

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

% Date of decision : 18.10.2011

WP(C) No.7547/2011

SH.RAJINDER & ORS. ... PETITIONERS

Through : Mr.Lekh Raj Rehalia, Advocate

- V E R S U S -

HARSH VOHRA & ORS. ... RESPONDENTS

Through : Nemo.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

SANJAY KISHAN KAUL, J. (ORAL)

CM No.17076/2011

Allowed subject to just exceptions.

+ WP (C) No.7547/2011

1. The petitioners, owners of land in question, executed a sale deed dated 07.10.1996 in respect of the land in question and mutation was also carried out in the revenue records in favour of the respondents. The petitioners, however, filed a suit alleging that they have received only part payment under the sale deed and balance consideration was not paid and sought cancellation of documents of title and for them to be declared null and void. Arising from those suit proceedings, a Civil Revision Petition No.183/2007 and FAO No.25/2009 were filed, which were decided by the learned single Judge of this Court on 01.12.2009. The learned single Judge noticed that it is the case of the petitioners that they have agreed to sell the land for higher consideration and understood that they were only signing documents of mortgage and not the sale

deed when they executed the documents. There were, in fact, four suits which arose out of the transaction in question as there were four sale deeds. The petitioners also stated in the plaint that they had filed appeal against the mutation of the land in the name of the respondents which was dismissed, the second appeal was dismissed by the Financial Commissioner and it is thereafter that the petitioners instituted the suit for declaration and injunction. The issues were framed on 18.05.2006 and all the suits were directed to be tried together.

2. It is at the aforesaid stage that the petitioners instead of filing affidavits by way of examination-in-chief of their witnesses filed an application under Order 14 Rule 5 and Order 11 Rule 16 of the CPC. An application was also filed subsequently under Section 340 of Cr.P.C., which was dismissed on 05.07.2007. It is against this order that a Criminal Appeal No.460/2007 was filed which was subsequently converted into FAO No.25/2009, which was decided by the learned single Judge. The petitioners also made a grievance that no

orders were passed on their applications filed under Order 14 Rule 5 and Order 10 of CPC.

3. The learned single Judge has found that the orders of the Trial Court were misquoted and the revision petition was not only signed by the petitioners, but by their counsels. Even though certified copies of orders were filed along with the revision petition, court found that the orders reproduced in the body of the pleadings filed had been misquoted; an act which was roundly deplored. It also found that after dismissing the application under Section 340 of Cr.P.C., the Trial Court had listed the matter for hearing of the applications under Order 14 Rule 5 and Order 10 of CPC. A finding has been arrived at by the learned single Judge that not only was the revision petition misconceived, but it was an attempt to browbeat the trial court and the suit proceedings have been unnecessarily delayed. The FAO No.25/2009 was qua the dismissal of the application of the petitioner under Section 340 of Cr.P.C., which has also been dealt with by the learned single Judge on merits, finding no infirmity in the same. The operative portion is as under:

“From the aforesaid, it will be seen that the petitioners having only by misquoting the orders filed the frivolous proceedings before this Court but during hearing also just read judgments herein above without reference to the facts. I am, in the circumstances, constrained to dismiss these proceedings with costs of Rs.10,000/- on the petitioners.”

4. The learned single Judge did not lay the matter to rest at that stage since in exercise of supervisory jurisdiction, the learned single Judge found that the very maintainability of the suits was in question and thus directed a preliminary issue to be framed in that behalf. The aforesaid order attained finality as it was not challenged further and was taken into consideration by the Trial Court in passing the order dated 20.11.2010. The plaint was rejected holding that the only remedy available to the petitioners as plaintiffs was to seek recovery of the balance consideration of the suit amount, if any, and not for cancellation of the sale deed.
5. The petitioners aggrieved by this order filed RFA No.104/2011 before this Court. The learned single Judge of this Court dismissed the appeal as misconceived by the order dated 17.02.2011. The

learned single Judge found that the suit did not lie in view of the provisions of Section 55 (4) of the Transfer of Property Act, 1882. There is also a finding recorded that the suit was barred under Order 2 Rule 2 of CPC as earlier suits had been withdrawn without liberty to file a fresh suit. The petitioners aggrieved by that order filed a SLP bearing No.15374/2011, which was dismissed in limine, on 06.07.2011.

6. It is after these rounds of litigation, that the present writ petition under Article 226 of the Constitution of India has been filed praying for the following reliefs:

- “ a) issue an appropriate writ, order or direction in the nature of Mandamus by setting aside the judgment and order dated 1.12.2009 passed by the Hon'ble Mr.Justice Rajiv Sahai Endlaw, the Learned single Judge of this Hon'ble Court in Civil Revision Petition No.183/2007 and FAO No.25/2009 which is beyond jurisdiction and in violation of Order 20 Rule 1 CPC read with Section 35 of CPC;
- b) issue an appropriate writ, order or direction in the nature of Mandamus by setting aside the judgment and order passed by the Additional District Judge, Delhi dated 20.11.2010 in Civil Suit Nos.102/08/1999 to 105/08/1999 and the records be summoned.
- c) issue an appropriate writ, order or direction in the nature of Mandamus by setting aside

the judgment and order dated 17.2.2011 passed by the Hon'ble Mr.Justice Valmiki J.Mehta, the learned single Judge of this Hon'ble Court in RFA No.104/2011 which is also without jurisdiction and mainly hinges on the findings given by the Hon'ble Mr.Justice Rajiv Sahai Endlaw, the learned Single Judge of this Hon'ble Court vide order dated 1.12.2009 passed in CRP No.183/2007 and FAO No.25 of 2009 which in fact is the complete violation of procedural provisions of the CPC is apparent on the face of the record when all issues arising on the basis of the pleadings were framed by the Additional District Judge Delhi on 18.05.2006 and the cases were listed on 31.8.2006 for plaintiff's evidence;

- d) the aforesaid three orders may kindly be set aside and the matter be remanded back to the Court of learned Additional District Judge, Tis Hazari, Delhi when the aforesaid Civil Suit No.102/08/1999 to 105/08/1999 for fresh disposal in accordance with the law;
- e) then notice issued by Hon'ble Mr.Justice Shiv Narain Dhingra learned Single Judge of this Hon'ble Court to the respondents in FAO No.25/2009 be recalled and the respondents be proceeded under Section 340, 195 Cr.P.C. in view of the order dated 19.9.2006 passed by Additional District Judge, Delhi in M/44/2006;
- f) and pass such other or further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

7. The Registry raised an objection about the maintainability of such a writ petition, but the learned counsel for the petitioners insisted that the matter may be placed before the court for hearing subject to the office objection. The writ petition has accordingly been placed before us.
8. We have heard learned counsel for the petitioner at length.
9. It is the say of the learned counsel for the petitioners that the petitioners have not received justice at the hands of various forums where proceedings have gone on. It is his say that the learned single Judge fell into an error while passing the order dated 01.12.2009 and the directions passed there could not have been taken into account by the Trial Court while passing the order dated 20.11.2010. Learned counsel further contends that the dismissal of the special leave petition does not give finality to the matter as the dismissal was in limine. Learned counsel for the petitioners strenuously contends that this court in exercise of power of under Article 226 of the Constitution of India has every right to look into the matter as the rights of the petitioners

under Article 300A of the Constitution of India have been violated as the petitioners have been deprived of their property without following the legal process.

10. Learned counsel has relied upon the Indian Oil Corporation Ltd. v. State of Bihar and Ors.; AIR 1986 SC 1780 to contend that the dismissal of a special leave petition by Supreme Court by a non-speaking order is no bar to the trial of the same issues in High Court under Article 226 of the Constitution of India. It may be noticed that the matter in controversy was a service dispute.

11. Learned counsel for the petitioners next referred to State of UP through Secretary v. Atulji Mishra & Ors.; (2003) 10 SCC 210 to contend that the High Court must first issue notice to the respondents, call upon their reply and then pass an order under Article 226 of the Constitution of India. We may note that this case again pertained to the issue of parity in employment and equal pay for equal work where Supreme Court found that the records ought to have been called and a reasoned order should have been passed. Learned counsel for the petitioners referred to the Gurudev datta

Vksss Maryadit and Ors. v. State of Maharashtra and Ors.; (2001) 4 SCC 534, State of Himachal Pradesh v. Dhanwant Singh; JT 2004 (2) SC 367 and A.V.Papayya Sastry and Ors.v. Govt. of A.P.& Ors. (2007) 4 SCC 221 to contend that that the statutory provisions cannot take away the constitutional rights and that where a fraud takes place, it vitiates all judicial proceedings.

12. We have given our thought to the matter and considered it appropriate to pen down a detailed order, setting the facts in controversy.
13. We find that the matter really does not pertain to deprivation of any constitutional rights of the petitioners qua the right of property in view of the petitioners voluntarily entering into a transaction for sale of the property. It is of course the say of the petitioners that they have executed what were purportedly mortgage papers. The fact, however, remains that the sale deed was duly registered and mutation carried out and all endeavours of the petitioners to get the mutation set aside were unsuccessful. The petitioners kept on moving applications including one under Section 340 Cr.P.C.

which formed subject matter of adjudication of the learned single Judge vide order dated 01.12.2009. Learned single Judge deplored the mode and manner of conduct of proceedings on behalf of the petitioners especially the factum of incorrectly quoting the orders in the petition to give an impression as if the trial court was delaying the proceedings qua certain applications while records showed that it was the petitioners who were pressing the application under Section 340 of Cr.P.C. first. The dismissal of that application has been upheld as no perjury was found nor any inconsistencies in the statements of the defendants. This order has become final and the same is stated not to have been assailed further. It is by this very order where the court exercising supervisory jurisdiction under Article 227 of the Constitution of India directed the Trial Court to examine the legality and validity of the claim as framed in the plaint in the form of a preliminary issue. This preliminary issue has been decided against the petitioners vide the order dated 20.11.2010 by the Trial Court which has received the imprimatur of this Court by dismissal of the RFA No.104/2011 vide order dated

17.02.2011. The special leave petition has also been dismissed.

14. In our considered view, this puts the controversy to rest insofar as the claim of the petitioners over the cancellation of documents is concerned. We may notice that the Trial Court had left it to the petitioners, if so advised, to file legal proceedings for recovery of the balance consideration of the sale deed as pleaded by them since that was not the relief claimed in the suit.
15. We must strongly deprecate the practice of repeated litigation on the same cause of action, wasting the time of the court. The *//s*, as agitated by the petitioners, has attained finality. The Registry also pointed out that such a writ petition would not be maintainable as the order passed in RFA No.104/2011 by a learned single Judge of this Court is not to be set aside in the writ petition by this Court. Not only that, the orders passed in Civil Revision Petition No.183/2007 and FAO No.25/2009 are also not to be set aside by this Court under Article 226 of the Constitution of India, and that too, after a period of 2 years. The petitioners seek to continue litigation under one pretext or the other and

courts must come down with heavy hand on such litigation.

15. We thus dismiss the writ petition with exemplary costs of Rs.25,000/- to be deposited with the Delhi High Court Legal Services Committee within a period of two weeks.

CM No.17075/2011

In view of the dismissal of the writ petition, no further directions are called for on this application.

The application stands disposed of.

SANJAY KISHAN KAUL, J.

OCTOBER 18, 2011
dm

RAJIV SHAKDHER, J.