

Reportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO (OS) No. 521/2007
and
RFA (OS) No. 3/2008

% Reserved on : September 08, 2008
Pronounced on : January 27, 2009

1. FAO (OS) No. 521/2007

Satish Kumar . . . Appellant

through : Mr. Rajesh Yadav, Advocate

VERSUS

Union of India & Ors. . . Respondents

through : Ms. Monica Garg, Advocate
for the UOI.
Mr. Sanjay Poddar, Advocate
for L&B Dept. of GNCTD.
Mr. Lovkesh Sawhney, Advocate
for the DDA.
Mr. V.K. Tandon, Advocate
for the EOW.

2. RFA (OS) No. 3/2008

Mahant Surendra Nath . . . Appellant

through : Mr. A.D.N. Rao, Advocate

VERSUS

Union of India & Ors. . . Respondents

through : Ms. Monica Garg, Advocate
for the UOI.
Mr. Sanjay Poddar, Advocate
for L&B Dept. of GNCTD.
Mr. Lovkesh Sawhney, Advocate
for the DDA.
Mr. V.K. Tandon, Advocate
for the EOW.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Mahant Surendra Nath, who is the appellant in RFA (OS) No. 3/2008, was the plaintiff in the suit which was filed by him for declaration, possession and injunction. He wanted declaration to the effect that he is the lawful owner of suit property measuring 22.15 bighas of land in village Bahapur, Delhi. Decree of possession was sought seeking restoration of the possession of the said land which, according to him, has been unlawfully and illegally encroached upon by the DDA. Impleading Union of India as defendant No.1 and DDA as defendant No.2, the precise prayers made in the suit were as under :-

“(a) A decree of declaration declaring that the plaintiff is the lawful owner of the suit property measuring 22.15 bighas of village Bahapur, Delhi (22 bigha 15 biswas).

(b) A decree of possession directing the defendant to restore the possession of the suit property to the plaintiff on as is where is basis.

(c) A decree of mandatory injunction directing the defendant to remove the fencing, boundary wall, if any, before restoration of the possession to the plaintiff.

(d) A decree of permanent injunction restraining the defendants from alienating, transferring and changing character of the land and from creating any third party interest in the suit property.

(e) The plaintiff also claims the cost of the suit throughout.

(f) Any other relief that this Hon'ble Court may deem fit and proper in the above facts and circumstances of the case.”

2. The said was filed by Shri Satish Kumar as attorney of Mahant Surendra Nath. During the pendency of the said suit, certain applications were filed. Five applications were under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short, 'CPC') by different persons seeking impleadment in the suit and one application was under Order VI Rule 17 CPC by the plaintiff for amendment of the plaint, details whereof shall be noted at the appropriate stage. However, when arguments on those applications were advanced, counsel for the plaintiff had sought permission to withdraw the suit with liberty to file a proper suit on the ground that the suit, as framed, was not maintainable as without seeking partition of the land, in which the plaintiff claims 50% share, the possession could not have been asked for.
3. Prayer for withdrawal of the suit, though, was allowed, but at the same time the learned Single Judge was of the view that such a prayer was made when the attorney felt that the learned Single Judge had assessed, after recording his statement, that the suit was replete with the concealment of material facts and he had made contradictory statements because of which the learned Single Judge was contemplating taking action for perjury. Thus, by the impugned order, while the suit is dismissed as withdrawn but the learned Single Judge has refused to grant any leave to file fresh suit. At the same time, direction is also given by the learned Single Judge to proceed

against Mahant Surendra Nath, his attorney Shri Satish Kumar and others who have allegedly committed perjury.

4. The plaintiff has filed RFA (OS) No. 3/2008 challenging the said judgment and his attorney Shri Satish Kumar has filed FAO (OS) 521/2007 seeking quashing of the directions to proceed against him for perjury.
5. Brief factual matrix of the case would be necessary to understand the issues involved.
6. The plaintiff/appellant Mahant Surendra Nath claims to be a Mahant of Kalkaji Mandir. In the suit filed by him through his attorney, it was pleaded that he is the lawful owner of 50% share of Khasra No. 629 measuring 4 bigha 2 biswa, Khasra No. 630 measuring 18 bigha 9 biswa, Khasra No. 633, 633/1, 633/2 and 633/2/1 measuring 185 bigha and 1 biswa in Village Bahapur. Out of this total land, certain portions of the land were acquired by different awards by the Government of India in all the six khasra numbers. The remaining land after acquisition is stated to be 45 bigha and 10 biswa and the plaintiff claims that his half share measures 22 bigha and 15 biswa. The plaintiff averred that after demarcation of the land, which resulted in Suit No. 342/1991, the plaintiff approached the Director (Lands) DDA and asked him to restore the land occupied and fenced by the DDA which measured 22 bigha and 15 biswa as the same was never acquired. It is the case of the plaintiff that the right over such

property being enjoyed by the DDA is without the authority of law. The Director of DDA informed the plaintiff that the suit land was transferred to the DDA in the year 1982 by the Ministry of Rehabilitation, Government of India under a package deal in pursuance to the letter dated 4/1978-55-11 on 'as is where is basis'. This position is naturally disputed by the plaintiff and it is the case of the plaintiff that the public authority cannot enjoy or take possession of the land except by due process of law under the Land Acquisition Act, 1894. The plaint sets out the cause of action for filing the suit as having arisen in the first week of January, 1998 when the plaintiff discovered that the DDA was fencing the land and apparently raised boundary walls encompassing the said land and started developing the same into a green area by trespassing in the suit property of the plaintiff. The period of limitation being 12 years, it is claimed that the cause of action had arisen only in the first week of January, 1998 and, thus, the suit was within time.

7. DDA in its written statement, *inter alia*, pleaded that the suit land came within site No. 49 in terms of the sketch of the survey land in Kalkaji, which was handed over to the DDA vide documents dated 28.9.1983 and 29.12.1983 on payment of Rs. 30 crores for maintenance, development and disposal of the land under the provisions of the Delhi Development Act. As per the DDA, the land in question is maintained as Green Belt. The DDA has explained that some parts of Khasra No. 629, 630 and 633 were found to be falling

in Site No. 49 which was so allotted and transferred to the Ministry of Rehabilitation. As per *Jamabandi* of the year 1908-09 of Khasra No. 630, there used to be a pond in the centre of the land and the land was enjoyed by the pujaris of the Kalkaji temple as well as Shamlat Thok comprising of Brahmins and Jogis in equal share. Though the said pond has dried up, but it still retains its shape as depression in the shape and falls in Site No. 49. According to the DDA, some encroachments were made which have been removed by the DDA. Thus, as per the DDA, land vests with it, in which the plaintiff had no exclusive rights. Defendant No.1/UOI supported the stand of DDA by filing a short affidavit and confirming that vide Notification dated 2.9.1982 the land was allotted to DDA and physical possession of the land was handed over on 18.11.1983.

8. After completion of the pleadings and before the issues could be framed, one after other applications were filed by different parties under Orders I Rule 10 CPC. These applicants wanted impleadment in the suit claiming interest in the suit land on the ground that it was a Shamlat Tokh of Brahmins and Jogis who had 50% share each in the land. About the actual percentage of share in the land, separate suit is also pending.
9. It can be discerned from the judgment of the learned Single Judge that as the position about the status of the land was not emerging clearly, notice was issued to the Land & Building Department of Govt. of NCT of Delhi. Apparently, the Court wanted to find out as

to whether the land had been acquired and after the acquisition of land, possession was given to the public authority like DDA. After this notice was received by the Land & Building Department, it was represented through its counsel. As per the explanation furnished by the Department, a notification was issued by the Government of India on 26.3.1949 under Section 3 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 where Khasra No. 638 has been shown as the acquired land and mentioned under village Bahapur. Vide another Notification dated 13.11.1959, land measuring 2 bigha 1 biswa comprised in Khasra No. 629 was acquired. Balance portion was stated to be a road since 1908 under the Wilson survey and it is this portion in respect of which the plaintiff claims his right. Khasra No. 630 consisted of 18 bighas and 14 biswas of land, out of which 5 bigha was acquired vide Notification dated 13.11.1959 and balance 18 bigha 9 biswa was a pond (water body), which according to the Land & Building Department, continues to be so.

10. Equipped with the aforesaid explanation, the learned trial court deemed it proper to direct personal appearance of the plaintiff as well as the attorney for making their statements under Order X Rule 1 & 2 of the CPC, which were recorded on 4.12.2007. In the statement given by the plaintiff, he stated himself to be a disciple of Mahant Ram Nath Ji from about 1970 and on his demise became a Mahant himself in the year 1992. He also claimed that he had right to keep the property as Mahant, but he would not inherit any

property from his father and the property owned by the Mahant would be managed by the new Mahant. He narrated the lineage of other Mahants and the Wills executed by those Mahants in favour of successor Mahants. He also affirmed that he was aware of this suit, which was filed through his attorney Shri Satish Kumar, who was his real brother and it was shown to him before it was filed. In respect of the suit land consisting of 22 bigha 15 biswas, he stated that there was a park of DDA over this land, though he had not seen the site as to what else existed on this land. He also deposed that he was staying in Kalkaji Mandir. He conceded that there was a jauhar on the land and there was a land between jauhar and the Mandir.

11. Mr. Satish Kumar, the attorney, in his statement narrated that he was running a business and of trading of herbal products and was educated upto inter class. He was looking after the affairs of the plaintiff's lands, for which he was paid a remuneration of Rs.10,000/- p.m., apart from other expenses. He had seen the site and admitted that the land was possessed by DDA and there was a park and a road apart from jauhar on the road. He also stated that demarcation had been carried out in the year 1989 when he was the attorney of previous guru and was looking after the lands on his behalf. He also admitted that park and the road were already in existence in 1986. He also conceded that from 1986 to the year 2000 no steps were taken to seek possession of the land. However, as per him, revenue authorities were approached time and again during this period.

Further statement made by the attorney is startling, as noted by the learned Single Judge in the following words :-

“17. The attorney has stated that he has no personal right in the land but for the first time disclosed that he had entered into agreements in respect of the suit land with the third parties and even executed sale deeds which had not been filed in Court. He categorically stated that the plaintiff was duly informed of all the transactions and that he did not inform his advocate about the same. The sale was stated to be on ‘as is where is’ basis and the agreement was at the rate of one lakh per bigha and on the land getting cleared, the plaintiff was to get a minimum of Rs.500/- and the maximum amount of Rs.1,000/- per square yard. The sale deed was stated to have been executed as attorney and the money was still lying with the attorney. The name of the purchasers was given as Mr. Mahender Pal, Mr. Akhilesh Singh and Ms. Anita Yogi with all the original documents being in the possession of the attorney. The whole land was stated to have been sold and the sale deeds duly registered. The attorney further stated that he had seen the Khasra Girdwari and Jama Bandi and the land was registered in the name of the Mahant and he obtained the documents from the revenue authorities which were filed with the plaint.”

12. In view of this statement and sale of land time and again to different parties even when the attorney had no personal right in the land, the plaintiff was examined again. He, however, feigned ignorance about these sales, though he maintained that land could be sold in case of necessity or need. He also came out with the plea that it is only on 3.12.2007 that he had been informed about the sale of the land and no money had been credited to his account. According to him, he had not specifically asked his attorney to sell the land, though the land could have been sold for some charitable purposes or activities connected with the temple, but not for profit motive. Following comments on this statement, as made by the learned Single Judge, apt reproduction :-

“19. In view of the contradictions between what was stated by the plaintiff and the attorney, it was observed that the matter required a deeper examination. The plaintiff was stating that he had no knowledge of the sale while his attorney stated that he was fully informed of the same. A direction was issued that all documents be filed in this Court which have since been so filed.”

13. It is at this stage when the learned Single Judge was contemplating deeper examination of the matter in view of the contradictory statements made by the plaintiff and the attorney that the counsel for the plaintiff made a request on 12.12.2007 for withdrawal of the suit under the pretext that suit, as filed, was not properly framed. The abnormalities as well as purported illegalities which were found in the sale deeds executed and produced on record are explained in paras 23 and 24 of the judgment. It is observed by the learned Single Judge that all the seven sale deeds were executed on 26.10.1999 for different portions of land. Three of them were in favour of Mr. Mahender Pal, two in favour of Smt. Anita Yogi and two in favour of Mr. Akhilesh Singh. Mr. Mahender Pal is another brother of the plaintiff, Mrs. Anita Yogi is wife of Mr. Mahender Pal and Mr. Akhilesh Singh is brother of Mrs. Anita Yogi. All these sale deeds are executed through Mr. Satish Kumar, the attorney who has registered power of attorney, which was so registered on 7.10.1998 executed in his favour by the plaintiff. In the sale deeds, it is recorded that vendor was the owner and in possession of the land in question which was sold for the *bona fide* needs and requirements of the vendor. Sale deeds also stipulate that vendor had handed over the physical possession of the land to the vendee in execution of the

sale deed and thereafter vendor was left with no title or interest in the suit property, which was claimed to be his exclusive property.

14. From the perusal of the power of attorney in favour of Mr. Satish Kumar, learned Single Judge has observed that it was an irrevocable power of attorney made specifically for the purpose of sale of the property in question and for obtaining necessary terms to effectuate such sales. Authority has also been given for construction of the land obtaining water and electricity connection, instituting legal proceedings, collecting compensation or taking allotment of alternative plot.
15. Because of the aforesaid reasons, the learned Single Judge refused to grant leave to file fresh suit on withdrawal of the said suit and in the process referred to the judgment of the Supreme Court in *Dy. General Manager, Re-designated as Dy. Director, ISB & Ors. v. Sudarshal Kumari & Ors.*, (1996) 4 SCC 763. The learned Single Judge also imposed exemplary costs of Rs.1,50,000/- taking cue from the Supreme Court judgments as well as the judgment of this Court where imposition of such a cost is necessary against those who are dishonest litigants. The learned Single Judge has also viewed the aforesaid acts on the part of the plaintiff as well as the attorney as attracting the penal provisions contained in Sections 193, 199, 200 & 209 of the Indian Penal Code and, therefore, necessitated action for initiation of proceedings under Section 340(1) of the Code of Criminal Procedure, 1973. Direction is accordingly given to the

Registrar General for taking the said action. Directions are also given to the Economic Offences Wing of Delhi Police to register a FIR against the plaintiff, his attorney as well as three beneficiaries under the sale deeds, namely, Mr. Mahender Pal, Mrs. Anita Yogi and Mr. Akhilesh Singh and carry out investigations in accordance with law and also to take suitable action thereafter if offences are made out as a result of the said investigation. Further consequential directions are also given.

16. Mr. M. Mirza and Mr. A.D.N. Rao, who appeared for the attorney and the plaintiff respectively in these appeals, argued the matter on their behalf.
17. Contention of Mr. Mirza was that the entire case proceeds on the assumption that the suit land belongs to Mandir, which is not correct. His submission was that in para 3 of the plaint, the plaintiff had categorically stated that he was the lawful owner of 50% share in the suit land. In that para, the plaintiff had specifically mentioned that the Government had acquired part of the land covered by Khasra Nos. 629, 630 & 633, leaving 45 bighas 10 biswas of land in which he had half share and, in this manner, the plaintiff had claimed that his share was to the extent of 22 bighas 15 biswas of land. Though this land was not acquired, DDA was still occupying this land and, therefore, it was claimed that he was entitled to get back the possession. It was stated in the suit that DDA was not able to show as to how it had interest in the said land and was trying to fence off

the entire area, raise boundary walls and develop it into a green area without acquiring the same. In para 13, which related to cause of action, it was specifically mentioned that in the first week of January 1998, when the plaintiff discovered that the DDA fenced off the land and partly raised boundary walls, encompassing the said land and started developing into a green area, cause of action arose in favour of the plaintiff. Learned counsel also referred to Jamabandi of different areas showing individual names. He also submitted that there were sufficient documents on record to show that individuals had sold the land from time to time. Referring to the demarcation report, he submitted that the said report clearly showed that the said land had been left out from acquisition.

18. His submission was that DDA could not point out as to how and when the land in question was acquired, as no details of any notification were given by either DDA or UOI in their replies. Therefore, there was neither any dispute that the suit land remained outside acquisition and had belonged to the plaintiff/individuals as per Jamabandi. He, thus, argued that the plaintiff or the attorney had a right to sell the suit land and at best (or at worst) in the plaint, sale deeds were not disclosed. According to him, the trial court should not have taken the extreme step because of this omission.
19. The aforesaid argument of the learned counsel for the appellant misses the central theme of the impugned judgment, for which hardly any satisfactory answer is provided.

20. From the submissions made, the appellant is trying to claim rights in the suit property. These rights are not even adjudicated upon in the suit as the appellant had sought permission to withdraw the suit. What is important is that though the suit was dismissed as withdrawn, liberty to file fresh suit was not granted as the learned Single Judge was of the view that there was concealment of important and necessary facts in the plaint; the statements of the plaintiff and his attorney recorded under Order X Rule 2 CPC under oath were contradictory and misleading; and the plaintiff and his attorney had tried to play fraud upon the Court inasmuch as though the possession of the DDA over the suit land for last number of years was accepted in the statements and it was also accepted that the area was maintained as green land; a false colour was given as if DDA sprung into action only in January 1998 when it started fencing off the area. The impression which was given was that earlier to that, the land was in possession of the plaintiff and, in fact, this was so stated in the sale deeds as well, but those sale deeds were suppressed from the Court.
21. Thus, we are of the view that it is a futile attempt on the part of counsel for the appellants to contend that the plaintiff is the owner of the land. The plaintiff withdrew the suit. The controversy is about the non-grant of permission. No submissions were even made on this aspect. We are of the opinion that the learned Single Judge rightly refused to give liberty to the appellant to file fresh suit. Costs

imposed in a matter like this by the learned trial court are also most proper and needs no interference.

22. With this, we come to the issue of directions given by the learned Single Judge for proceeding under Section 340 Cr.P.C. and registration of FIR by the Economic Offences Wing of Delhi Police.

23. According to the learned counsel for both the appellants, such directions were not warranted and could not be given in law. For this, reference to various judgments, noted below, was made :-

- (i) *B.K. Gupta v. Damodar H. Bajaj & Ors.*
(2001) 9 SCC 742
- (ii) *State of Maharashtra & Ors. v. Pandurang K. Pangare & Ors.*
(1995) Supp. 2 SCC 119
- (iii) *Common Cause, A Registered Society v. Union of India & Ors.*
(1999) 6 SCC 667
- (iv) *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India & Ors.*
(1996) 11 SCC 582
- (v) *Chajoo Ram v. Radhey Shyam & Anr.*
(1970) 1 SCR 172

24. In *Chajoo Ram* (supra), the Supreme Court had given the following dicta relating to prosecution for perjury :-

“The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavit is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which

may be innocent or immaterial. There must be *prima facie* case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation: it seems to have ignored the fact that the appellant was a Panch and authorized to act as such and his explanation was not implausible.”

25. Reliance upon *All India Institute of Medical Sciences Employees’*

Union (supra) was for the purpose that the aggrieved party was not remediless and complaint could be filed by the complainant before the Magistrate having jurisdiction to take cognizance of the offence. Therefore, complainant was not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI.

26. In *Pandurang K. Pangare* (supra), following observations were relied upon :-

“8. As regards the application for perjury we must confess that we had been baffled by the conduct of Pangare as even though he had sold the property in favour of Shaikh who in its turn sold it in favour of Gupta and it ultimately came to VIPL yet it was Pangare who was not only appearing in this Court but was assuring through his counsel and contesting that no construction was going on on the plot in dispute. The explanation of the learned Counsel appearing for VIPL that Pangare filed his affidavit because a portion was still in his possession, is not convincing. In fact on 17th September 1993 and 24th September 1993 it was Pangare's counsel who vehemently challenged the statement made on behalf of MHADA that any construction was going on. He has in his affidavit filed in reply to perjury, attempted to whittle down the report of the Additional District Judge by saying that it does not indicate that construction was going on. Since Pangare had sold the property and he was not making any construction on the portion which was in his occupation there was no occasion for him to make such statement which was apt to mislead the Court. Technically speaking he may be right

that he was not making any construction. But factually he was wrong as construction activity was going on in the plot. He may not be guilty of contempt or perjury but he was certainly unfair to the Court. It is not necessary to say anything further. We do not propose to take any action against him for perjury but we are of opinion that he should be directed to pay a cost of Rs. 10,000 which shall be deposited by him within one month with the Legal Aid Committee of this Court.”

27. Likewise, from *B.K. Gupta* (supra), sustenance was sought to be drawn from the principle laid down in para 3 thereof where the Court stipulated two conditions required to be fulfilled for filing a complaint under Section 340 Cr.P.C. :-

“3. From the above, it follows that there are two conditions on fulfillment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an enquiry against such a person in relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated.”

28. It is clear from the aforesaid judgments cited by the learned counsel for the appellants themselves that if two conditions stipulated in Section 340 Cr.P.C. are satisfied, the Court can direct the initiation of proceedings under the said provision. These conditions are:

- (i) the said person has given a false affidavit or evidence in a proceeding before a Court; and
- (ii) in the opinion of the Court, it is expedient, in the interest of justice, to make an inquiry against such a person in relation to the offence committed by him.

Additional factor which may also be considered is that perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely.

It is, thus, to be seen as to whether the appellants had resorted to falsehood on a matter of substance and the same was deliberate.

29. We have already taken note of the averments, on the basis of which the suit was instituted, as well as the statements of the appellants recorded under Order X Rule 2 CPC. To recapitulate in brief, in the suit filed, prayer was to pass a decree of declaration declaring that the plaintiff is the lawful owner of suit property measuring 22 bighas 15 biswas and he also sought a decree of possession directing the DDA to restore the possession of the said property. Other consequential reliefs were also sought. In the plaint, specific averment was made that the cause of action had arisen when in the first week of January 1998 the plaintiff discovered that the DDA was fencing the land and apparently raised boundary wall encompassing the said land and started developing the same into a Green Area by trespassing in the suit property. Suit was filed in the year 2000. However, from the replies of the DDA as well as Land & Building Department of Govt. of NCT of Delhi, it emerged that the land in question was given to the DDA way back in the year 1992; part of the land was used as road; there was a pond (water body) and DDA had used the land in question as park. At this stage, the plaintiff's

statement was recorded under Order X CPC when he admitted that there was a park of DDA over the land as well as Jauhar on the land and there was land between Jauhar and Mandir.

30. Mr. Satish Kumar also, in his statement, admitted that the land was possessed by the DDA and there was a park and the road, apart from Jauhar on the road. He stated that demarcation had been carried out in the year 1989 and park and the road were already in existence in 1986. He also conceded that from 1986 to the year 2000, no steps were taken to seek possession of the land. More shocking fact which was revealed by him in his statement was that even in respect of such land, which was park, road and jauhar on the road, he was selling that land by executing sale deeds. Seven sale deeds were executed, which were all in favour of family members. In those sale deeds, it was mentioned that possession was given to the vendees, which fact, on the face of it, was false keeping in view the nature of the land and the manner in which it was used and no possession of said land, which was with DDA, was ever given by the vendor to the vendees, nor could it be given.

31. From this, not only it emerges that the appellants had made contradictory averments in the plaint and in their statements recorded under Order X, those were false as well. When the appellants stood exposed and the learned Single Judge was deeming it proper to have deeper scrutiny of the matter, application was filed

for withdrawal of the suit under the pretext that the suit, as filed, was not properly framed.

32. We are, therefore, of the opinion that it, *prima facie*, appears that not only false statements, on oath, are given by the appellants, the suit was filed with false averments, which were made deliberately. Furthermore, if the land in question, which is in possession of the DDA for the last number of years (at least since 1982, as per the DDA), the sale of this land in the manner done by the appellants would be a serious matter.

33. In this behalf, it will be of interest to reproduce the following portion of the impugned judgment wherein the learned Single Judge has made remarks about the statement of the plaintiff :-

“15. The plaintiff was not able to state any reason as to why the status of the properties which existed at site was not disclosed in the plaint. He conceded that he had seen the revenue records himself sometimes for the first time in 1990s and that the jauhar was very old. He did not know as to when the road and the park was constructed but were stated to be made after 1980. He further could not state any reason as to why after becoming a Mahant in 1992 it had taken him eight years to file a suit for possession. The only reason given was that he was verifying the records. The plaintiff further conceded that half of the share of the total land lies with the plaintiff while the other half remains with the families of the Brahmins.”

34. Likewise, following description is given about the sale of suit land to three parties :-

“26. An appreciation of the aforesaid facts show that the suit is replete with the concealment of material facts. The plaint is laid on the basis of an endeavour by the public authorities to improperly dispossess the plaintiff from the land owned by the plaintiff which had not been acquired by due process of law.

The attorney of the plaintiff, who is the natural born brother, was the attorney even of the earlier Mahant. The complete nature and status of the property was thus not only known to the plaintiff but even to the attorney. In the statements recorded of the plaintiff and the attorney under Order 10 Rule CPC it has clearly come to light that the plaintiff and the attorney were fully aware of the fact that the land in question had a road, jauhar and a park while the case presented in the plaint was as if recently an endeavour in 1998 had been made by the DDA to fence the park. The statements of these parties also show that even prior to 1986 all these things already existed on the land and, thus, the introduction of the date of 1998 was made only to bring the suit within the ambit of limitation by stating that the period of limitation was 12 years and should be counted from 1998. The plaintiff and the attorney had, at least, knowledge of the status of the defendant authorities and their possession in the land from 1986 onwards, if not earlier.

27. The documents of sale have been executed on 26.10.1999 by the attorney. There is not a whisper of this fact in the suit. In fact, the suit would not have been entertained in such a case where rightly or wrongly the land had been sold. The affidavit in support of the application for interim relief has been affirmed on 16.11.1999 though the application and the plaint have been verified on 25.2.2000.

28. The attorney has, thus, come with uncleaned hands giving misdisclosures and false statement in the plaint. Not only that, the attorney has executed sale deeds claiming to have possession of the land and further claiming to transfer the possession to the vendees who were his brother, sister-in-law and sister-in-law's brother. The sale deeds are also, thus, replete with incorrect statements being made.

29. The plaintiff also cannot be really absolved of the responsibility by merely stating that he was unaware of the execution of the sale deeds. The plaintiff himself had as late as on 7.10.1998 executed an irrevocable GPA in favour of the attorney, his natural brother, for sale of the property and it was in pursuance to the said attorney that the sale deeds have been executed on 26.10.1999.”

35. The directions, thus, given for initiating action by filing a complaint under Section 340 Cr.P.C. and registration of the FIR by the Economic Offences Wing of the Delhi Police are perfectly justified as ingredients for proceeding under the aforesaid provision have been

satisfied, *prima facie*, in this case. We, therefore, do not find any

merit in these appeals and dismiss the same with costs quantified at Rs.25,000/- each. We are limiting the costs to Rs.25,000/- only because of the reason that there is already a cost of Rs.1,50,000/- imposed by the learned Single Judge.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

January , 2009
nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA (OS) No. 3/2008

% Reserved on : September 08, 2008
Pronounced on : January , 2009

Mahant Surendra Nath . . . Appellant

through : Mr. A.D.N. Rao, Advocate

VERSUS

Union of India & Ors. . . . Respondents

through : Ms. Monica Garg, Advocate
for the UOI.
Mr. Sanjay Poddar, Advocate
for the LAC.
Mr. Lovkesh Sawhney, Advocate
for the DDA.
Mr. V.K. Tandon, Advocate
for the EOW.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

For orders, see FAO (OS) No. 521/2007.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

January 27, 2009
nsk