

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

CM (M) No. 1084/2010 & CM No. 15288/2010

% Judgment reserved on: 26th August, 2010

Judgment delivered on: 1st September, 2010

1. Sh. Madan Lal (Since Deceased)

A. Smt. Ramrameshwari Devi,
W/o Sh. Madan Lal
I-1/62, Lajpat Nagar,
New Delhi.

B. Sh. Hans Raj Sharma,
S/o Late Sh. Madan Lal.
R/O 1007, Sector-7, Urban Estate,
Karnal (Haryana)

C. Sh. Hem Raj Sharma,
S/o Late Sh. Madan Lal,
R-II-1/62, Lajpat Nagar,
New Delhi.

D. Smt. Sushma Saroch
W/o Sh. Anand Kumar,
R/o 404/F, First Floor,
Sector-C, N-1, SIDCO,
Aurangabad, Maharashtra.

E. Smt. Sunita Sharma
W/o Sh. Vinod Kumar,
R/o I-39/A Garwali Mohalla,
Laxmi Nagar,
New Delhi.

2. Sh. Krishan Gopal

S/o Sh. Munshi Ram,
R/o I-1/62, Lajpat Nagar,
New Delhi.

3. Sh. Manohar Lal Sharma,
S/o Sh. Munshi Ram,
R/o I-1/62, Lajpat Nagar,
New Delhi.

....Petitioners.

Through: Mr. Rahul Gupta, Mr. Rajanish
Mishra and Mr. Shekhar Dasi,
Advocates.

Versus

Sh. Ram Parshad (Since Deceased)

Through his Legal Heirs.

1. Smt. Nirmala Devi (Wife)
2. Shri Prem Sagar Sharma (Son)
3. Shri Pawan Sharma (Son)
4. Shri Ashok Sharma (Son)
5. Shri Girdhar Gopal (Son)
All Residents of J-77, Sri Niwas Puri,
New Delhi- 110056.
6. Smt. Shyam lata (Daughter)
W/o Shri Kuldeep Kishan Kalia,
R/o Kalia Nurshing Home,
Railway Road, Hoshiarpur,
Punjab.

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

V.B.Gupta, J.

Present petition under Article 227 of the Constitution of India, has been filed by petitioners challenging order dated 9th July, 2010 passed by Civil Judge, Delhi, vide which application of petitioners under Section 151 of Code of Civil Procedure (for short as 'Code') for treating issue no. 4 as preliminary issue, was dismissed with costs of Rs.2,000/-.

2. Present petitioners belong to that category of litigants whose only motive is to create obstacles during the course of trial and not to let the trial conclude. Application after application are being filed by the petitioners at every stage, even though orders of the trial court are based on sound reasoning. Moreover, petitioners have tried to mislead this court also by filing wrong synopsis and incorrect dates of events.

3. The purpose of filing of brief synopsis with list of dates and events, is to give brief and correct summary of the case and not to mislead the court. Those litigants or their advocates who mislead the courts by filing wrong and incorrect particulars (the list of dates and events) must be dealt with heavy hands.

4. In list of dates and events (page B of paper book) it is stated that respondents filed a suit for mandatory injunction and recovery of Rs.36,000/- on 22nd September, 2003. In fact, as per typed copy of plaint placed on record (page 26 to 30 of paper book) suit was filed by predecessor-in-interest of respondents in 1992. Written statement was filed by predecessor-in-interest of the petitioners, in 1992. This shows that suit is pending trial for last 18 years. Thus, petitioners tried to mislead this Court by mentioning wrong date of 22nd September 2003, as date of filing.

5. Petitioners in written statement took an objection “that suit is not properly valued, since the plaintiff is seeking the possession of the suit property he is required to value the suit on market value of the

suit property.

6. Trial court accordingly framed issue no. 4 as under;

“4. Whether the suit has been properly valued for the purpose of court fees and jurisdiction? OPP.”

7. Both parties led their respective evidence. On 9th July, 2010, when matter was listed before trial court for final arguments, petitioners filed the application in question which was dismissed by the impugned order.

8. It would be pertinent to point out that earlier on 23rd October, 2009, petitioners moved an application under Order 7 Rule 11 of the Code, praying for rejection of plaint on the ground of non filing of court fee on the market value of the property. Vide order dated 23rd October, 2009, trial court dismissed the application. Relevant portion of this order read as under:

“Perused the application. It is pertinent to mention that relief sought by plaintiff is for mandatory injunction directing the defendant to vacate the suit property. It is pertinent to mention that contention of plaintiff is that defendant is licensee, had it so suit for mandatory injunction seeking eviction is maintainable. Plaintiff is dominos litus of this case and cannot be dictated to frame his claim and seek prayer in specific way of plaint framed and prayed sought is maintainable as per law. Defendant is

entitled to lead evidence in respect of his contention and even tender arguments on the legal points at the time of final arguments in this case. I

do not see any merits in this application. It is dismissed accordingly.”

9. Thereafter, petitioners filed Civil Revision Petition (C.R.P. No. 76/2010) before this Court, which was disposed of vide order dated 26th April, 2010, which read as;

“The petitioner (defendant in the court below) is aggrieved by an order dated 23.10.2009 passed by the Civil Judge, dismissing an application filed by him under Order 7 Rule 11 CPC, praying inter alia for rejection of the plaint on the ground that the same is hit by Sub-Rule (b) of Rule 11 of Order 7 CPC.

On enquiry, counsel for the petitioner states that prior to filing of the aforesaid application, issues had already been framed by the Court and issue no. 4 specifically deal with the issue as to whether the suit has been properly valued for the purposes of court fee and jurisdiction.

Counsel for the petitioner seeks leave to withdraw the present petition while reserving the right of the petitioner to approach the court below with a request to treat issue no. 4 as a preliminary issue for the purposes of addressing arguments thereon.

Leave, as prayed for, is granted. The revision petition is dismissed as withdrawn, along with the pending applications. It is however clarified that the trial court shall be at liberty to consider the request of the petitioner and pass appropriate orders, as it may deem appropriate.”

10. Thereafter, petitioners filed application in question, before trial court and the same was dismissed by impugned order.

11. It is contended by learned counsel for petitioners that as issue no. 4 relates to court fee vis-à-vis jurisdiction of the Court, the same was to be treated as preliminary issue and ought to have been decided prior to deciding or taking up any other issue.

12. It is further contended that as per provision of Order 14 Rule 2 of the Code, jurisdiction of Court or the bar to the suit created by any law should be tried as preliminary issue. Hence, impugned order, under these circumstances is liable to be set aside.

13. In support learned counsel cited following judgment;

(i) ***Ashok Chaudhary Vs. Dr. (Mrs.) Inderjit Sandhu & another,***
1998 IV AD (DELHI) 917;

(ii) ***N.R. Govindarjan Vs. V. K. Rajagopalan and Others,***
(2005) 12 Supreme Court Cases 362 and;

(ii) ***Renu Nagar Vs. Anup Singh Khosla & Anr.***
156 (2009) Delhi Law Times 723.

14. 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.

15. 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.”

16. 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.”

17. In *Mohammed Yusuf Vs. Faij Mohammad and Ors., 2009 (1)*

SCALE 71, 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”.

18. 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.'

19. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, *JT 1995(7) SC 400*, 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.”

20. 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 order is maintainable or not.

21. Suit was filed in trial court in 1992. Written statement was filed as far back on 15th April, 1992. On pleadings, issue no. (4) was framed with regard to court fee and jurisdiction. As per record, petitioners never pressed that issue no. (4) be treated as a preliminary issue. Both parties led their respective evidence. When the suit was fixed before trial court for final arguments, application in question was filed. It also transpires from the record that petitioners have been moving one application after the other, though all were dismissed, some of them with costs.

22. Even after getting adverse orders in their favour petitioners were not satisfied. They moved transfer application apprehending adverse order from the trial judge, which application was also dismissed by the District Judge. This conduct of petitioners shows that they are determined not to allow the trial court to proceed with the suit. They are creating hurdle and obstacle at every stage of the proceedings. It would also be pertinent to reproduce the relevant finding of the trial court, which read as under;

“Application U/s 151 CPC is filed by defendant for treating issue no. 4 as preliminary issue. It pertains to court fees and jurisdiction. It is pertinent to mention that suit is at the stage of final arguments and both the parties have led the entire evidence. Ld. Counsel for defendant submits that this application has been filed by the defendant in view of the liberty granted to the defendant by Hon’ble High Court vide order dated 26.04.2010 dismissing the C. R. P. application no. 76/10 as withdrawn against the order dated 23.10.2006 passed by this court. It is pointed out to the counsel for defendant that case is at the stage of final arguments and law enjoin upon the court to return finding on all the issues. Counsel for defendant filing this application seeks disposal of the same. Perused the application and gone through record. Order 20 Rule 5 clearly states that court has to return finding on each issue. Even order 14 Rule 2 CPC states that the court has to pronounce the judgment on all issues notwithstanding that the case may be disposed off on preliminary issue. Sub rule 2 refers to the discretion given to the court where the court may try issue relating to the jurisdiction of the court or the bar to the suit created by any law for time being in force as preliminary issue. It further relates to disposal of the suit treating these points as preliminary issues and also relates to deferring the settlement of other issues. But there is no such case. Entire evidence has been led, the matter is at the stage of final arguments and the point raised does not relate to the point pertaining to sub rule 2. Neither it relates to bar created by any law nor the

jurisdiction of the court to entertain the suit. It is averments made in the plaint. Contention of the applicant for treating the issue as preliminary issue

is against the spirit of law as referred in order 20 Rule 5 and order 14 Rule 5 CPC. I do not see any merit in this application and the same is dismissed with the costs of Rs.2000/-.”

23. Decision of *N.R. Govindarjan (Supra)* goes against the petitioners as in this case it was observed;

“The learned counsel for the appellant (the defendant in the trial court) submits that the issue as to court fee can be heard and decided as a preliminary legal issue, inasmuch as the appellant does not propose to adduce any evidence in support of the plea taken in the written statement in this regard. That being the stand taken, we are satisfied that in terms of Rule 2 Order 14 of the Code of Civil Procedure, 1908, as amended by Act 104 of 1976, the issue could have been heard and decided as a preliminary issue.”

24. In present case at the time of filing of written statement, petitioners nowhere prayed that issue no. (4) be treated as a preliminary legal issue. On the other hand, both parties led their respective evidence and now matter is fixed for final arguments.

25. Decisions of *Ashok Chaudhary (Supra)* and *Renu Nagar (Supra)*, are not applicable to the facts of the present case, as matter is fixed for final arguments before the trial court where petitioners can rake up the issue of court fee and jurisdiction.

26. In *P. K. Palanisamy Vs. N. Arumugham and Another*, (2009)

9 Supreme Court Cases 173, Supreme Court observed;

“ It is now a well-settled principle of law that an order passed by a court having jurisdiction shall remain valid unless it is set aside. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth*, it is stated: (SCC pp.439-40, para 8)

"8. In *Halsbury's Laws of England*, 4th edition, (Reissue) Volume 1(1) in paragraph 26, page 31, it is stated, thus:

‘If an act or decision, or an order or other instrument is invalid, it should, in principle be null and void for all purposes: and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a Court of competent jurisdiction. Until its validity is challenged, its legality is preserved.’

In the *Judicial Review of Administrative Action* De Smith, Wolf and Jowell, 1995 edition, at pages 259-260 the law is stated, thus:

‘The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the

distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

(1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent jurisdiction.’

Similarly, Wade and Forsyth in Administrative Law, Seventh edition -1994, have stated the law thus at pages 341-342:

‘...every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe said:

“An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

This must be equally true even where the brand of invalidity is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects.”

27. Looking from any angle, no illegality or infirmity can be found in the impugned order. The only object of petitioners is just to delay the trial, which is pending for the last more than 18 years. To a large extent petitioners have been successful in delaying the judicial

proceedings by filing false, frivolous and bogus applications, one after the other.

28. It is well settled that frivolous litigation clogs the wheels of justice making it difficult for Courts to provide easy and speedy justice to the genuine litigants. A strong message is required to be sent to those litigants who are in the habit of challenging each and every order of the trial court even if the same is based on sound reasoning and also to those litigants who goes on filing frivolous applications, one after the other. By filing this frivolous petition, petitioners have not only wasted the precious time of this court, but at regular intervals they have been wasting the time of the trial court also and creating obstruction at every stage. Petitioners also made false allegations against the trial judge by filing false and frivolous transfer application, which was rightly dismissed by the District Judge.

29. No mercy should be shown to such type of litigants, who have no other work but just to waste the time of different courts and create obstruction in the smooth functioning of the judicial system. Keeping in view the conduct of the petitioners that they still do not want the suit instituted about 18 years ago, to reach its ultimate destination

must be made to pay heavy costs for filing frivolous and bogus applications.

30. Hence, present petition is hereby dismissed with costs of Rs.75,000/- (Rupees Seventy Five Thousand only).

31. Petitioners are directed to deposit the costs with Registrar General of this court, within four weeks from today.

CM No. 15288/2010

32. Dismissed.

33. List for compliance on 7th October, 2010.

1st September, 2010
ab

V.B.GUPTA, J.