

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:22.05.2014

+ CM(M) 1240/2012
KAMAL MEHTA

..... Petitioner

Through: Mr. Sanjay Kumar, Adv. with
petitioner in person.

Versus

SHANTI DEVI

..... Respondent

Through: Mr. Sanjay Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (Open Court)**

1. This petition under Article 227 of the Constitution of India impugns an order dated 11.07.2012 whereby the Trial Court dismissed the petitioner's application under Section 114 read with Order XLVII Rule 1, CPC. In the said application, the petitioner (defendant) had sought review of the judgment dated 11.10.2010, whereby the Trial Court had allowed the respondent's application under Order XII Rule 6, CPC, thereby partly decreeing the suit filed by the respondent (plaintiff).
2. The dispute arose with the respondent filing a suit claiming possession, permanent injunction and recovery of mesne profits against the petitioner from the suit property bearing no. 179/1, First Floor, Pocket-A, Sector-7, Rohini, Delhi. During the pendency of the suit, the respondent/plaintiff filed an

application under Order XII Rule 6, CPC praying for a judgment/decreed, on admissions, with regard to possession of the suit property.

3. The aforesaid application filed by the respondent/plaintiff was allowed on the ground that the petitioner had executed a Relinquishment Deed dated 28.08.1997, by which he had relinquished his rights, interest and share in the suit property, thereby leaving the respondent as the sole owner of the suit property. The Trial Court noted that averments with respect the said Relinquishment Deed were made by the respondent in the plaint, which were admitted by the petitioner in the Written Statement. The Trial Court rejected the petitioner's claim of rights over the suit property, claimed by him only on the basis of an Affidavit dated 20.03.2001 since the said Affidavit merely authorized the petitioner to get work done before the DDA, MCD, NDPL etc. on behalf of the respondent. In view of the aforesaid, the application under Order XII Rule 6, CPC was allowed and vide judgment dated 11.10.2010, the respondent's suit was partly decreed.
4. The petitioner thereafter, preferred a review of the aforesaid judgment. It was submitted that much after the Relinquishment Deed was executed, there was a Settlement Deed dated 09/09/2004 between the parties which superseded the Relinquishment Deed, and there was a payment of consideration of Rs.1.8 lakhs for the settlement. The amount was largely contributed by the petitioner; that the petitioner was not in

possession of the aforesaid Settlement Deed and the same had come to his possession only on 02.11.2010 whereas the judgment was delivered earlier on 11.10.2010; that the respondent was guilty of '*suppressio veri*' and '*suggestio falsi*' since the said Settlement Deed was in her knowledge when the suit was instituted on 26/09/08; that despite due diligence, the petitioner could not have brought the Settlement Deed to the notice of the Court since the major beneficiaries were the respondent, her elder son and daughter-in-law.

5. In reply to the review application, the respondent raised objections that the Settlement Deed was not a registered document thereby having no legal value; that the Settlement Deed was not relied upon in the Written Statement; that the Settlement Deed having been executed in the custody of the police was hit by Section 25 of the Indian Evidence Act; and that the review application was filed only to delay the matter.
6. After hearing the parties, the Trial rejected Court rejected the petitioner's argument that despite due diligence, he could not have brought the Settlement Deed to the notice of the Court. The Trial Court observed that since the petitioner himself was a signatory to the Settlement Deed and was aware of its content, he could have well pleaded the same in the Written Statement and not by vaguely mentioning that the respondent/plaintiff is guilty of concealing material facts. Regarding the claim of the petitioner that his brothers had shifted to other properties after taking their respective shares and it was settled that the

petitioner would reside in the suit property as he had not taken any share, the Trial Court held that such a claim by itself would not render the duly registered Relinquishment Deed invalid, since the Settlement Deed relied upon by the petitioner was an unregistered one. The Trial Court also observed that the tone and tenor of the Settlement Deed signified that the settlement was entered upon only to buy peace, as the daughter in law of the plaintiff/respondent had lodged a complaint with the CAW Cell and the plaintiff/respondent had in turn filed a case against the daughter in law and her son Rakesh Mehta. In view of the aforesaid and keeping in mind the parameters for review set out under Order XLVII Rule 1, CPC, the Trial Court dismissed the review application filed by the petitioner.

7. The learned counsel for the parties were heard. The learned counsel for the petitioner submits that the impugned order suffers from material irregularity and gross illegality, hence, it needs to be set aside. In support his contentions, he places reliance on the decision of the Supreme Court in ***Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha (HUF) & Anr.***, AIR 2010 SC 1890 and on a Division Bench decision of this Court in ***Preeti Satija v. Raj Kumari & Anr.***, AIR 2014 Del 46. On the other hand, learned counsel for the respondent has sought to sustain the impugned order.
8. At the outset, this Court is conscious that the petitioner should have ideally preferred a Regular First Appeal under the provisions of CPC but has instead chosen to invoke the

supervisory jurisdiction under Article 227 of the Constitution of India. It is settled law that the provisions of a statute cannot act as a rider to the jurisdiction of this Court conferred upon by the Constitution. The Hon'ble Supreme Court in ***Surya Dev Rai v. Ram Chander Rai & Ors.***, (2003) 6 SCC 675 has exhaustively dealt with High Court's supervisory jurisdiction under Article 227 of the Constitution. It has been held that the High Court may step in to exercise its supervisory jurisdiction when a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice is occasioned thereby. Keeping in mind the aforesaid jurisdictional parameters, this Court is of the view that the impugned order does not warrant any interference in its supervisory jurisdiction under Article 227 of the Constitution.

9. In so far as the petitioner/defendant had unequivocally, unambiguously and clearly admitted to the Relinquishment Deed dated 28.08.1997, the Trial Court was right in passing a judgment under Order XII Rule 6, CPC. Furthermore, since the Settlement Deed dated 09/09/2004 was never averred by the petitioner in his Written Statement, the Trial Court was right in rejecting the petitioner's review application. This Court is further of the view that the judgments relied upon by the counsel for the petitioner would not be applicable to the present case since in those case, there was no unequivocal or

unqualified admissions necessitating a judgment on admissions under Order XII Rule 6, CPC.

10.In view of the aforesaid discussion, this Court finds no infirmity with the impugned order. The petition is without merit and is accordingly dismissed.

**NAJMI WAZIRI
(JUDGE)**

MAY 22, 2014/acm