

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

% *Order pronounced on: October 09, 2013*

+ **CM(M) No.898/2013 & C.M. No.13571/2013 (for stay)**

BIMLA DEVI Petitioner

Through Mr. Pritam Kumar, son of the
petitioner in person

versus

MANGE RAM (DECEASED) THR. LRS. & ANR Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner Bimla Devi assails the judgment dated 11th February, 2013 passed in MCA No.15/2012 which is an appeal filed by the petitioner/appellant against the order dated 3rd August, 2011 passed by the learned Civil Judge by which the application under Order XXXIX, Rules 1 & 2 CPC moved by the petitioner was dismissed.

2. Admitted facts in brief are that a suit for permanent injunction and declaration is filed by the petitioner against the respondents. It was contended in the suit that she is the owner of the property No.44A/3, Kalu Sarai, New Delhi measuring 150 Sq. Yards purchased from Sh.Nanwa vide agreement to sell and registered receipt dated 15th July, 1974 for ₹3037.50/-. Respondent No.1 had witnessed the document executed by said Sh.Nanwa in favour of the petitioner. In 1980, respondent No.1 requested the petitioner to give him the house for the purposes of residence on rent which was given by

the petitioner at a monthly rent of ₹80/- and thereafter, respondents No.1 & 2 started residing in the constructed portion. With the permission of the petitioner, respondent No.1 also got constructed toilet, bathroom and a shop for his earning, but later on respondents No.1 & 2 became dishonest and started making forged documents and also started raising unauthorized construction over the property. Thus, the petitioner filed the suit in the year 2000 for permanent injunction against the respondents to restrain them from raising illegal and unauthorized construction.

3. An FIR was also got lodged against the respondents. It has also come to the notice of the petitioner that the respondent No.1 has executed a sale deed dated 24th September, 1999 in favour of respondent No.2. Thus, a decree for declaration was sought by the petitioner that the said sale deed dated 24th September, 1999 be declared as null and void.

4. Along with the suit, the petitioner filed an application under Order XXXIX, Rules 1 & 2 CPC which was dismissed.

5. The case of the respondents before the learned trial Court was that the petitioner is neither the owner nor in possession of the suit property. The suit was filed on the basis of forged documents. In fact, the respondents are the owners of the suit property which is a three storeyed building and is in physical possession of the respondents for the last 30 years. Respondent No.1 has sold one shop on the ground floor to Smt.Asha Chopra in 1984 and sold the remaining property to respondent No.2 vide registered sale deed dated 24th September, 1999.

6. It was also contended in the written statement that the suit filed by the petitioner is also barred under Section 10 CPC, as the earlier suit filed by the

petitioner for injunction in respect of the suit property was held to be not maintainable and the plaint was rejected on 5th September, 2002.

7. The learned Civil Judge by order dated 13th September, 2011 dismissed the application under Order XXXIX, Rules 1 & 2 CPC. The said order was challenged in appeal which was also dismissed by the impugned order. The main reasons for dismissing the appeal are given in para 22 of the order which read as under:-

“22. The respondent no. 1 Sh. Mange Ram has obtained the probate on the Will executed by Sh. Nanwa in his favour vide order dated 19.05.2001 passed by the court of Ms. Rekha Sharma, the then Ld. ADJ, Delhi. The Will has been probated as per the Annexure B. In Annexure B, property bearing plot No. 44 in Khasra No. 288/249, Village Kalu Sarai, Tehsil Mehrauli, New Delhi measuring 1500 sq. yds. is mentioned. The order passed in the probate proceedings is judgment in rem. Therefore, by virtue of grant of probate on the Will, the respondent no. 1 Sh. Mange Ram has been held to be the owner of the Plot bearing No. 44 in Khara No. 288/249, Village Kalu Sarai, Tehsil Mehrauli, New Delhi. The property in question is also situated in Khasra No. 288/249 in plot No. 44 and as per respondents same is 100 sq. yds., part of the aforesaid 1500 sq. yds. property. Therefore, the observations of the Hon’ble High Court of Delhi vide order dated 30.03.2007 that the respondent no. 1 Mange Ram had not enclosed the Annexure B mentioning the properties in respect of which probate has been granted or that there is no mention of property in the Will do not help the case of the appellant that no probate has been granted in respect of the suit property. Hence, there is no force in the argument of the Ld. Counsel for appellant that respondents have not been held to be owner of the property in question in view of observations made by the Hon’ble High Court of Delhi vide order dated 30.03.2007.”

8. The question before this Court is that after the dismissal of the application under Order XXXIX, Rules 1 & 2 CPC and also after exercising the remedy under Order XLIII, Rule 1 CPC, whether this Court should interfere with the two orders passed by the learned trial Court while exercising the supervisory powers under Article 227 of the Constitution of India when the matter is decided on facts.

9. In the case of ***Babhut Mal Raichand Oswal Vs. Laxmi Bai R. Tarta*** reported in AIR 1975 (1) SCC 858, the Supreme Court speaking through Bhagwati J. as his Lordship then was observed thus:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts” (emphasis supplied)

The Supreme Court in the case of ***Babhut Mal*** (supra) approved the dictum of Morris L. J., in ***Res v. Northumberland Compensation Appellate Tribunal***, 1952 All England Reports 122.

10. In the case of ***State of Maharashtra Vs. Milind & Ors.***, 2001 (1) SCC 4, Supreme Court observed:

“The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being

supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.” (emphasis supplied)

11. Again in the case of *State Vs. Navjot Sandhu*, (2003) 6 SCC 641, the Supreme Court observed:

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.” (emphasis supplied)

The decisions of *Babhut Mal* (supra), *State Vs. Navjot* (supra) and *State Vs. Maharashtra* (supra) have been approved by Hon'ble Justice C.K. Thakkar as his Lordships then was in the case of *Shamshad Ahmad & Ors. vs. Tilak Raj Bajaj (D) By Lrs. & Ors.*, 2008 (9) SCC 1.

12. Upon careful reading of observations in the above referred cases, it can be safely said that the scope of judicial interference under Article 227 is well settled and the court ceased of the proceedings under Article 227 cannot act as a court of appeal and should interfere with the decision of the inferior tribunal or court only to keep the authorities and courts within their bounds and in the cases where it results into manifest miscarriage of justice and not in all other cases to correct mere errors. The power under Article 227 is thus discretionary in nature and can be exercised in the cases where the lower court ignores material piece of evidence or considers some evidence which it ought not to have considered which results into injustice and not in cases where there are two views possible and the view adopted by lower court is reasonable and plausible one and the High Court would be unjustified to interfere in such cases merely to arrive at different view in the matter as this would be re-appreciating the evidence on finding of facts which is the role of the appellate Court and not the supervisory Court acting under Article 227 of the Constitution of India.

13. In view of the settled law on this aspect, I am of the considered view that the petition filed by the petitioner is not maintainable and the same is accordingly dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

OCTOBER 09, 2013