms of the prayers was passed. The application No.5970/05 is for vacation of this order. It appears that the defendants 1,2 and 3 have since transferred their title to Jaspal Kaur, plaintiff in I.A. No.6399/05 seeking to implead Jaspal Kaur under the provisions of Order 20 Rule 10 CPC. In the meanwhile the plaintiff has also applied for withdrawal of the suit vide I.A. No.6722/05. The plaintiff now wants to withdraw the application on the ground that it was a mistake. It is contended in the application being I.A. No.6722/05 that he has settled his claim outside the court with Smt. Jaspal Kaur to whom the defendant No.1 has transferred part of the property. The plaintiff also says in the application that the suit may be dismissed as having been satisfied. What transpires now is that although the plaintiff has admitted that the part of his claim share in the suit property has actually not executed any document for which the title can be said to have been transferred. The plaintiffs’ title subsist in the property. Since now he is saying that the application No.6722/05 is a mistake and since no orders have been passed on this application the plaintiff be allowed to withdraw this application.

In view of what has been stated above since Smt. Jaspal Kaur is the transferee of defendants 1,2 and 3 she is to be impleaded under the provisions of Order 22 Rule 10. The I.A. No.6399/05 is accordingly allowed and Smt. Jaspal Kaur is directed to be impleaded as a party. Copy of the plaint be given to Sh.Raja Beriwal. The written statement of Smt. Jaspal Kaur, newly added defendant No.4 be filed within the statutory period. As far as injunction order is concerned, in view of the averments made in I.A. No.6722/05 and what is stated at the time of hearing there is no necessity of injunction to continue. Therefore, the injunction granted on I.A.

No.3933/05 is vacated.”

31. In the second order dated 3rd January, 2007 the court has given a finding that there is no disclosure of these agreements by plaintiff No.1 at any point of time either at the time of consideration of the interim application or at any time thereafter. It was also recorded that even in the replication filed on 24th May, 2006 the plaintiff No.1 has maintained a stoic silence in respect of these agreements. The court observed that it was not open to plaintiff No.1 to deal with the property in the manner in which he has dealt with the same after filing of the suit. The plaintiff No.1 was bound to make a complete and fair disclosure of the facts in the plaint and the concealment of agreements which the plaintiff No.1 had entered into and received consideration was deliberate and fraudulent. It was also observed in the said order that the plaintiff No.1 on solemn affirmation as back as 23rd January, 1998 in the case bearing No. 370/01(Old No.51/97) titled as Smt. Rajinder Kaur vs. Sardar Harjit Singh in the court of Sub Judge made a statement giving an undertaking that he shall not use the suit property which is shown in red colour and part of Kirti Nagar property except for running the business of Oriental Wollen Mills, a partnership firm and he would not part with or sell the red colour portion as shown in the site plan to any other person without the consent of Smt. Rajinder Kaur, plaintiff in the suit. The plaintiff was admittedly a partner of Oriental Wollen Mills who was a tenant of the front portion of the property belonging to defendant No.1 and inspite of the undertaking, he handed over the possession to Smt. Jaspal Kaur of the tenanted portion of the premises

without the consent of Smt. Rajinder Kaur, partner of Oriental Wollen Mills and wife of defendant No.1. The court also observed that the plaintiff No.1 has violated the statement made by him in the court of competent jurisdiction.

32. At the time of passing the order on 3rd January, 2007, the counsel for plaintiffs agreed to deposit the amount received by plaintiff No.1 against the execution of four agreements. The said amount has been deposited by plaintiff No.1 as per orders. Now the question before this court is (a) whether as per the facts explained, the suit of the plaintiffs is maintainable or not and (b) whether the plaintiffs are guilty of concealment of facts and the plaintiff No.1 has willfully violated the undertaking given by him in the competent court.

33. The following are the main factors which are to be taken into account before passing any order in this matter:-

- i) That when the matter was listed before the court on 4th May, 2006 the application under Order 23 Rule 1 for withdrawal of suit i.e. I.A. No.6722/03 was also listed for disposal. The said application is admittedly signed by plaintiff No.1. The said application was withdrawn by plaintiff No.1 on the ground that it was a mistake. The plaintiff No.1 has specifically made a statement before the court that although the plaintiff has parted with the possession of his claim share in the suit property but he has actually not executed any document by which the title can be said to have been transferred.

On his statement, the application was allowed to be withdrawn.

- ii) In the replication, the plaintiff No.1 has not disclosed that he has already parted with the possession of the tenanted premises to Smt. Jaspal Kaur by virtue of the four agreements. The said fact has only been admitted by the plaintiffs before this court on 3rd January, 2007.
- iii) The plaintiff No.1 has also not denied the statement given by him in case bearing No. 370/01(Old No.51/97) titled as Smt. Rajinder Kaur vs. Harjit Singh in the court of Mr.Navin Arora, Sub Judge, Delhi to the effect that he will not part with or transfer the suit property.
- iv) In the application under Order 23 Rule 1, the plaintiff No.1 in Para 4 of the application has mentioned that he has settled all his claims outside the court with Smt. Rajinder Kaur (wife of late defendant No.1 herein) and no longer wishes to continue with the suit against the defendant and wishes to withdraw the claim in the present suit and the same may be dismissed as having satisfied on behalf of Plaintiff No.1.
- v) It appears from the conduct of plaintiff No.1 that he had not disclosed the true facts before the court on 4th May, 2006 regarding the handing over of the possession of the suit property against the execution of four agreements, rather the statement was made that he has not actually

executed any document. Had he made the correct statement, the court might not have allowed him to withdraw his application and the suit ought to have been dismissed on that date itself.

- vi) In the plaint, the plaintiffs have also not disclosed the factum of the undertaking given by plaintiff No.1 on 23rd January, 1998 wherein a specific statement has been made that he shall not part with or transfer or resell the red colour portion as shown in the site plan.
- vii) The plaintiff No.1 has not denied the fact of handing over the possession of suit property to Smt. Jaspal Kaur, even no consent was taken by him from Smt. Rajinder Kaur who is one of the partner of the firm.

34. From the above mentioned events referred in para 33, this Court is of the view that the plaintiffs are guilty of concealment of facts and have made a misrepresentation before this Court from time to time.

35. Coming to the law relating to the subject that a party who is seeking discretionary relief has to approach the court with clean hands and is required to disclose all the material facts, which may one way or the other affect the decision, otherwise, the party is not entitled for any discretionary relief is discussed, in the case of **S P Chengalvaraya Naidu [dead] by L.Rs. V. Jagannath [dead] by L.Rs. [1993] 6 JT [SC] 331**, wherein it was held that:-

“In this case Jagannath had obtained preliminary decree for partition by suppressing and not disclosing all the

material facts and by misrepresenting the facts obtained a preliminary decree of partition. An application for final decree was opposed on the ground that the preliminary decree was obtained by playing fraud upon the Court. The trial Court had dismissed the application but High Court reversed the findings of the trial Court. The Apex Court in appeal set aside the judgment of the High Court and restored that of the trial Court. The Apex Court held as under [para 8] :

A litigant, who approaches the Court, is bound to produce all documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party.”

36. The overt act of fraud vitiates all the actions and the party conducting the same is not worthy of any benevolence or discretionary relief from the court. In the case of **A.Anuradha Vs. Canara Bank** **2006 ALT 4 581**, the Division Bench of the Andhra Pradesh High Court has held :-

“ In this connection, it is apposite to observe that Satya [truth] and Ahinsa [nonviolence] are the two basic values of life, which have been cherished for centuries in this land of Mahavir and Mahatma Gandhi. People from different parties of the world come here to learn these fundamental principles of life. However, post-independence era and particularly the last two decades have witnessed sharp decline in these two basic values of life. Materialism has over-shadowed the old ethos and quest for personal gain is so immense that people do not have any regard for the ‘truth’.

TRUTH was the hallmark of the justice delivery system which operated in the country till the establishment of the court system under British rule. The people used to tell truth and truth only without being influenced by its consequences. In the present day judicial system the truth is perhaps the biggest casualty. Unscrupulous litigants like the petitioners leave no stone unturned to mislead the quasi-judicial and judicial authorities and the courts for material gains. The entire system has become victim of such persons. In order to meet this challenge, the courts have evolved new rules, strategies

and techniques. One such rule is that the court will not grant hearing to a person who does not approach it with clean hands. To put it differently, a person who touches the fountain of justice with the tainted hand or who makes an attempt to pollute the course of justice by making false or misleading statements or by suppressing facts must be shown the door at the threshold."

37. In the case of **Satish Khosla V/s.Eli Lilly Ranbaxy Ltd. & Anr. 71 [1998] DLT 1 [DB]**, the Division Bench of this Court has held as under :-

19. As held by the Supreme Court in **T. Arivandandam v. T.V. Satyapal and Another**, AIR 1977 SC 2421, the pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. "It may be a valuable contribution to the cause of justice if Counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an Advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of *ex parte* orders tempts gamblers in litigation into easy Courts. A Judge who succumbs to *ex parte* pressure in unmerited cases helps devalue the judicial process."

38. I concur with the earlier order dated 3rd January, 2007 passed by this court that the conduct of the plaintiff No.1 amounts not only to concealment of material facts from this court but also amounts to contempt of its proceedings.

39. Even on merits, the entire case of the plaintiffs is based as per claim made in Para 14 of the plaint which refers to a draft proposal

of settlement which is claimed to have been signed by the parties on 28th October, 2003. The said document has been specifically disputed and denied by the defendants in their written statement. The said document filed by plaintiff No.1 shows that the same is undated un-signed Photostat of a typed document. A mere reading of the said document shows that there are certain terms and conditions which are proposed terms on which the parties would settle their disputes in respect of the suit property i.e. 9/56 Kirti Nagar Industrial Area and the parties were required to exercise the option and possession of a portion was to be parted based on the option. The contention of the plaintiff No.1 is that the signed copy of this document is lying with defendant No.4 Sant Gurmukh Singh Maharaj who has been arrayed as defendant No.4 and he should get an opportunity to prove his case in accordance with law.

40. It is pertinent to mention that although the defendant no.4 is ex parte but through Advocate he has filed his affidavit dated 12.02.2007 and paras 3 to 6 of the said affidavit read as under :-

“3. That the malafides of the defendants are clear from the very fact that the defendant no.4 has very cleverly stated that no settlement could be arrived at between the parties but neither stated nor filed the signed/unsigned copy of the Agreement dated 28.10.2003 lying with him.

4. That the non-filing of the said Agreement along with the affidavit of defendant no.4 clearly shows that he does not want to file the same because it was duly signed by all the parties and was left with him for future actions but because it does not suit to the defendants, therefore, the same is not being filed.

5. That even in the absence of the said Agreement the rights of the plaintiff no.2 are not vitiated because the suit property is a joint family property and the plaintiff no.2

has a share in the same.

6. It is, therefore, respectfully prayed that the affidavit filed by defendant no.4 may kindly be declared as false and frivolous and may be rejected.”

41. After the execution of four agreements in favour of Smt. Jaspal Kaur and the sale deed executed in her favour, the plaintiff No.2 filed two applications being I.A. No.331/07 under Order 40 Rule 1 read with Order 39 Rules 7 and 10 and Section 94 praying that a receiver may be appointed for the suit property and defendants 1 to 3 should be directed to deposit the said amount and other reliefs claimed in this application. The plaintiff No.2 has also denied the affidavit of defendant No.4.

42. In the second application filed under Order 1 read with Section 94 and 151 CPC, the plaintiff No.2 has prayed that plaintiff No.1 may be transposed as defendant No.6 and the plaintiff No.2 may be allowed to continue with the present suit as the sole plaintiff. In his application, he has admitted the execution of four agreements by the plaintiff No.1 and handing over the rights of possession and occupation to Smt. Jaspal Kaur who is now impleaded as defendant No.5 by order dated 4th May, 2006. He was aware that when defendant No.1 was alive he had transferred his part of the property in favour of Smt. Jaspal Kaur by virtue of sale deed dated 25th May, 2005 for Rs.25 lakhs.

43. The main contention of the plaintiff No.2 is that he is a bachelor. The plaintiff No.1 was having approximate rights of the front portion of the property in dispute in the capacity of co-owner and also

being a partner of M/s.Oriental Wollen Mills who was the tenant of defendant No.1. The plaintiff No.2 appointed plaintiff No.1 as his attorney only to act on his behalf in respect of his share if allotted to him in respect of the suit property. The plaintiff No.2 authorised plaintiff No.1 to take any steps as may be desired not only by plaintiff No.1 but also by defendant No.1. The plaintiff No.2 is only seeking his share in the suit property and not acting in any manner against his interest but rather the defendants have acted contemptuously after knowing about the tenancy of the present suit by executing the sale deed in favour of Smt. Jaspal Kaur on 25th May, 2005.

44. It is stated in the application filed by plaintiff No.2 that the plaintiff No.2 has not received a single penny either from plaintiff No.1 or the defendants. He has also denied that he is acting in collusion with plaintiff No.1.

45. The case of the defendants is that both the plaintiffs created forged and fabricated documents by virtue of which the plaintiff No.1 created some further documents in favour of plaintiff No.2 and the plaintiff No.1 in terms of the joint conspiracy with plaintiff No.2 handed over the possession of the shop by sub letting it to M/s. Delhi Utranchal Transport Co. The plaintiff No.1 had also sub let one of the shops to his wife and as such both the plaintiffs have fraudulently harmed the defendant No.1 and his wife Smt. Rajinder Kaur, mother of the plaintiffs and partner of M/s. Oriental Wollen Mills. It is also urged that both plaintiffs have received a huge amount from Smt. Jaspal Kaur.

46. The Plaintiff No.2 was not the tenant of the possessory right of the suit property nor the partner of Oriental Wollen Mills in the tenanted premises of defendant No.1. The plaintiff No.1 has admittedly handed over the possession of the entire premises which was let out by defendant No.1 to the firm M/s. Oriental Wollen Mills. From the overall surrounding circumstances, it appears that there is no other defence left with the plaintiffs to contest the matter on merit, therefore, the suit is liable to be dismissed.

47. It appears from the pleadings in the two applications that now the plaintiff No.2 wants to continue with the case as sole plaintiff and has prayed that the plaintiff No.1 be transposed as defendant No.6. As per record, the present suit has been filed by the two plaintiffs i.e. Harjit Singh and Narender Singh through the same counsel, both have signed the plaint alongwith supported affidavits.

48. In case the plaintiff No.2 had any interest in the tenanted premises, why did he not take any action against the plaintiff No.1 and against the defendants when he came to know about the execution of the four agreements when he is claiming that he was the sub-tenant of the suit property and had interest in it. In fact both the plaintiffs were appearing and represented by the same counsel. It is a recent development that he is now being represented by another counsel. Hence, as there is no force in the submissions of plaintiff No.2, both the applications are dismissed. The question of his share in the tenanted premises or otherwise does not arise on the basis of averment of the defendant No.1 that it was his self acquired property and he was the

exclusive owner of the same. Further the defendants have made the allegation against both the plaintiffs that they have created fabricated documents in order to show sub letting in favour of Delhi Utranchal Transport Co. and Rajinder Kaur who is the wife of plaintiff No.1. It was not disputed by plaintiff No.1 before the Court on 3rd January, 2007 that four agreements were executed by him in favour of Smt. Jaspal Kaur and the possession of the entire portions of suit property was handed over to her. One has failed to understand where the plaintiff No.2 was at that time. The conduct of the plaintiff No.2 shows that since plaintiff No.1 is guilty of concealment of facts and violation of the undertaking given by him in the judicial proceedings, plaintiff No.2 has filed these applications in order to take the advantage and to further harass the widow of defendant No.1 otherwise, where was he when he joined the plaintiff No.1 and filed Criminal MA No.1806/2006 under Section 340 of Cr.PC against defendants No.1, 2 and 3 and made serious allegations against them.

49. As the plaintiff No.1 has violated the statement made by him in the court of competent jurisdiction coupled with the fact that the plaintiffs are admittedly out of possession and that he is guilty of suppression of material facts, the suit of the plaintiff is not maintainable and is liable to be dismissed on the ground of concealment of facts. The same is hereby dismissed with costs.

50. In view of this order, the application being I.A. No. 10911/2006 does not survive and is hereby dismissed.

51. As regard the amount deposited by plaintiff No.1 in terms of

order dated 3rd January, 2007 it shall remain deposited in this court till the decision of Suit No.1246/06 filed by deceased defendant No.1 for recovery of possession and recovery of Rs.26 lakhs along with interest.

52. The suit and all pending applications stand disposed of accordingly.

MANMOHAN SINGH, J

SEPTEMBER 11, 2009
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