

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

+ CM(M) 325/2008 and CM No.8140/2011

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Reserved on : 13th July, 2012

Date of decision : 07th September, 2012

VIKRAM KHARBANDA & ORS. Petitioners

Through : Mr. Ghanshyam, Adv. for
Mr. M.P.Sharma, Adv. for
P-1.

Mr. Anil Sapra, Sr. Adv.
with Mr. Rakesh Malhotra,
Adv. for P-2.

versus

K.C. MALHOTRA & ORS. Respondents

Through : Mr. Sudhir Nandrajog, Sr.
Adv. with Mr. L.K. Garg
and Ms. Hena Kaur, Advs.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. This is a petition under Article 227 of the Constitution against the judgment of the Appellate Court dismissing the petitioner's appeal against the order dated 19th April, 2005 of the learned Trial Court.

2. The dispute between the parties relate to the roof rights of property bearing No.J-13/51, Rajouri Garden, New Delhi. The petitioners are tenants in respect of the entire ground floor and two rooms on the first floor of the suit property. The petitioners claim to be in possession of the roof over the first floor which is disputed

by the respondents who claim to be in possession. The relevant facts in brief are as under:-

- 2.1 *Vide* rent note dated 4th December, 1967, late Piare Lal Kharbanda (father of the petitioners) took the ground floor of the suit property on lease from the erstwhile owner, late Ram Rakhi at a monthly rent of `375/-. Clause 1 of the said rent note clearly records that the tenant has no concern whatsoever with the first floor which is in the exclusive possession of the landlady.
- 2.2 *Vide* rent note dated 4th August, 1968, late Piare Lal Kharbanda took two rooms on the first floor of the suit property from late Ram Rakhi at a monthly rent of `175/-. Clause 9 of the said rent note records that the tenant has no concern whatsoever with the third room on the first floor which is in the exclusive possession of the landlady and the landlady would be at liberty to make further construction/additions on the first floor.
- 2.3 *Vide* sale deed dated 19th November, 2004, respondent No.1 sold the suit property to respondents No.2 and 3. Para 2 of the said sale deed records that three bedrooms and one drawing room on the ground floor and two rooms on the first floor without roof/terrace of the suit property are under the tenancy of Piare Lal Kharbanda and the tenancy is through the written documents handed over to the vendees. The sale deed further records that effective proprietary possession of the suit property, physical possession of the common areas

and exclusive possession of the stairs from first floor to mumty and terrace of first floor have been delivered to the vendees.

2.4 On 25th November, 2004, Piare Lal Kharbanda instituted Suit No.207/2004 for permanent injunction against respondent No.1 before the Senior Civil Judge seeking a restraint against respondent No.1 to transfer the suit property of respondents No.2 and 3; restraint from entering the suit property; restraint from dispossessing the petitioner without due process of law; and restraint to carry out in unlawful construction without taking permission from the concerned authorities. The petitioner claimed to be a tenant in respect of the entire suit property including the roof since 1967. The petitioner further claimed that on 18th November, 2004, the respondents attempted to break the door of the second floor to dispossess the petitioner.

2.5 On 30th December, 2004, respondents No.1 and 2 instituted Suit No.24/05/04 before the learned Trial Court seeking permanent injunction to restrain the petitioner from obstructing their free access to the common areas, terrace and mumty of the suit property and from illegally and forcibly occupying the same. Respondents No.2 and 3 claim to be in exclusive possession of the stairs from first floor to mumty and terrace having taken the same from respondent No.1 at the time of sale deed dated 19th November, 2004. Respondents No.2 and 3 claim to have opened the lock over

the door leading to the terrace with the keys handed over by respondent No.1 and inspected the same. Respondents No.2 and 3 further pleaded that on 21st December, 2004, husband of respondent No.2 was prevented by the petitioner's son who also threatened him whereupon a police report was lodged.

3. *Vide* common order dated 19th April, 2005, the learned Civil Judge dismissed the petitioner's application and allowed respondent's application thereby restraining the petitioner from causing any interference/obstruction in the free access of respondents No.2 and 3 to the common areas, terrace and mumty of the suit property till the disposal of the suit. The findings of the learned Civil Judge are as under:-

- 3.1 The petitioner has not disputed the rent notes dated 4th December, 1967 and 4th August, 1968. No right has been granted to the petitioner in respect of the roof over the first floor under the rent notes dated 4th December, 1967 and 4th August, 1968. The rent note dated 4th December, 1967 clearly records that only the ground floor has been let out and the petitioner has no concern whatsoever with the first floor which is in exclusive possession of the landlady. The rent note dated 4th August, 1968 relates to two rooms on the first floor and the landlady kept her right to further construct and make additions on the first floor of the suit property.
- 3.2 There is no other document on record between the parties with respect to the roof over the first floor of the suit

property.

- 3.3 There is no *prima facie* material or document to show that the roof of the first floor was given to the petitioners.
- 3.4 There is no construction on the roof of the first floor of the suit property.
- 3.5 Respondent No.1 has obtained NOC for construction on the roof from MCD as back as on 8th February, 2002.
- 3.6 Mere oral averment of the petitioners is not sufficient, more so when there are ample documents to the contrary.
- 3.7 The petitioners cannot be considered to be in settled possession of the roof as the same was neither let out nor there is any document to that effect.
- 3.8 The respondents may be presumed and considered to be in lawful and constructive possession of the roof over the first floor.
- 3.9 Even if the petitioners are in possession of the roof without being a tenant, the same is of no avail and the status of the petitioners would be that of a trespasser.
- 3.10 The petitioners cannot dispute the title of respondents No.2 and 3 who have purchased the suit property from respondent No.1.
- 3.11 The dispute between the parties arose only after the suit property was purchased by respondents No.2 and 3 who proposed to raise construction on the terrace of the first floor.
- 3.12 The respondents have right to raise the construction on the

terrace of the suit property in accordance with law after taking necessary permission from the concerned authorities and the petitioners have no right to restrain them, more so when the petitioners are neither a tenant nor have any right on the terrace of the first floor.

3.13 The petitioners have not approached the Court with clean hands. The petitioners have concealed material facts and have not even disclosed the second rent note dated 4th August, 1968 by which the tenancy of the first floor was granted to the petitioners.

4. The petitioners preferred an appeal against the order dated 19th April, 2005 before the Senior Civil Judge which was dismissed *vide* impugned judgment dated 15th February, 2008. The findings of the learned Senior Civil Judge are as under:-

4.1 The petitioners took the entire ground floor *vide* rent note dated 4th December, 1967 and two rooms on the first floor *vide* rent note dated 4th August, 1968 from late Ram Rakhi who retained all the rights in respect of the roof over the first floor as well as right to make further constructions and additions. At no point of time, the roof over the first floor of the suit property was ever let out to the petitioners.

4.2 The respondents have not made any admission as to the right of the petitioners with respect to the roof over the first floor of the suit property in the eviction petition filed before the Rent Controller under Section 14(1)(h) of Delhi Rent Control Act as contended by the petitioners.

- 4.3 The petitioners contention that the word ‘building’ used in the rent receipts would mean the entire building including the roof was rejected by the Appellate Court on the ground that the word ‘building’ has to be read in juxtaposition with two rent notes between the parties.
- 4.4 The petitioners contention that since the entire ground and first floor were in its possession, by deeming provision, the roof of the ground floor would also be considered as part and parcel of the tenancy was rejected by the Appellate Court on the ground that when the parties have reduced their agreement into writing at the time of letting out in 1967 and 1968, it is expected that they would resort to the formality of writing for the further letting out.
- 4.5 The Appellate Court held the case to be clearly covered by the Division Bench judgment of this Court in *Peter George v. Janak J. Gandhi*, 1996 (36) DRJ 248, in which the Division Bench held that the terrace cannot be said to have been let out by a deeming fiction.
- 4.6 The Appellate Court also recorded that *vide* order dated 16th February, 2005 in CM(M)No.1802/2004, this Court dismissed the petition of the petitioners holding that from the material placed on record, it *prima facie* appears that what was let out to the petitioners was the ground floor and first floor of the suit property. This Court held as under:-

“The impugned order is a well reasoned order and does not suffer from any jurisdictional error or

infirmity which calls for interference by this Court under Article 227 of the Constitution of India. It is the duty of the Court under Article 227 of the Constitution to see whether the Trial Court has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. The Court does not act as an appellate court. It is also not permissible to review or reweigh the evidence upon which the trial court purports to have passed the order or to correct errors of law in the decision. The petitioner has failed to make out any ground to warrant interference.”

4.7 The petitioners contention to be in settled possession was rejected on the ground that the petitioners have failed to show any document that the roof of the first floor was let out at any point of time. It was not the case of the petitioners that they were trespassers and in settled possession, instead they claimed to be tenant of the entire property including the roof since 1967, which the petitioners utterly failed to establish.

4.8 Respondents No.2 and 3, being successors in interests of respondent No.1 having purchased the suit property *vide* registered sale deed dated 19th November, 2004 would be entitled to all the rights of their predecessor.

5. The learned Senior Counsel for the petitioners have urged at the time of hearing of this petition that the petitioners are in possession of the roof over the first floor of the suit property since 1967. The learned Senior Counsel refers to and relies upon

receipts in which the word ‘building’ has been used which means the petitioners are in possession of the entire suit property including the roof over the first floor. The learned Senior Counsel submits that the petitioners claim over the roof of the first floor is based on the oral arrangement made by the mother of respondent No.1 in favour of the father of the petitioners in 1967. The learned Senior Counsel further submits that the respondents have taken contradictory stand in different proceedings between the parties. In CM(M)No.1802/2004, the respondents claim to have been dispossessed by the petitioners on 29th December, 2004 whereas in Suit No.24/05/04, the respondents claim to be in possession as on 30th December, 2004. The learned Senior Counsel has referred to and relied upon *Rame Gowda v. M. Varadappa Naidu*, (2004) 1 SCC 769, *Arvindra Kumar Singh v. Hardayal Kaur*, 2005 (80) DRJ 1, *Shri Jyoti Kumar Ahuja v. Narendra Singh Grewal*, 2001 VII AD (Delhi) 402 and *Ashok Rai v. Trilok Nath*, 61 (1996) DLT 815.

6. The learned Senior Counsel for the respondents has raised a primary objection to the maintainability of the petition. It is submitted that the impugned judgment does not suffer from any error of jurisdiction and, therefore, the petition under Article 227 of the Constitution of India is not maintainable. The learned Senior Counsel has referred and relied upon *T.V. Mylsamy v. Meenakshi Sundaram*, (2004) 13 SCC 559, *Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524, *Ouseph Mathai v. M. Abdul Khadir*, (2002) 1 SCC 319, *Essen Deinki v. Rajiv Kumar*, (2002) 8

SCC 400 and *Labhkuwar Bhagwani Shaha (Mrs) v. Ianardhan Mahadeo Kalan*, (1982) 3 SCC 514.

7. On merits, the learned Senior Counsel for the respondents has urged that respondents No.2 and 3 are in physical possession of the roof over the first floor of the suit property. It is submitted that late Ram Rakhi, mother of respondent No.1 had let out only the ground floor of the suit property *vide* rent note dated 4th December, 1967 which clearly records that the petitioners have no concern whatsoever with the first floor which remained in the exclusive possession of the landlady. *Vide* rent note dated 4th August, 1968, two rooms only on the first floor were given on lease and the landlady retained the right to make further construction or additions on the first floor. The sale deed dated 19th December, 2004 also records the possession over the roof of the first floor by the seller who handed over the same to respondents No.2 and 3. It is submitted that in Suit No.207/2004, the petitioners sought permanent injunction to restrain the respondents from raising construction without permission from the concerned authorities which implies that the petitioner admitted the respondent's right to construct with requisite permissions. It is submitted that the petitioners did not approach the learned Trial Court with clean hands and concealed the rent note dated 4th August, 1968 in the plaint. It is further submitted that the disputed question of facts cannot be examined in a petition under Article 227 of the Constitution of India. It is further submitted that *vide* order dated 16th February, 2005 in CM(M)No.1802/2004, this Court has

dismissed the petition against the interim order dated 24th December, 2004 and the Special Leave Petition of the petitioners has also been dismissed by the Supreme Court. The learned Senior Counsel refers to and relies upon *D.T.T.D.C. v. D.R. Mehta & Sons.*, 62 (1996) DLT 234 and *K.V. Narayan v. S. Sharana Gowda*, AIR 1986 Karnataka 77.

8. Upon careful consideration of the rival contentions of both the parties, this Court is of the view that there is no error of jurisdiction in the impugned judgment dated 15th February, 2008 passed by the learned Appellate Court and, therefore, the petition is not maintainable and is liable to be dismissed on this short ground alone. The jurisdiction under Article 227 of the Constitution of India is limited. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct the orders made within the jurisdiction of the Courts below. The High Court cannot while exercising its jurisdiction under Article 227, convert itself into Court of appeal when the legislature has not conferred a right of appeal and has made the decision of the subordinate Court final on facts. Interference under Article 227 is not called for in the findings of the facts, except where it is perverse or not based on any material whatsoever resulting in manifest injustice. Consequently, the High Court cannot set aside or ignore the findings of the subordinate Court merely on the ground that its findings of fact were erroneous. The jurisdiction under Article 227 is by no means appellate in nature for correcting errors in the decision of the subordinate Courts but merely a power of

superintendence to be used to keep them within the bounds of their authority and therefore it is not permissible to a High Court to review and reweight the evidence upon which the subordinate Court purports to have passed the order. This case is squarely covered by the judgments referred to and relied upon by respondents No.2 and 3.

9. Since both the parties have addressed detailed arguments on merits, this Court has considered their rival contentions and does not find any infirmity in the concurrent findings of the Courts below. This Court agrees with and confirms the finding of both the Courts below that the petitioners do not have any right in respect of the roof over the first floor of the suit property. The rent notes dated 4th December, 1967 and 4th August, 1968 do not grant any right whatsoever to the petitioners in respect of the roof over the first floor. The petitioners approached the learned Trial Court with unclean hands by concealing the rent note dated 4th August, 1968. The word 'building' in the rent receipts have to be read in juxtaposition with the said rent notes. The petitioners claim to have got the roof rights in 1967. If that be so, the rent note dated 4th August, 1968 would have referred to it. However, the rent note dated 4th August, 1968 specifically excludes the roof rights which implies that the petitioner's plea to be patently false and dishonest. The judgments referred to and relied upon by the petitioners do not help the petitioner as the rights of the parties shall be governed by the rent notes dated 4th December, 1967 and 4th August, 1968 which do not grant any right to the petitioners in respect of the roof

over the first floor.

10. **False claims and defences**

10.1 In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, 2012 (3) SCALE 550, the Supreme Court held that false claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate.

10.2 In *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114, the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

“1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

(Emphasis supplied)

10.3 In *Satyender Singh v. Gulab Singh*, MANU/DE/1047/2012, the Division Bench of this Court following *Dalip Singh v. State of U.P.* (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Court's time for a wrong cause. The observations of this Court are as under:-

“2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. **In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by**

a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left.”

(Emphasis supplied)

11. **Imposition of costs**

11.1 In *Ramrameshwari Devi v. Nirmala Devi*, (2011) 8 SCC 249, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

“45. ...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.”

“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.

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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.”

(Emphasis supplied)

11.2 In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria* (supra) the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences. The Supreme Court held as under:-

“85. This Court in a recent judgment in *Ramrameshwari Devi and Ors.* (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. 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 time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases 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.”**

11.3 In *Padmawati and Ors. v. Harijan Sewak Sangh*, 154 (2008)

DLT 411, this Court imposed cost of ` 15.1 lakhs and noted as under:

“6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.”

“9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people

in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.”

(Emphasis supplied)

12. False claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

13. Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led

by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.

14. Unless the Courts 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 the Courts' scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. It becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that the dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.

15. 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. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court.

The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution.

16. This case warrants imposition of costs on the petitioners in terms of the judgments of the Supreme Court in *Ramrameshwari Devi v. Nirmala Devi* (supra) and *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria* (supra) and of this Court in *Punjab National Bank v. Virender Prakash*, 2012 V AD (Delhi) 373 and *Padmawati v. Harijan Sewak Sangh* (supra). The petitioners have raised the frivolous pleas with the hope that the petitioners can, with the Court delays, drag the case for years and the other side would succumb to buy peace. If the other side does not so settle in the end, they are hardly compensated and remain a loser. The petitioners took the ground floor of the suit property on rent *vide* rent note dated 4th December, 1967 which specifically excluded the roof. On 4th August, 1968, the petitioners took additional two rooms on the first floor of the suit property on rent *vide* rent note dated 4th August, 1968 which again specifically excluded the roof. If the landlady would have given the roof to the petitioners in 1967, she would have documented or would have at least recorded in the second rent note dated 4th August, 1968.

Since the rent note dated 4th August, 1968 specifically excluded the roof, the plea raised by the petitioners is false and dishonest. In Suit No.207/04 filed by the petitioners on 25th November, 2004, the petitioners sought injunction against respondent No.1 to restrain her from transferring the suit property to respondent Nos.2 and 3 which shows that sole intention of the petitioners was to somehow stop the sale, which is not permissible in law. How can a tenant stop landlady from selling the immovable property? This shows the petitioner's dishonest intention to drag the landlady into a frivolous litigation. In the said suit, the petitioners also sought restraint against unlawful construction without permission from concerned authorities meaning thereby the petitioners recognized the respondent's rights to construct after permission from concerned authorities. Be that as it may, the learned Trial Court as well as the Appellate Court have given a thoughtful consideration to all the contentions raised by the petitioners in their well reasoned judgments. The petitioners have filed the present petition raising all possible frivolous pleas by invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

17. **Conclusion**

On consideration of totality of the facts and circumstances of this case, I do not find any infirmity in the well reasoned impugned judgment. The petitioners have misused the process of law by raising a false claim. The petitioners have no respect for truth and have made false statements on oath. The petitioners have

shamelessly resorted to falsehood and have attempted to pollute the pure fountain of justice with tainted hands and, therefore, the petitioners are not entitled to any relief. This case warrants prosecution as well as imposition of penal costs on the petitioners. This petition is consequently dismissed with costs of `2,00,000/- on the petitioners. The learned Trial Court shall consider the prosecution of the petitioners at the stage of final hearing of the suits. The cost be paid by the petitioners to the respondents within four weeks failing which the learned Trial Court shall strike off the defence of the petitioners.

J.R. MIDHA, J

SEPTEMBER 07, 2012