

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

+ **RFA No.408/2004**

% **9th May, 2012**

SURAJ PRAKSH SHARMA Appellant
Through: Mr. P.N.Bhardwaj, Adv.

VERSUS

SHAKUNTALA RANI DIWAN THR. LR. Respondent
Through: LR of respondent in person.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the Trial Court dated 1.3.2004 dismissing the suit of the appellant/plaintiff as an abuse of process of law and being not maintainable.

2. (i) At the outset, before proceeding to refer to the detailed facts of the present case, though it will lead to repetition, I must state generally certain facts as to the number of litigations by which the appellant/plaintiff/tenant has tried to stall/set aside the eviction

decree passed against him. Against the appellant/plaintiff a decree of eviction was passed by the Rent Controller as the appellant/plaintiff failed to pay the rent and his defence was struck off. The order of the Rent Controller was challenged in appeal before the Rent Control Tribunal wherein the appellant/plaintiff claimed title to the property by means of the documents dated 10.9.1997 executed in his favour being the agreement to sell, power of attorney, Will etc., however, the Court of the Rent Control Tribunal dismissed this appeal. Further challenge laid to the High Court was dismissed and an SLP preferred by the appellant/plaintiff was also dismissed. This was the first chain of litigations.

(ii) The appellant/plaintiff was a tenant in the first floor of suit property bearing no.B-4/21, Paschim Vihar, Delhi and who was evicted therefrom in due process of law in execution proceedings after the eviction proceedings were confirmed till the Supreme Court.

(iii) The second litigation was a suit which is still pending, and which suit for declaration was filed by the appellant/plaintiff on 8.12.1997. In this suit for declaration, the

appellant/plaintiff claimed to be owner of the suit property on account of the aforesaid documents dated 10.9.1997. Other reliefs were also claimed in this suit.

(iv) The **third litigation** was the objections which were filed by the appellant/plaintiff in execution against the judgment and decree of the Rent Controller. In these objections, the appellant/plaintiff had again claimed ownership on the basis of the documents dated 10.9.1997 and hence disentitlement of the decree-holder to execute the decree. These objections were dismissed and an appeal filed to the Rent Control Tribunal was also dismissed. Challenge was laid to the High Court which was dismissed and even an SLP filed was also dismissed.

(v) The **fourth litigation** was the second objections to execution which were immediately filed after dismissal of the first objections till the Supreme Court. These second objections were dismissed by the Rent Controller. The appeal to the Rent Control Tribunal was also dismissed. There was no further challenge to the dismissal of the second objections by the Rent Control Tribunal.

(vi) The present litigation is the **fifth litigation** being a suit for declaration filed by the appellant/plaintiff wherein once again the

basic cause of action is to the claim of the ownership of the suit property on the basis of the documents dated 10.9.1997 and hence the prayer that the eviction decree is obtained by 'fraud'. This subject suit was filed on 8.5.2001 after dismissal of the second set of objections by the Rent Control Tribunal. It is this suit being Suit No.175/03/01 which has been dismissed by the Trial Court vide the judgment dated 1.3.2004, and which is impugned in this appeal.

3. The facts of the case are that the appellant/plaintiff became a tenant in the suit property being first floor of the property bearing no.B-4/21, Paschim Vihar, Delhi under one Sh.Sheetal Prasad Diwan. Sh.Sheetal Prasad Diwan had certain litigation with his wife-Smt.Shakuntla Rani Diwan and Sheetal Prasad Diwan executed an agreement with Shakuntla Rani Diwan giving her rights to take rent from the suit property. It is pursuant to such rights, that Smt. Shakuntla Rani Diwan collected rents of the suit property and also had filed eviction proceedings before the Rent Controller on account of non-payment of rent. The eviction proceedings were decreed in favour of the Smt. Shakuntla Rani Diwan in E-21 of 1994 vide judgment dated 25.9.1999. The eviction proceedings were decreed against the present appellant/plaintiff who was the respondent/defendant in the eviction

proceedings. The appellant/plaintiff challenged the order of the Rent Controller dated 25.9.1999 before the Rent Control Tribunal, and in which appeal the appellant/plaintiff pleaded the case of his right in the suit property by virtue of documents being an agreement to sell, power of attorney, Will, all dated 10.9.1997 executed in his favour by Sh.Sheetal Prasad Diwan, but, the Rent Control Tribunal dismissed the appeal vide its order dated 7.1.2000. The challenge laid to the High Court was thereafter dismissed as also the SLP to the Supreme Court. Thus, the eviction proceedings against the appellant/plaintiff achieved finality on the SLP before the Supreme Court being dismissed, and in which proceedings, the appellant/plaintiff had taken up a case of ownership of the suit property by means of the documents dated 10.9.1997.

4. Ordinarily the matter ought to have ended here because the appellant/plaintiff lost out right in the Supreme Court with respect to his stand of ownership of the suit property in judicial proceedings, however, appellant/plaintiff filed on the same basis of ownership objections to the execution of the judgment of the Rent Controller dated 25.9.1999. The first set of objections was dismissed by the Rent Controller vide order dated 7.2.2001. A reference to this order shows that the pleadings in these objections were to the effect of the claim of the appellant/plaintiff to

ownership of the suit property under the documentation dated 10.9.1997. The Rent Controller referred to the documents on the basis of which title was claimed by the appellant/plaintiff, including the Will dated 10.9.1997 (since Sh. Sheetal Prasad Diwan had died in the meanwhile) and dismissed the objections. The objections were challenged in an appeal and the appeal was also dismissed by the Rent Control Tribunal vide order dated 28.2.2001. Appeal to the High Court again failed and so did the SLP before the Supreme Court. Once again, therefore, the issue with regard to entitlement of the appellant/plaintiff to the suit property on the basis of the documentation dated 10.9.1997 was rejected till the highest Court of the land.

5. Objections (2nd time) were then again filed by the appellant/plaintiff and which were dismissed by the Rent Controller as also the Rent Control Tribunal in an appeal.

6. As already stated a suit for declaration was filed on behalf of the appellant/plaintiff claiming ownership rights on the basis of these documents on 8.12.1997 and which suit is presently pending disposal before the competent Court of ADJ, Delhi.

7. It is after dismissal of the 2nd objections that the subject suit for declaration has again been filed on 8.5.2001, and in which once again

pleading the basic cause of action of ownership of the suit property on the basis of the documents dated 10.9.1997 the relief claimed is for setting aside of the original eviction decree passed by the Rent Controller on 25.9.1999 as having been obtained by fraud. The fraud which is alleged is that the appellant/plaintiff was the owner of the suit property by means of the documentation dated 10.9.1997, and which were concealed from the Court of the Rent Controller.

8. Learned counsel for the appellant/plaintiff argued that the judgment which is passed by a Rent Controller under the Delhi Rent Control Act, 1958, is not final so far as the issue of title is concerned. Reliance is placed upon Sections 43 and 50(4) of the Delhi Rent Control Act, 1958. Reliance is also placed upon the judgments in the cases of *Kishun Sah vs. Harinandan Prasad Sah & Ors.*, AIR 1963 Patna 79; *Smt. Kanta Devi & Ors. vs. Shri Surinder Kumar & Anr.*, 1979 (1) RCR Delhi 31; *Niranjan Lal Vohra vs. M/s. Ram Lal Mahajan Charitable Trust (Regd.)*, 1983 (1) RCR 682; *Sushil Kumar Mehta vs. Gobind Ram Bohra (dead) Thr. LRs*, (1990) 1 SCC 193 and *S.P.Chengalvaraya Naidu (dead) by LRs. Vs. Jagannath (dead) by LRs & Ors.*, (1994) 1 SCC 1 to canvass the self same proposition.

9. In my opinion, if ever there was a litigation which is a

downright abuse of process of law and Courts, then it is this litigation. After all there has to be some end where the abuse of judicial process must stop. One set of litigation of eviction of the appellant/plaintiff reached right till the Supreme Court, and where, the issue of ownership of the appellant/plaintiff was not sustained. In the first set of objections which were filed again the issue of ownership was raised by the appellant/plaintiff on the basis of the documents dated 10.9.1997 which too did not succeed right till the Supreme Court. The second set of objections again failed though, mercifully, they only reached the stage of the Rent Control Tribunal. The suit for declaration which was filed in December, 1997 and which seeks declaration of ownership of appellant/plaintiff on the documentation dated 10.9.1997 is still pending. The present suit filed after dismissal of the second objections is quite clearly an abuse of process of law inasmuch as the same is not only barred by general principles of res judicata, as also the principles of abuse of process of law. Issues as raised in the present suit have already, in substance, been raised in the suit which is pending before the competent Court of ADJ, Delhi and which suit for declaration filed in December, 1997 basically claims ownership of the suit property on the basis of documents dated 10.9.1997. Besides the fact that general

principles of res judicata always apply inasmuch as Section 11 CPC is not the final repository of the doctrine of res judicata which is based on public policy that there has to be an end to litigation as has been held in the judgment of the Supreme Court reported as *Gulam Abbas & Ors. vs. State of Uttar Pradesh & Ors., (1982) 1 SCC 71*, I may also refer to Rule 23 of the Delhi Rent Control Rules, 1959 which provides that in the proceedings under the Delhi Rent Control Act, 1958, the Rent Controller and the Rent Control Tribunal shall be guided by the provisions of CPC. Therefore, besides the general principles of res judicata being applicable, specifically, provisions of CPC have been held to be applicable to the proceedings before Rent Controller under the Delhi Rent Control Act, 1958.

10. Not only is the subject suit barred by res judicata, the subject suit is also barred by the general principles of abuse of process of law inasmuch as effectively the same cause of action of ownership of the suit property is already pleaded in another suit filed in December, 1997 and which is pending. A second suit cannot be filed once there is already existing an earlier suit, and therefore the second suit has necessarily to be dismissed on account of abuse of process of law.

11. The provisions of Section 43 and Section 50(4) of the Delhi

Rent Control Act, 1958 as also the judgments cited on behalf of the appellant/plaintiff, do not apply inasmuch as the appellant/plaintiff had raised these issues, as raised in the present suit, in the original eviction proceedings, in the first set of objections in the execution proceedings, also in the second set of objections, and which issues have been duly considered by the Courts in those proceedings and the right to ownership claimed in the suit property has been held against the appellant/plaintiff right till the Supreme Court two times. Therefore, I do not think that there is any fraud, which of course is a mantra which is very usually alleged by litigants who lose out in a litigation, more so in a case such as the present, however, merely uttering a mantra of the earlier judgment and decree of the Rent Controller having been obtained by fraud, is really neither here nor there inasmuch as the appellant/plaintiff was a respondent in those proceedings, and he has had three rounds of litigation urging these very issues unsuccessfully.

12. The Supreme Court in its recent decision in the case of ***Ramrameshwari Devi and Others v. Nirmala Devi and Others***, (2011) 8 SCC 249 has observed that it is high time that dishonest litigations must end with actual costs. The following observations of the Supreme Court in the said judgment of ***Ramrameshwari Devi (supra)*** are apposite:

“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)

13. I am also empowered to impose actual costs by virtue of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*.

14. In view of the aforesaid facts, which show that the present litigation is a complete abuse of process of law, and endeavour to overreach the Courts, the same is dismissed with costs of ₹5,00,000/-. The costs shall be payable within a period of 8 weeks from today, failing which, the respondent/defendant will be entitled not only to initiate execution proceedings, but in view of the judgment of the Supreme Court in the case of *Ram Narang vs. Ramesh Narang, 2006 (11) SCC 114* liberty is granted to initiate contempt proceedings for non-compliance of the order of payment of costs.

VALMIKI J. MEHTA, J

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