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HIGH COURT OF DELHI : NEW DELHI

CM (M) No.926/2010 & CM No.12810/2010

% Judgment reserved on: 23rd July, 2010

Judgment delivered on: 27th July, 2010

Shri Surender
S/o Late Shri Bhim Singh
R/o 156, Ground Floor
Second Pushta
New Usman Pur
Delhi

Through: Petitioner.
Mr. S.C.Singhal, Adv.

Versus

1. Smt. Roshani
W/o late Shri Bhim Singh
2. Sh. Krishan Pal
3. Sh. Rajender @ Ravinder
4. Sh. Tej Singh

All sons of late Sh. Bhim Singh
All resident of:
156, First & Second Floor
Second Pushta, New Usman Pur
New Delhi

....Respondents.

Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |

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3. Whether the judgment should be reported
in the Digest?

Yes

V.B.Gupta, J.

1. By way of present petition filed under Article 227 of the Constitution of India, petitioner has challenged order dated 4.5.2010 passed by Civil Judge vide which application of petitioner under Order 39 Rule 1 & 2 of the Code of Civil Procedure (for short as 'Code') was dismissed, as well as order dated 5.6.2010 passed by the Additional District Judge, Delhi vide which appeal filed by the petitioner against the order of Civil Judge was also dismissed with costs of Rs.10,000/-.

2. Brief facts of this case are that petitioner herein, filed a suit against his widow mother and three real brothers stating that Sh. Gur Sahab, petitioner's grand- father was the owner of property in question. He has raised Kachcha construction over it. Later on, petitioner got constructed the house from his own funds, being the elder male member and was the only earning member.

3. It has been further alleged that during his life time father of the petitioner and respondents No.2 to 4, partitioned the suit

property verbally. Ground floor of the same came into his share since he was residing on the ground floor.

4. It is further alleged that due to increase in the rate of the property, respondents No.2 to 4 became dishonest and now they are trying to dispossess him.

5. Respondents contested the suit and denied that petitioner had raised construction in the suit property. It is stated that construction was raised by husband of respondent No.1 and father of respondents No.2 to 4, as well as petitioner. Petitioner has concealed material facts regarding the execution of family settlement between the parties. Petitioner is only entitled for second floor of the suit property, which was given to him as per family settlement but he illegally occupied the ground floor of the suit property. Hence, petitioner is not entitled to any relief of injunction.

6. It is contended by learned counsel for the petitioner that possession of petitioner is duly admitted by respondents in their written statement. The family settlement is unregistered and all the legal heirs of his late father are not party to it. In these circumstances, family settlement is of no consequence as the

same is void and inadmissible in evidence.

7. It is also contended that since respondents themselves have filed a suit for partition, it clearly shows that family settlement is void and inadmissible in evidence. Thus possession of petitioner cannot be interfered, as all rights of the parties are required to be decided in the suit for partition.

8. In support of his contentions, learned counsel cited following judgments;

(i) Nirmal Singh and others vs. Gurbachan Singh AIR 1988 Punjab & Haryana 184 and,

(ii) Jai Dev Singh vs. Sujan Singh & Anr. 50 (1993) DLT 663.

9. Principles for grant of temporary injunction are well settled that;

(i) Petitioner has to show that he has a prima facie case;

(ii) Balance of convenience lies in his favour and;

(iii) Petitioner will suffer irreparable loss, if injunction is not granted.

10. It is also well settled that a party who comes to the Court seeking discretionary relief of injunction must not conceal

material facts and should approach the Court with clean hands.

11. As per plaint, case of petitioner is that his father during his life time partitioned the property verbally and possession of respective share were allotted. As per partition, ground floor came into the share of petitioner.

12. In the entire plaint, petitioner has nowhere mentioned about the family settlement deed which was executed in writing. Present petitioner was party to the same. So, petitioner has approached the Court by misrepresenting the facts and concealing the material facts.

13. Courts below rightly rejected the contention of the petitioner. In this regard it would be relevant to reproduce the relevant findings of the Courts below. Learned Civil Judge in impugned order observed;

“The grant or refusal of interim injunction is governed by three golden tests i.e. prima facie case, balance of convenience and irreparable loss or injury. In the case in hand it is admitted fact that the suit property was purchased by the father of the plaintiff and defendant no.2 to 4 and husband of defendant no.1. Execution of family settlement dated 04.6.1999 is also not in dispute but plaintiff has stated that same has never been acted upon. Plaintiff has failed to give any reason of not acting upon the family settlement. Mere saying that the family settlement was not acted upon is not sufficient.

Plaintiff is estopped from stepping back from the family settlement. In view of family settlement, I find no prima facie case in favour of plaintiff. Hence, application under order 39 rule 1 and 2 CPC is dismissed.”

14. Whereas First Appellate Court in its order observed;

“8. It is clear that the plaintiff cannot be permitted to reopen the family settlement. In fact, by way of the application, the plaintiff despite having no right, title or interest in the suit premises in view of the family settlement, has sought to restrain, inter alia, the person having absolute right, title and interest in the same, which, obviously, is not permissible in law. Hence, there cannot be any doubt that the plaintiff has no prima facie case. Hence, there is no question of the balance of convenience lying in favour of the plaintiff and against the defendants or the plaintiff suffering any loss or injury, must less irreparable. The appeal is liable to be dismissed on this ground alone.

9. Even otherwise, it is a settled law that grant of injunction is in the discretion of the Court and the same cannot be claimed as a matter of right by a party and that a party, who does not come to the Court with clean hands and conceals material facts, is not entitled to grant of injunction in his favour. The plaint is absolutely silent about the family settlement. There cannot be any doubt that the factum of family settlement has a direct bearing on the relief sought by the plaintiff, and hence, the same was a material fact. Since the plaintiff has concealed the material fact of execution of family settlement deed, there cannot be any doubt that he has not come to the Court with

clean hands, and hence, is not entitled to grant of injunction in his favour. The appeal as well as the application is liable to be dismissed on this ground also.

10. In any case, Section 41(i) of the **Specific Relief Act** lays down that an injunction cannot be granted when the conduct of the plaintiff has been such as to dis-entitle him to the assistance of the Court. A perusal of the family settlement deed reveals that it is specifically stated in the family settlement deed that the entire construction, consisting of the ground floor, first floor and the second floor, was raised by Sh. Bhim Singh (father of the plaintiff and defendants no.2 to 4, and husband of defendant no.1), whereas in the plaint, the plaintiff has claimed that the construction was raised by him. Hence, it is clear that the plaintiff has made statements in the plaint, which are false to his knowledge, and thus, his conduct dis-entitles him from any assistance of the Court. The appeal as well as the application is liable to be dismissed on this ground also.

11. Coming to the aspect of the cost, since (as noted above) the plaintiff has made statements in the plaint, which are false to his knowledge and has concealed material facts, I am of the view that this is a fit case, where exemplary costs should be imposed upon the plaintiff.

12. In view of the above discussion, the appeal is dismissed with exemplary cost of Rs.10,000/-. The cost shall be paid before Ld. Trial Court."

15. Judgments cited by learned counsel for petitioner are not applicable to the facts of the present case, as petitioner himself

concealed the material facts about family settlement and also mislead the courts below.

16. In ***Narain Singh through LRs & Ors. vs. Shanti Devi through LRs & Ors. 2010 (115) DRJ 601***, this court observed:-

“It is settled law that where two courts below have given a concurrent finding of the facts, this court under Article 227 of the Constitution of India shall not disturb the finding even if there is some mistake committed in appreciation of some part of evidence. Under Article 227, the Court does not correct the mistakes of law or mistakes of facts. The intervention of this Court under Article 227 has to be only in those exceptional cases where the courts below had either not exercised their jurisdiction or had acted beyond jurisdiction or had ignored the well-settled legal proposition and acted contrary to law.”

17. Present petition has been filed under Article 227 of the Constitution of India and two Courts below have given concurrent findings on the facts and I do not find any reason to disagree with their findings. Under these circumstances, I do not find any illegality, infirmity or irrationality in the impugned orders passed by two Courts below.

18. Since petitioner approached the Courts below with

misleading facts and concealed the material facts, the Courts below rightly rejected his prayer for grant of temporary injunction.

19. The present petition is frivolous one and is meritless and has been filed just to delay the proceedings pending before the trial Court and just to waste time of this Court also. Accordingly, the same is hereby dismissed with costs of Rs.20,000/-.

20. Petitioner is directed to deposit the costs with Registrar General of this court by way of cross cheque, within four weeks from today.

21. Copy of this order be sent to the Courts below.

22. List for compliance on 30th August, 2010.

+ CM No.12810/2010

23. Dismissed.

27th July, 2010
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V.B.GUPTA, J.