

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 10.12.2013

+ WP(C) No.7755 of 2013 & CM No.16507 of 2013

THAKUR BALWAN SINGH

..... Petitioner

Through: Mr. A.K. Singla, senior advocate
with Mr. Rahul Shukla, Advs.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondent

Through: Mr. Mirza Amir Baig for Mr. Anjum
Javed, Adv. for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioner before this Court claims to have purchased the entire first floor of the property bearing number D-200, Defence Colony, New Delhi vide sale deed registered with the Office of Sub Registrar – V on 16.2.2000. On the same date, another sale deed, for sale of the ground floor of the above referred property was also got registered with the same registering authority, which was executed in favour of respondent No.3.

2. Certain disputes arose between the petitioner and the respondent no.3 on access to the common areas in the aforesaid building which led to the petitioner filing a civil suit in the court of Civil Judge (South). According to the petitioner, he came to know of insertion of five (5) pages in the sale deed executed in favour of respondent no.3, while prosecuting the said civil suit. The Sub Registrar, Delhi lodged a complaint dated 13.4.2012 in this regard

with Additional Deputy Commissioner of Police, CBT. Economic Offences, Wing seeking investigation in the matter. This led to registration of an FIR No.197/2012 at Police Station Mehrauli. The petitioner, therefore, has filed this writ petition seeking the following reliefs:

In the circumstances stated above, it is, therefore, respectfully prayed that the Hon'ble Court may be pleased to issue writ of mandamus/ certiorari or any other writ(s), direction or order thereby directing respondents no.1 and 2 to delete 5 unnumbered pages inserted between page 17 to 18 of Sale Deed registered as No.1405 in Additional Book No.1 Volume No.1789 on pages 29 to 46 registered on 16.2.2000 obtained by respondent no.3 and annul additions in hand appearing at page 6 & 14 of the said deed, found as part of certified copy issued by such respondents and delivered to petitioner as copy no.3028 dated 14.7.2010, in the facts and circumstances of the case.

3. It would thus be seen that the case of the petitioner in nutshell is that at the time the sale deed was executed in favour of respondent no.3, it was an 18 page document and 5 pages have been inserted in the said document, at a later date.

4. The complaint dated 13.4.2012 made by the Sub-Registrar (South) to the Additional Deputy Commissioner of Police, CBT. Economic Offences Wing points out the following circumstances on the basis of which he formed a prima facie opinion of manipulation in the office record and sought further investigation in the matter:

- (1) The pages of the volume of paste file are of two colours, thereby raising suspicion that manipulation might have taken place.
- (2) Further, it is an established practice of pasting, one page of registry with one page of paste file. However, in this case, the pages Nos. 3,4,5,6&7 have been pasted as two pages of registry with one page of paste file. This again raises suspicion of manipulation.
- (3) Moreover, the five pages in question are single signed whereas other pages of the said registry in the volume are double signed by parties. This might have been done to forge the same ink and all the papers including the manipulated pages.
- (4) Further, the page Nos. of registered pages are numbered from 29 to 46, but the said five pages are not numbered and excess to the counting 29 to 46. This raises eyebrows about manipulations.

5. During the course of arguments, the learned counsel for the petitioner pointed out that as per Certificate of Registration at the back side of the page 18 of the sale deed, the document in question was registered at pages 29 to 46 which comes to 18 pages. The contention of the learned counsel for the petitioner was that had there been 23 pages in the document at the time it was registered, the numbers of 23 pages would have been given in the Registration Certificate. The complaint made by the Sub Registrar to the Delhi Police shows that the practice in his office is to paste one page of the document on each page of the register, whereas in the present case, two pages each have been pasted on some pages of the register. This can hardly be disputed that prima facie the above referred circumstances indicate insertion of certain pages, in the record of the Sub Registrar, at a date later than the date on which the document was registered. Another suspicious circumstance which I notice is that two signatures each of the vendor, vendee and the confirming party appear at the pages 1 to 18 of the sale deed and out of them one signature

each appears in black ink and the other signature in the blue ink. Ordinarily, there would be no reason to put two signatures on each page of the document. Moreover, even if the parties sign twice, the ink and pen used by them for signatures would be same and it is unlikely that they will use two different pens for putting signatures on the same document at the same time. Yet another suspicious circumstance I find is that no serial number is typed on five pages which appears to be a schedule of property and two site plans, though the remaining 18 pages bear computer typed serial numbers on the top of the page.

6. The next question which arises for consideration of the Court is as to whether, on the basis of the above referred suspicious circumstances, directions can be issued, in a writ petition, directing the respondents no.1 and 2 to remove the above referred five pages from the register maintained in the office of Sub Registrar. In my view, such directions cannot be given since the matter is still under investigation by Delhi Police. If the police, after investigating the complaint made by the Sub Registrar, comes to the finding that five pages were inserted in the register at a later date, prosecutes the person(s) responsible for such insertion and the criminal court after trial, returns a finding that there has been insertion on five pages in the document after the document was presented to the Sub Registrar for its registration only then such a direction can be given. The complaint made by the Sub Registrar only points out the suspicious circumstances which led him to form a prima facie opinion of manipulation in his office and the complaint made by him cannot be a substitute for the finding which the competent court would render in the matter after holding a trial in accordance with the procedure established by law. In fact, at this stage, the police finding no commission of an offence cannot be altogether ruled out.

7. The question as to whether the five pages were actually inserted in the register at a later point of time and if so which those pages are, is a question of fact which cannot be gone into in a writ petition. This question can be gone into either by a criminal court in case the police find one or more persons responsible for such insertion and prosecutes them or by a civil court, in appropriate civil proceedings. Neither it is appropriate nor possible for a writ court to go into these disputed question of facts and render a finding thereon, since recording of evidence would be necessary before a finding on these disputed questions of facts is returned.

8. In my view, either the petitioner should wait till the outcome of the criminal prosecution which may possibly be initiated by Delhi Police after completing its investigation in the matter or he can file appropriate civil suit, impleading the vendor, vendee, the confirming party and the Sub Registrar as parties to the said suit and challenging the document as it stands in the record of the Sub Registrar, on the ground that five pages have been inserted in the documents at a later date. In fact, the petitioner can easily file a civil suit claiming right in the common areas which is the bone of contention between him and the respondent no.3 on the ground that the said areas were not the subject matter of the sale deed executed in favour of respondent no.3 as five pages which include the schedule of the property and two site plans came to be inserted at a later date in connivance with the officials/ officers in the office of the Sub Registrar.

The directions sought in the writ petition, in my view, cannot be issued for the reasons that the disputed questions of facts cannot be gone into in a writ petition and there is no finding of fact recorded either by the competent criminal court or a civil court holding that the five pages have been inserted in the document at a later date. In fact, besides proving the alleged insertion of five pages at a later date, the petitioner will also have to establish which those

five pages are, before the direction can be issued to the official respondents to remove those pages from their record.

9. For the reasons stated hereinabove, the writ petition is dismissed. It is, however, made clear that dismissal of the writ petition does not come in the way of the petitioner filing an appropriate suit in a court of competent jurisdiction.

All pending applications also stand disposed of.

There shall be no orders as to costs.

DECEMBER 10, 2013/*rd*

V.K. JAIN, J.