

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

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CRP No.183/2007 & FAO No. 25/2009

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Date of decision: 1st December, 2009

RAJINDER & ORS.

...Plaintiffs

Through: Mr. Lekh Raj Rehala, Advocate

Versus

HARSH VOHRA & ORS.

.... Defendants

Through: Mr. Chetan Sharma, Senior Advocate with
Mr. Sushil Kumar Pandey, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The Revision Petition as well as the FAO, both arise from four suits instituted by the petitioners/plaintiffs against the respondents/ defendants and pending in the Trial Court. The suits being between the same parties and entailing the same facts are being tried together and common issues have been framed in all the four suits. The petitioners have instituted the suits for the reliefs of declaration and injunction.

2. The case in the plaint in each of the suits is that the plaintiffs/petitioners are bhumidars of certain land in the revenue estate of village Rewala, Khanpur, Delhi; that in the year 1995 they were in need of some money and asked one Sh. Ved Prakash to arrange for the money; that said Sh. Ved Prakash introduced the petitioners to Sh. Om Prakash, Respondent no.2 herein; that Sh. Om Prakash told the petitioners that the land was being acquired by the government at the rate of Rs.4,65,000/- per acre, whereas the market value thereof was Rs.5,00,000/- per acre and hence it was advisable for the petitioners/plaintiffs to sell their land; that the petitioners agreed to sell their land at the rate of Rs.5,00,000/- per acre to the respondent Sh. Om Prakash who paid Rs.5,00,000/- to the petitioners on 23rd May, 1995 as earnest money and got executed agreement to sell and receipt in his name and promised to pay the balance sale consideration at the time of registration of sale deed; that the petitioners were called to the office of Sub-Registrar on 10th July, 1995 where each of them was further paid Rs.3,32,500/- and asked to sign “mortgage papers for the time being till the sale deed is not registered” on the representation that formalities for registration of the sale deed were still to be executed. It is further the case in the plaint that the petitioners were not paid the balance sale consideration; that they then filed a suit for mandatory injunction against Sh. Ved Prakash for direction to him to disclose the nature of the documents got signed by him from the petitioners; that the petitioners there upon learnt that documents of Agreement to Sell and General Power of Attorney with respect to the land had been got executed from them in the garb of mortgage documents. The petitioners claimed that they thereafter approached the Respondent no.2 Sh. Om Prakash to make payment of the balance sale consideration but were informed that the agreement to sell is in favour of the Respondent no.1 herein Sh. Harsh Vohra. The petitioners thereafter filed a suit for permanent injunction and declaration against respondents Harsh Vohra & Om Prakash from acting on the basis of the said documents and for declaration thereof as null and void and for restraining the respondent Harsh Vohra & Om Prakash from forcibly dispossessing the petitioners from the land. The said suit is stated to have however been disposed of as compromised on the assurance of respondents Harsh Vohra & Om Prakash that the balance sale consideration shall be paid. It was thereafter that the four suits from which these proceedings arise were instituted on the averment that the petitioners had

then learnt that four sale deeds with respect to the land had been executed by the Respondent no.2 on the basis of the Power of Attorney got executed from the petitioners. It is the case of the petitioners that the balance sale consideration remains unpaid.

3. The petitioners have in the plaints stated that they filed appeal against the mutation of the land in the name of the respondent which was dismissed; the second appeal there against is stated to have been dismissed by the Financial Commissioner, Delhi. The petitioners thereafter instituted the suit for declaration that the sale deeds are null and void and be set aside and for restraining the respondents from claiming any rights on the basis of the said sale deeds. The suits as originally filed were against the respondents Harsh Vohra & Om Prakash only. Subsequently, an application was filed for impleading the Respondent no.3 M/s Udyan Estate Ltd. as a party to the suits. The said application was allowed by the Trial Court. The respondent no.3 M/s Udyan Estate Ltd. preferred CR No.847-849/2002 in this Court. The same were dismissed vide Order dated 6th August, 2004 by this Court.

4. As aforesaid, common issues have been framed in the four suits on 18th May, 2006 and the same have been ordered to be tried together. The petitioners/plaintiffs instead of filing affidavits by way of examination-in-chief of their witnesses filed applications under Order 14 Rule 5 and under Order 11 Rule 16 of the CPC and notice whereof was issued for 31st August, 2006. On that date, replies were filed by the respondents/ defendants to the applications and the same were adjourned for arguments for 9th October, 2006. On 9th October, 2006, the counsel for the petitioners/plaintiffs was not available and the matter was adjourned for arguments on the applications on 1st December, 2006. On 1st December, 2006, the suits were adjourned for arguments on the applications to 18th January, 2007.

5. On 18th January, 2007, the petitioners/plaintiffs filed application under Order 10 of the CPC and another application under Section 340 of the Cr.P.C. A separate file was started for the application under Section 340 of the Cr.P.C. The matter was adjourned to

14th March, 2007. On 14th March, 2007, the suits were adjourned to 25th April, 2007 and thereafter to 12th May, 2007.

6. The order dated 12th May, 2007 in the suit files is of some significance and is therefore reproduced herein below:

*“12/05/2007
Present: Counsels for both the sides. Put up on 24th
May, 2007 with the connected files.”*

The order of 12th May, 2007 in the separate file made on the application under Section 340 of the Cr.P.C. is that arguments thereon had been addressed by the counsel for the petitioners herein.

7. On 24th May, 2007, the counsel for the respondents addressed arguments on the application under Section 340 of the Cr.P.C. and the application under Section 340 of the Cr.P.C. was posted for order on 5th July, 2007. In the suit files the order of 24th May, 2007 is for putting up the same along with the file of application under Section 340 of the Cr.P.C. on 5th July, 2007.

8. On 5th July, 2007, application under Section 340 of the Cr.P.C. was dismissed. The suits were adjourned for hearing of the applications under Order 14 Rule 5 and under Order 10 of the CPC for 16th October, 2007.

9. The petitioners against the order dated 5th July, 2007 of dismissal of their application under Section 340 of the Cr.P.C. filed an appeal to this Court titled as “Criminal Appeal” and registered as Criminal Appeal No.460/2007. The same was admitted vide order dated 13th August, 2007 and notice thereof issued; the operation of the order dated 5th July, 2007 was stayed. Vide order dated 30th September, 2008 in the said criminal appeal, the Trial Court record comprising not only of the file of application under Section 340 of the Cr.P.C. but of all the four suits were ordered to be summoned to this Court on an application of the petitioners in this regard. The files were accordingly received in this Court. A perusal of the suit file shows that though they were listed on

16th October, 2007 for hearing on the applications under Order 14 Rule 5 and Order 10 of the CPC but the petitioners sought an adjournment on the ground of having preferred criminal appeal No.460/2007 in this regard. The said criminal appeal was listed before this Court on 3rd February, 2009 when it was ordered that the same was not maintainable as a criminal appeal but as a FAO. Accordingly, the same was ordered to be converted into FAO No.25/2009 and was vide order dated 12th October, 2009 ordered to be listed along with CRP No.183/2007.

10. CRP No.183/2007 was preferred by the petitioners under Section 115 of the CPC and notice thereof was ordered to be issued to the respondents on 8th October, 2007 for 11th December, 2007. The said CRP had been preferred for setting aside the orders dated 12th May, 2007 and 5th July, 2007 in the suit.

11. I will first take up the said CRP for consideration. The grievance of the petitioner in the said petition is that they have been denied the fair trial of their suits and a prejudice is being caused to them by the procedure adopted by the Trial Court. It is pleaded that in the applications preferred by the petitioners before the Trial Court under Order 14 Rule 5 of the CPC and under order 10 of the CPC, though arguments have been heard, the applications have not been disposed of. The petition itself is argumentative and refers to a number of precedents. The grievance is made of the adjournments meted out by the Trial Court for hearing on the said two applications. It is also suggested that though the arguments on the said applications had been heard but the orders thereon had not been pronounced and the matter was listed for re-hearing on 16th October, 2007. The petitioners have in the body of the petition also quoted the orders dated 12th May, 2007 and 5th July, 2007 on the suit files but which on perusal of the suit files, summoned in this Court as aforesaid, shows the same to be not a true reproduction of the orders on the suit file.

12. This has to be viewed seriously. A party to this Court cannot be permitted to 'misquote' the orders on the file of the Trial Court. The revision petition is filed under the signatures not only of the petitioners but also of their advocate. The advocates while

signing the petition though not responsible for the factual statements on the merits of the disputes are at least responsible for correctly reproducing the orders of the Courts below. From a perusal of the orders as set out in the body of the petition, it appears that the Trial Court had not applied its mind to the matter and the orders are incomprehensible. By wrong reproduction of the orders of the Trial Court, an impression is also sought to be conveyed as if the Trial Court inspite of having heard arguments on the applications under order 14 Rule 5 and Order 10 of the CPC failed to pronounce orders thereon and listed the applications again for hearing without giving any reason therefor. I must however hasten to add that along with the petitions, the certified copies of the orders were also filed. That in my view would not affect the responsibility of the parties and the counsels to correctly reproduce the orders of the Court in the body of the petition. If the counsel intended to rely upon the certified copy of the order annexed to the petition, there was no need to reproduce the same in the body of the petition. The order impugned having been set out in the body of the petition, ordinarily the court at the stage, at least of admission of the petition, is unlikely to read the certified copy of the order even if annexed to the petition. However, I shall further deal with this aspect a little later in this order.

13. From the proceedings on the suit files as set out herein above, it is apparent that the petitioners/plaintiffs gave precedence to the application under Order 340 of the Cr.P.C. over the applications under Order 14 Rule 5 and Order 10 of the CPC. It is also clear from the Trial Court records before this Court that arguments were addressed on 12th May, 2007 & 24th May, 2007 on the application under Section 340 of the Cr.P.C. only of which a separate file had been made and in which separate ordersheet had been maintained and no arguments were addressed on that date on the applications under Order 14 Rule 5 and Order 10 of the CPC in the suit file. The said files were on both the dates merely adjourned with the connected file i.e. the file of the application under Section 340 of the Cr.P.C. However, after the said applications had been dismissed vide order dated 5th July, 2007 and the file of the application under Section 340 of the Cr.P.C. thus closed, order was made in the suit file for listing the matter on 16th October, 2007 for hearing of applications under Order 14 Rule 5 and Order 10 of the CPC.

14. The grievance made in the revision petition is thus misconceived and an attempt to browbeat the Trial Court. In fact, it is the petitioners themselves who by having the suit files also summoned to this Court as aforesaid have even thereafter not allowed the applications under Order 14 Rule 5 and Order 10 of the CPC to be disposed of. The four suits have been unnecessarily delayed for the last over two and a half years. I may also note that the revision petition under Section 115 of the CPC in any case is not maintainable and liable to be rejected as such. However, since notice thereof had been issued and had been pending for the last two years, the same has been considered as a petition under Article 227 of the Constitution of India. No merit is found therein and the same is dismissed.

15. I will now take up the FAO challenging the order of the Trial Court dismissing the application of the petitioner under Section 340 of the Cr.P.C. A perusal of the said application in the record summoned from the Trial Court shows that the allegations of the petitioners therein are:

- (i) That a fraud had been perpetuated by having the agreement to sell and power of attorney executed from them in the garb of documents of mortgage.
- (ii) That the stand of the Respondents No.1 Harsh Vohra and Respondent no.2 Om Prakash in the written statement in the suit filed earlier by the petitioners against them and which was withdrawn as noted in para 1 herein above show that the Respondent no.1 Harsh Vohra was the purchaser of the land from the petitioners; however in the written statement in the subsequent suits from which these proceedings arises, the stand was taken that the purchaser is Respondent no.3 M/s Udyan Estate Ltd.; it was contended that the respondents could not take two different stands and were bound by their admission in the written statement in the first suit; this was also averred to constitute an offence.
- (iii) The allegations of fabrication of documents of sale in favour of the respondent no.3 M/s Udyan Estate Ltd. were made.
- (iv) That the sale deeds in favour of M/s Udyan Estate Ltd. on the basis of power of attorney in favour of the respondent no.1 Om Prakash had been executed during the pendency of the first suit and by

misrepresenting to the authorities that there were no legal proceedings with respect to the property pending; it is averred that the respondents thus filed false affidavit before the authorities for the purposes of having the sale deeds registered.

16. The defence of the respondents inter alia was that in the first suits the defendant no.1 was described as “Harsh Vohra proprietor of M/s Udyan Estate Ltd.”. It is contended that there is no change of stand and inconsistency in the written statement in the two suits. The respondents also denied having filed any false affidavits before any of the authorities for registration of the sale deeds in favour of M/s Udyan Estate Ltd.

17. The Trial Court dismissed the application under Section 340 of the Cr.P.C. inter alia for the reasons:

- (i) That no finding of forgery and fabrication of documents or of falsehood in the pleadings could be reached without adjudication of the suits.
- (ii) That there was no inconsistency in the written statement in the first suit and in the suits from which this proceedings arise in as much as while in the first suit Harsh Vohra had been sued as proprietor of M/s Udyan Estate Ltd. and in the subsequent suit Harsh Vohra was sued in his personal capacity and M/s Udyan Estate Ltd. was impleaded separately as a defendant.

18. I do not find any error whatsoever in the order of dismissal of the application under Section 340 of the Cr.P.C. I have otherwise also recently in ***Vinedale Distilleries Ltd Vs S.K. Aggarwal*** MANU/DE/2261/2009 and for detailed reasons given therein held that ordinarily applications under section 340 of the Cr.P.C. ought not to be filed or taken up before the lis between the parties is adjudicated in the suit. Till said adjudication, the Court cannot be expected to arrive at a finding of falsehood in the pleadings of any of the parties. If such falsehood does not require any trial, then there would be no occasion for recording evidence and the suit itself can be disposed of. However, whenever issues have been framed and trial ordered, it cannot be said till the final adjudication of the suit as to the version of which party is false.

19. I have also satisfied myself that there is no inconsistency in the two written statements as aforesaid. It is the petitioners own mistake that in the first suit they

impleaded Harsh Vohra as proprietor M/s Udyan Estate Ltd. as defendant no.1. The reference in the written statement to defendant as purchaser/owner of the land can thus mean reference to M/s Udyan Estate Ltd. At this stage, it cannot be said that since Sh. Harsh Vohra was sued as proprietor the same should be read as stating that Sh. Harsh Vohra in his individual capacity was the purchaser and owner.

20. The counsel for the petitioner before this Court also instead of arguing in relation to the facts of the case sought to raise general arguments of law qua Section 340 of the Cr.P.C. and conduct of trials by the Trial Courts. During the hearing, aspersions were cast on the Trial Court. The counsel referred to *Pritish Vs. State of Maharashtra* (2002) 1 SCC 253, *Nafar Chandra Jute Mills Ltd. Vs. United Bank of India* (2000) 9 SCC 545, *Manohar Singh Vs. State* 2005 (1) Crimes 432 (J&K), *Rajesh Sahu Vs. State of Chhattisgarh* 2005(1) Crimes 434, *Black Diamond Glassware P. Ltd. Vs. Kusumlata Gupta* AIR 2004 Delhi 88, *Dharmendra Nath Vs. Rex* AIR (36) 1949 Allahabad 353 & *Harishankar Vs. Khyalichandra* 1991 CRL.L.J. 2153 in the course of the hearing. However, no case of any offence within the meaning of Section 340 of the Cr.P.C. having been found, need is not felt to discuss the aforesaid judgments. Merely by citing extracts from proposition of law and without reference to the facts of the case at hand, cases cannot be argued. The appeal is also found to be meritless and is dismissed.

21. From the aforesaid, it will be seen that the petitioners having only by misquoting the orders filed the frivolous proceedings before this Court but during hearing also just read judgments herein above without reference to the facts. I am in the circumstances, constrained to dismiss these proceedings with costs of Rs.10,000/- on the petitioners.

22. However, this is not the end of the matter. This court in the exercise of its supervisory jurisdiction having perused the file of the Trial Court entertains a doubt as to the very maintainability in law of the suits. The Supreme Court in *T Aravindam Vs T.V. Satyapal* AIR 1977 SC 2421 has held that suits which are bound to doom and of which there is no likelihood of success ought not to be kept pending to clog the courts and the valuable time and at the costs of the other deserving plaintiffs and should be dismissed summarily. On going through the pleadings of the petitioners/plaintiffs it appears that the

petitioners/plaintiffs though admitting the agreement to sell of their property and execution of documents with respect thereto are seeking cancellation of the sale deeds only for the reason of the entire agreed sale consideration having not been received by them. In my opinion, non payment of the agreed sale consideration does not entitle the petitioners/plaintiffs to seek relief of cancellation of the sale deed. Section 55(4) of the Transfer of Property Act envisages a situation where title to the property has passed to the purchaser before the entire sale consideration has been paid. It appears that the remedy in such situation is only for recovery of the balance sale consideration and of having attachment on the property till such balance sale consideration is paid and not of seeking cancellation of the sale deed. In this regard *Kaliaperumal Vs. Rajagopal* AIR 2009 SC 2122 may be perused. If that be the position, no purpose would be served in proceeding with the trial of the suits. The petitioner/plaintiffs have not sued for recovery of balance sale consideration. Though the petitioners/plaintiffs appear to claim that they are still in possession of the land but the same is controverted by the respondent no.3 M/s Udyan Estate Ltd. which claims to be in possession of the land. I may further notice that the respondents/defendants in their written statement did not appear to have taken up said plea. I do not find any issue also to have been struck thereon. I must confess that the parties have also not been heard on this aspect of the matter. This factum has come to light only during perusal of the files of the Trial Court for pronouncing judgment in the revision petition and the appeal. However, I deem it the bounden duty of this Court in exercise of the supervisory jurisdiction to when finding a suit to be misconceived, to point out the same for consideration of the Trial Court so that if after giving opportunity to the parties to address and/or upon the Trial Court finding the suit to be misconceived, appropriate orders can be made rather than acting through the rigmarole of trial. I, therefore, direct the Trial Court to look into this aspect and if finds any merit therein to give opportunities to the parties to address the Trial Court thereon and to deal with the same in accordance with law.

**RAJIV SAHAI ENDLAW
(JUDGE)**

December 01, 2009/gsr