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HIGH COURT OF DELHI : NEW DELHI

CM (M) No. 1006/2010 & CM No. 13753/2010

% Judgment reserved on: 4th Aug, 2010

Judgment delivered on: 06th Aug, 2010

Sh. Prem Chand Jain,
S/o Sh. Dhanna Lal Jain,
R/o A-14, Green Park Extension,
New Delhi.

....Petitioner

Through: Mr. Ravi Gupta. Sr. Adv. with
Mr. Ankit Jain, Adv.

Versus

Smt. Usha Gupta,
W/o Late Sh. Rajinder Prasad Gupta,
R/o 862/6, Mehrauli, New Delhi.

....Respondent

Through: Nemo.

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

V.B.Gupta, J.

Petitioner has filed this petition under Article 227 of the Constitution of India for setting aside order dated 4th June, 2010, passed by Additional District Judge, Delhi.

2. Brief facts of this case are that respondent herein, in the year 2004 filed a suit for recovery of possession as well mesne profit against present petitioner on the ground that petitioner is a tenant of respondent with respect of land measuring 1400 Sq. yds in property bearing no. 893, Ward No. 8, Mehrauli, New Delhi at monthly rent of Rs.2000/-.

3. Petitioner in his written statement stated that he is a tenant in respect of premises admeasuring 2000 sq. yds. along with the superstructure existing thereon and not 1400 sq. yds. as alleged by respondent.

4. During the course of trial, petitioner filed an application under Order 26 Rule 9 read with Section 151 Code of Civil Procedure (for short as 'Code') for appointment of Local Commissioner to inspect the premises and prepare a report accordingly.

5. Trial court vide its order dated 25th September, 2008, dismissed that application.

6. In 2009, petitioner filed another application under Order 8 Rule 1A (3) read with section 151 of the Code, stating that petitioner engaged Er. B. P. Singh to inspect the property in dispute and prepare a true and correct

plan thereof. Petitioner may be allowed to produce the inspection report along with plan and examine Er. B. P. Singh, as a witness. Vide impugned order, this application was dismissed by the trial court.

7. It is contended by learned counsel that trial court erred in holding that application has been filed on 29th September, 2009, while report is dated 6th October, 2008. The Court failed to take into consideration that during most of the aforesaid period, parties were negotiating for an amicable settlement and when settlement talks failed thereafter this application was filed.

8. Another contention is that since report of engineer was not even in existence at the time of filing of the list of witnesses, there was no occasion for petitioner to mention the name of Er. B. P. Singh, in the list of witnesses.

9. Lastly, it is contended that petitioner is not trying to raise any new plea since, he has already pleaded in written statement that he is in possession of 2000 sq. yds.

10. In support learned counsel has cited following judgments;

- (i) ***Ashok Sharma Vs. Ram Adhar Sharma,***
(2009) 11 Supreme Court Cases 47.
- (ii) ***Bank of India Vs. M/s. Goyal Textiles & Others,***
2001 VII AD (DELHI) 1030.

11. 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.

12. 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.”

13. 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.”

14. 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”.

15. 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.'

16. 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."

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

18. In the application for appointment of Local Commissioner filed by the petitioner in 2008 it was prayed that Local Commissioner be appointed to inspect the premises in dispute and to report as under;

“a). Whether the defendant is in possession of the entire area with construction existing thereon as shown in the plan marked ‘DX’.

b). Whether there is a pucca boundary wall enclosing the area measuring 93 ft. x 193.25ft.

c). That in case the Ld. Local Commissioner finds that the plain marked ‘DX’ is not correct as per the spot, he should make his own plan at the spot and submit to this Hon’ble Court showing construction on 2000sq.yds. of land and if any area out of 2000 sq. yds. of land is lying open to sky.”

19. Whereas, in application under Order 8 Rule 1A (3) read with section 151 of the Code, it is stated that petitioner had engaged Er. B.P. Singh to inspect the property in dispute and prepare a true and correct plan thereof showing therein existing construction and prepare his inspection report and petitioner may be allowed to produce the inspection report along with plan and to examine Er. B. P. Singh to appear as witness.

20. While disposing of application for appointment of Local Commissioner, trial court observed;

“The question of possession over the suit property can be determined by adducing evidence. In this regard, the judgment relied upon by the plaintiff are clear on this point that the Local Commissioner should not be

appointed in order to enquire the factum of possession as that question is to be decided on the basis of evidence adduced by the parties and court is not to assist any party to collect evidence where it can get the evidence itself.”

21. Now, while disposing of application under Order 8 Rule 1A (3) read with Section 151 of the Code trial court held;

“It is further revealed from the record that thereafter, on perusal of the pleadings of the parties, all the relevant issues have been framed vide order dated 05.10.07. It is further revealed from the record that after examination of PWs, PE was closed in affirmative on 27.8.08. It is further revealed from the record that vide order dated 25.9.08 an application under Order 26 rule 9 r/w Order 39 Rule 7 and Section 151 CPC as moved on behalf of the defendant praying for appointment of the Local Commissioner to ascertain as to whether the defendant is in possession of entire area of 2000 sq. yds. with superstructure, was dismissed. It is further revealed from the record that the defendant has filed his evidence affidavit dated 10.10.08 in the court on 13.10.08 and delivered the copy of the same to Ld. Counsel for the plaintiff and thereafter, matter was adjourned to 07.11.08 for DE. It is further revealed from the record that this application under Order 8 Rule 1A (3) r/w Section 151 CPC for taking on record the report dated 06.10.08 and plan as prepared by Er. B.P. Singh and for examination of said Er. B. P. Singh on behalf of the defendant has been filed in the court on 29.9.09. It is further revealed from the record that this report of Er. B. P. Singh is of dated 06.10.08 but there is no reference about the same in the evidence affidavit of the defendant as filed on 13.10.98. Furthermore, there is no reference about Er. B. P. Singh in the list of witness as filed on behalf of the defendant.

Considering the aforesaid material as found available in the case record and specifically keeping in

mind that the defendant has already filed his evidence affidavit on 13.10.98, I have no hesitation to safely conclude that this application under Order 8 Rule 1A (3) r/w Section 151 CPC as filed on behalf of the defendant deserves dismissal and is here by dismissed accordingly.”

22. It is petitioner’s own case that, his earlier application for appointment of Local Commissioner to inspect the premises and give report was dismissed on 25th September, 2008.

23. Again, petitioner in application under Order 8 Rule 1A (3) of the Code has prayed that he be allowed to produce the inspection report along with report and examine Er. B. P. Singh as a witness.

24. In spite of fact that Court did not agree to appoint Local Commissioner in this case, petitioner on its own, appointed an Engineer for inspection and to prepare a report.

25. By way of present application, petitioner is seeking the same relief which was earlier refused to him in year 2008. Moreover, Er. B. P. Singh has not been cited as a witness in the list of witnesses submitted by the petitioner. In the garb of present application petitioner cannot be allowed to circumvent the law, since order dated 25th September, 2008 passed earlier by the trial court, was never challenged and that has become final.

26. Judgments cited by learned counsel for petitioner are not at all applicable to the facts of the present case.

27. Under these circumstances, there is no illegality, infirmity or irrationality in the impugned order passed by the trial court. Present petition under Article 227 of the Constitution of India is not maintainable. This petition being frivolous one and has been filed just to delay the proceedings pending before the trial court. Same is hereby dismissed with costs of Rs.10,000/- (Rupees Ten thousand only).

28. Petitioner is directed to deposit the costs with Registrar General of this court, within four weeks from today.

29. List for compliance on 10th September, 2010.

CM No. 13753/2010

30. Dismissed.

Aug. 06, 2010
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V.B.GUPTA, J.