

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

**CM (M) No. 970/2010 & CM No. 13399/2010**

% Judgment reserved on: 14<sup>th</sup> September, 2010

Judgment delivered on: 24<sup>th</sup> September, 2010

Mr. Murari Lal (Deceased)

(Through Shri Pawan Kumar Arora, Legal heir & Son)

720-A, Shop No. 3,

Ashok Gali, Gandhi Nagar,

Delhi.

....Petitioner.

Through: Mr. V. P. Singh, Sr. Adv.  
with Mr. Mukul Dhawan,  
Adv.

Versus

1. Shri Sunder Singh & Another,  
Son of Shri Gurdit Singh,  
Resident of House No. 4.  
Mahila Colony, Gandhi Nagar,  
Delhi.

2. Shri Balbir Singh,  
Son of Shri Gurdit Singh,  
Resident of House No. F-11/35,  
Krishna Nagar,  
Delhi.

....Respondents

Through: Mr. Amarjit Singh, Adv. for  
respondent no.1

Coram:

**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may  
be allowed to see the judgment?

Yes

2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**V.B.Gupta, J.**

Courts of law should be careful enough to see through such diabolical plans of the judgment debtor to deny the decree holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system. (*Ravinder Kaur vs. Ashok Kumar, AIR 2004 SC 904*)

2. Above observations made by Supreme Court are fully applicable in this case.

3. As per facts of the present case, in 1975 Sh.Sunder Singh, decree holder (respondent No.1 herein) filed a suit for possession by way of mandatory injunction against Shri Murari Lal (since deceased). Decree holder claimed that he is owner of House No. 720-A situated in Ashok Gali, Gandhi Nagar, Delhi, which also included five shops. Out of which, shop no. 1 was rented to Shri

Murari Lal at a monthly rent of Rs.45/-. Shop No. 3 was lying vacant.

4. On or about 01.05.1975, Shri Murari Lal requested decree holder to allow him to store goods for a temporary period of ten days. After expiry of said period, Shri Murari Lal became unauthorized occupant of the said shop and refused to vacate the same.

5. It was claimed by Shri Murari Lal that he was a tenant in shop no. 3 at a monthly rent of Rs.45/-. He further claimed that suit was bad for non joinder of necessary parties as possession of suit property was with M/s. Chand Colour mart, a partnership firm. He further alleged that it was an oral tenancy and decree holder failed to issue any rent receipt.

6. Trial court framed the following issues;

- 1) Whether the defendant is unauthorized occupant of the suit property, if so, its effect?
- 2) Whether the defendant is a tenant in respect of the suit property?
- 3) Relief.

7. That suit was decreed in favour of decree holder, vide judgment dated 31<sup>st</sup> January, 1979, holding that Shri Murari Lal was an unauthorized occupant and not a tenant with respect to shop no. 3 in dispute. Sh. Murari Lal was also directed to hand over the vacant possession of the shop, within two months of passing of the decree.

8. The aforesaid findings of the trial court were upheld by this Court and also by Supreme Court.

9. Thereafter, second round of litigation started as Shri Dheeraj Ram (brother of deceased Murari Lal) filed objections under Order 21 Rule 97, 98 & 99 of Code of Civil Procedure (for short as 'Code'). During pendency of the objections, objector died and his wife filed an application for being impleaded and after her death, daughter of late Sh. Dheeraj Ram (Ms. Avnish Malhotra) was brought on record.

10. Trial court after framing issues and after recording evidence, vide order dated 17<sup>th</sup> August, 2009, dismissed the objections with special damages of Rs.3,000/-.

11. Aggrieved by the order of Civil Judge, legal heirs of deceased Shri Dheeraj Ram, filed an appeal which was dismissed by Additional District Judge, Delhi on 4<sup>th</sup> March, 2010 with cost of Rs.10,000/-. Costs as awarded by executing court as well as by the appellate court, have not yet been paid. Thus, second round of litigation came to an end on 4<sup>th</sup> March, 2010.

12. Now, third round of litigation has been started by Sh. Pawan Kumar Arora, (son of deceased Murari Lal-Judgment Debtor) by filing objections under Section 47 of the Code, which have been partly allowed by the executing court, vide its order dated 22<sup>nd</sup> April, 2010. All the legal heirs of Late Shri Murari Lal have been ordered to be impleaded as a party in place of deceased-Judgment Debtor. Amended memo of parties has also been filed and same was taken on record by the executing court. Ultimately, objections of present petitioner were dismissed by the executing court, vide order dated 5<sup>th</sup> July, 2010.

13. By way of present petition filed under Article 227 of the Constitution of India, petitioner has challenged order dated 5<sup>th</sup> July, 2010.

14. It is contended by learned counsel for petitioner that executing court has acted without jurisdiction and on this short ground alone warrant of possession are liable to be set aside. Further, application under Section 47 of the Code was filed by petitioner alone disclosing the names of other legal representatives (daughters of deceased Sh. Murari Lal) but the executing court without issuing notice to any of the four daughters (LRs of the deceased) took on record details of LRs, vide order dated 22<sup>nd</sup> April, 2010, which is contrary to law. In fact, notice was required to be served on each LRs of the deceased which has not been done by the Court below. Thus, issuance of warrant of possession without impleading all the legal heirs of the judgment debtor is illegal.

15. Another contention is that decree holder had filed the suit for possession by way of mandatory injunction and no ad veloram court fee was paid. On this ground alone, issuance of warrant of possession against petitioner is totally illegal and against the law.

16. In support of its contentions, learned counsel for petitioner cited following judgments:-

*a) Sarup Singh vs Daryodhan Singh,  
AIR 1972 Delhi 142;*

*b) Smt.Rajlakshmi Dassi vs. Bonomali Sen & Ors.,  
AIR 1955 Calcutta 573;*

*c) Kuldip Singh vs. Charan Singh,  
AIR 1986 Delhi 297 and*

*d) Sunder Dass vs. Mulakh Raj and others,  
AIR 1981 Delhi 85.*

17. On the other hand, it is argued by learned counsel for the respondent that present petition is nothing but gross abuse of process of law. The main object of the petitioner and his predecessor is/was to enjoy the disputed shop for free and further to delay the execution proceedings. The possession of petitioner and his predecessor is unauthorized and illegal, in view of decision of different courts passed in these proceedings.

18. Other contention is that, decree holder had filed the suit for possession as apparent from the prayer clause of the plaint. No relief for mandatory injunction was claimed in the prayer clause. Decree holder has paid the court fee at the market value of the shop in question. The findings of the trial court have been confirmed

right upto the Supreme Court of India. Thus, eviction order passed against Murari Lal (deceased) has become final.

19. It is further contended that after decision of the Supreme Court, Sh. Dheeraj Ram (brother of deceased Murari Lal) filed false and frivolous objections, which were also dismissed. Appeal against that order was also dismissed with costs.

20. Now, present petitioner has filed false and frivolous objections under Section 47 of the Code.

21. The present petition deserves to be dismissed with heavy costs since petitioner has deprived the respondent who is 65 years of age, the fruits of decree for more than 30 years. In support, learned counsel for respondent cited following judgments:-

***a) Sant Lal Jain vs. Avtar Singh,  
(1985) 2 SCC 332;***

***b) Bullard Grace Manoramma & Anr. vs. The  
Telugu Baptist Church,  
AIR 2005 Andhra Pradesh 506;***

***c) Jaseentha Joseph vs. Louis Neeklause, Cheppallil  
St. Joseph house, Patathanam Ward and others,  
AIR 1997 Kerala 40;***

***d) P.S.Batra vs. S.Anoop Singh,***

*2009 Rajdhani Law Reporter 24 (Note);*

*e) Sardar Estates vs. Atma Ram Properties (P) Ltd.  
2009 Rajdhani Law Reporter 338 (SC);*

*(f) Ahmmadsahab Abdul Milla vs. Bibijan,  
2009 Rajdhani Law Reporter 341 (SC) and*

*(g) Ashok Kumar Mittal vs. Ram Kumar Gupta,  
2009 Rajdhani Law Reporter 97 (SC).*

22. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

23. Article 227 of The Constitution of India reads as under;

**“227. Power of superintendence over all courts by the High Court-** (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks

and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.”

24. In *Waryam Singh and another Vs. Amarnath and another*, **AIR 1954, SC 215**, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in –‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

25. In *Mohammed Yusuf Vs. Faij Mohammad and Ors.*, 2009

(1) **SCALE71, Supreme Court held;**

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

26. In *State of West Bengal and Ors. Vs. Samar Kumar*

*Sarkar, JT 2009 (11) SC 258 Supreme Court held;*

‘10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta* (AIR1975SC1297) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.’

27. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, JT 1995(7)SC400, Apex Court observed;

“The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

28. In light of principles laid down in the above decisions, it is to be seen as to whether this petition under Article 227 of the Constitution of India, against impugned order is maintainable or not.

29. As already noted above, suit for possession by way of mandatory injunction filed by the decree holder against late Murari Lal, was decreed by the Civil Judge, vide its Judgment dated 31<sup>st</sup> January, 1979 observing as under;

“10. Consequently, I hold that the defendant is an unauthorized occupant and is not a tenant with respect to the shop in dispute. Hence, these issues are decided against the defendant and in favour of the plaintiff.”

### ISSUES NO.3.

11. In view of my findings on the aforesaid issues, I hereby pass a decree for possession with mandatory injunction to deliver the vacant possession of the shop No. 720A/3 situated in Ashok Gali, Gandhi Nagar, Delhi as shown red in the site plan Ex.P.2. with costs, in favour of the plaintiff and against the defendant. The defendant is directed to hand over the vacant possession of the shop indispute within two months of the passing of this decree, failing which the plaintiff shall be entitled to the same through the process of the court.”

30. Thus, late Murari Lal (judgment debtor) was held to be an unauthorized occupant and not a tenant, with respect to the shop in dispute. These findings of trial court have been confirmed upto the Supreme Court. So, late Murari Lal (Judgment debtor) being an unauthorized occupant, had no legal right or title in the shop in dispute. When Judgment debtor had no legal right/title in the shop in dispute, present petitioner (being son/L.R. of deceased Murari Lal-Judgment debtor) cannot have any better title than the Judgment debtor.

31. Now, the question which arises for consideration is as to whether in the facts and circumstances of the case, can legal representative of deceased Murari Lal (Judgment debtor) have any

legal right to be substituted in the execution proceedings initiated against unauthorized occupant and whether right to sue survives to the L.Rs of the Judgment debtor or not.

32. Under order 22 of the Code, it is only when the right to sue survives, the legal representatives of the deceased plaintiff or defendant are brought on record. If the right to sue does not survive, the Civil Procedure Code does not provide for any legal representative coming on record.

33. In *Bullard Grace (supra)* it was observed that:-

“As the legal representative of the judgment-debtor, cannot have better rights than the judgment-debtor.”

34. Since, Judgment debtor was held to be an unauthorized occupant and not a tenant in the shop in dispute, the present petitioner being L.R. of deceased Murari Lal (Judgment debtor) cannot have any better right or title than that of an unauthorized occupant. Petitioner also being unauthorized occupant, has got no legal right to get substituted in the execution proceedings. The court below, rightly dismissed the objections of petitioner under Section 47 of the Code.

35. None of the judgments cited by learned counsel for petitioner are applicable to the facts of the present case.

36. It is well settled that frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to genuine litigants. It has also been observed in large number of cases that meritless litigation should be dealt with heavy hands. Any litigant who indulges in mindless litigation and unnecessarily waste the precious time of the Courts should not be spared. He must pay heavy costs for wasting time of the Court.

37. In *Sardar Estates (supra)*, the Supreme Court observed;

“7. It is evident that frivolous objections have been filed in the execution case which is an abuse of the process of the Court and a flagrant violation of the eviction decree against the appellant against which Appeals had been rejected and even SLP in this Court was dismissed.

8. It is evident that after the first round of litigation was over the tenant started a second round of litigation on frivolous grounds which was a flagrant abuse of the Court. This is a practice which has become widespread, and which the Court cannot approve of, otherwise no judgment will ever attain finality.”

38. In the present case due to frivolous objections filed firstly, by the Objector-Sh. Dheeraj Ram (brother of Murari Lal-Judgment-debtor) and then objections under Section 47 of the Code filed by present petitioner (s/o Murari Lal-Judgment debtor) respondent has been denied the fruits of decree which was passed more than 30 years back, that is, on 31<sup>st</sup> January, 1979. The judgment of the trial court passing decree of possession in favour of respondent was upheld even by the Supreme Court.

39. Thus, present petition under Article 227 of the Constitution of India is nothing but gross abuse of process of law. A strong message is required to be sent to those litigants who are in the habit of filing bogus and frivolous objections in the execution proceedings and thereafter deprive the decree holder fruits of the decree passed in their favour. Petitioner herein, have left no stone unturned to deprive the fruits of decree to the decree holder, in the suit filed in the year 1975.

40. Since, there is no illegality, infirmity or error in the impugned order, present petition being most bogus and frivolous

one having no legal force, is hereby dismissed with costs of Rs.1,00,000/- (Rupees One lakh only).

41. Out of this cost of Rs.1,00,000/-, petitioner shall pay Rs.50,000/- (Rupees Fifty thousand only) as cost to Sh. Sunder Singh, respondent No.1 (Decree holder) by way of demand draft in his favour. Balance amount of the cost shall be deposited by way of cross cheque in the name of Registrar General of this Court. These costs be deposited within a period of four weeks from today.

42. After deposit of the costs by the petitioner, the decree holder should be paid the same, only after expiry of the period of appeal/revision preferred, if any.

**CM No. 13399/2010**

43. Dismissed.

44. List for compliance on 28<sup>th</sup> October, 2010.

September 24, 2010  
ab/mw

**V.B.GUPTA, J.**