

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **EX.S.A. No. 1/2008**

% **22nd November, 2011**

VIRENDER VASHISHT & ANR. Appellants
Through : Mr. Aly Mirza, Advocate.

versus

SHAM LAL DECD. & ORS. Respondents
Through : None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers 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?

VALMIKI J. MEHTA, J (ORAL)

1. This Execution Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the First Appellate Court dated 4.10.2007. The First Appellate Court by the impugned judgment dismissed the appeal of the objectors/appellants against the order of the executing Court dated 23.7.2005 by which the objections of the appellants/objectors to the execution of the judgment and decree dated 13.10.1993 were dismissed. The present litigation shows as to how the process of the Courts is abused by certain litigants, such as the appellants. The object of the objections is to frustrate the decree for redemption of the

mortgaged property passed way back in the year 1993 (13.10.1993) and was passed decreeing the suit for redemption of the mortgaged/suit property filed way back in the year 1981 i.e. over thirty years back.

2. Since the property was not allowed to be redeemed by the mortgagee-Smt. Murti Devi (mother of the present objector and wife of the earlier objector-Sh. Hari Chand) the respondents/legal heirs of the original mortgager-Sh. Tula Ram were forced to file the suit for redemption. This suit was contested tooth and nail and was prolonged up to 1993 when the judgment and decree dated 13.10.1993 was passed in favour of the respondents. In 1994 the objections were firstly filed to the execution by Sh.Hari Chand, husband of Smt. Murti Devi and which objections were dismissed by the executing Court on 15.5.1999 and an appeal against that order was also dismissed on 17.8.2002. Sh. Hari Chand also filed a suit after dismissal of his objections and which suit was dismissed in default on 28.5.2003. Thereafter the present objections before the executing Court were filed by the appellants/objectors, one of the objector being Sh. Ram Mohan S/o Hari Chand, whose objections as already stated were dismissed earlier. Sh. Ram Mohan, as stated above, is the son of Smt. Murti Devi, wife of the earlier objector Sh. Hari Chand. Thus, the facts which emerge are that from the year 1981 till today i.e. in the year 2011, the respondents/deGREE holders have not been able to get possession of the mortgaged property being house No. 1386, Najafgarh, New Delhi.

3. The brief facts of the case, some of which have been stated above, are that Sh. Tula Ram mortgaged the property bearing No. 1386, Najafgarh Road, New Delhi in favour of Smt. Murti Devi vide registered mortgage deed dated 13.8.1970. After the death of Sh. Tula Ram when his legal

representatives sought to redeem the mortgage by making payment of the amount, the same was objected to whereupon the suit for redemption was filed in the year 1981. Smt. Murti Devi contested the suit and took up various objections, however ultimately the suit was decreed on 13.10.1993. During the pendency of the suit Smt. Murti Devi had died and her legal heirs were brought on record. Sh. Hari Chand, husband of Smt. Murti Devi deposed as a witness in this redemption suit but at no point of time had ever deposed that he was a tenant in the property. It is only after the decree of the suit in favour of the respondents and against Smt. Murti Devi that Sh. Hari Chand filed objections claiming tenancy in the entire property, and which objections were dismissed by the executing Court on 15.5.1999 and appeal against that order filed by Sh. Hari Chand was also dismissed on 17.8.2002. Hari Chand not being satisfied, thereafter, in collusion with his wife-Smt. Murti Devi filed a suit claiming tenancy rights which suit however was dismissed in default on 28.5.2003. It was around this period, i.e. in January, 2003 that the appellants/objectors filed objections in execution petition claiming that they were tenants of one room in the property. These objections were dismissed by the executing Court vide its order dated 23.7.2005 and the first appeal had also been dismissed vide impugned judgment dated 4.10.2007.

4. I may note that though the mortgage deed mentioned that one room was retained by Sh. Tula Ram, this must have been only a nominal fact not based on reality as the suit for redemption filed by the respondent against Smt. Murti Devi also refers to redemption of the entire property being 1386, Najafgarh, New Delhi and claiming back possession of the same. The decree dated 13.10.1993 was also for the entire property being 1386, Najafgarh,

New Delhi. The concept of part of a document being a nominal statement and not meant to be acted upon is now well accepted – see ***Hindu Public and Anr. v. Rajdhani Puja Samitee and Ors., 1999 (2) SCC 583***. In any case, the facts which have emerged show that there must have been a subsequent oral agreement after execution of the mortgage deed whereby possession of the one room was not retained by Sh. Tula Ram/mortgager. Also, no mileage can be derived by the objectors of the mortgage deed mentioning one room being retained by Sh. Tula Ram and that there cannot be tenancy in favour of the objectors qua that room because:-

(i) The suit filed for redemption against Smt. Murti Devi, mother of the objectors was for the entire mortgaged property and decree was also for entire mortgaged property. To this suit the legal heirs of Smt. Murti Devi were parties as they were brought on record after the death of Smt. Murti Devi. The legal heirs would surely include Sh. Hari Chand-husband of Smt. Murti Devi and the present objector-Sh. Ram Mohan who was the son. Hence, the judgment and decree against Smt. Murti Devi dated 13.10.1993 binds the objector vide the principle of *res judicata* as Sh. Ram Mohan-objector will be claiming under Smt. Murti Devi.

(ii) The husband of Smt. Murti Devi i.e., Sh. Hari Chand claimed tenancy of whole property and his objections were dismissed right till the stage of appeal, and the whole property includes this one room. No separate rights can once again, therefore be claimed by the objector qua the room which was also the subject matter of the objections filed by Sh. Hari Chand and which shows the dishonest and *mala fide* nature of the present objections to execution.

(iii) In these objections filed by the objector-Sh. Ram Mohan in 2003 it is

said that Sh. Ram Mohan is living separately from his parents for over 15 years i.e. since atleast 1988 but various documents such as Income Tax Returns, Disability Certificate issued by Delhi Administration, etc show Sh.Ram Mohan's residence as the subject property being 1386, Najafgarh, New Delhi. The falsity of the stand of the objectors is thus quite clear.

(iv) Since the objector-Sh. Ram Mohan was living with his parents in the suit property he obviously was aware of the objections filed by his father for the whole property and thus also of their dismissal right till the appellate stage.

5. A perusal of the aforesaid facts show that the objections of these appellants are wholly *malafide* and grave abuse to the process of Court. As already narrated above, Smt. Murti Devi, thereafter, her husband-Sh.Hari Chand and even the present objectors/appellants including Sh. Ram Mohan, son of Hari Chand and Smt. Murti Devi, viz. the family of Smt. Murti Devi have stalled firstly the redemption of the mortgage and thereafter taking back the possession of the property received under the mortgage deed by one frivolous litigation after another. In view of the aforesaid facts, no substantial question of law arises for this appeal to be allowed under Section 100 CPC.

6. Accordingly, in view of the ratio of the recent judgment of the Supreme Court in the case of ***Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249*** this appeal is dismissed with costs of ₹2,00,000/-. The Supreme Court in the aforesaid case of ***Ramrameshwari Devi*** (supra) has stated that it is high time that actual and realistic costs be imposed so that a dishonest litigant does not profit out of the false litigation. In this case the dishonest litigant is the family of Smt. Murti Devi i.e. Smt.

Murti Devi herself, her husband-Sh.Hari Chand and her son-Sh.Ram Mohan who have been successful in preventing the return of possession of the mortgage property right from the year 1981. It would be useful to reproduce certain paragraphs of the aforesaid judgment in the case of *Ramrameshwari Devi* (Supra) and the same read as under:-

“43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh v. State of Punjab* (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following

steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we

quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.”

(underlining added)

I also exercise my powers under *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15* which entitles this Court to impose actual costs.

7. The present appeal is therefore dismissed and disposed of accordingly. Trial Court record be forthwith sent back by special messenger so that there is no further delay in execution of the decree.

NOVEMBER 22, 2011

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VALMIKI J. MEHTA, J.