

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

Reserved on: 04.02.2014
Date of Decision: 01.10.2014

+ CM (M) No.908 of 2012

KUSUM SHARMA Petitioner
Through: Mr. Pratap Singh, Adv.

versus

DIDAR SINGH & ORS. Respondents
Through: Mr. Sanjiv Bahl & Mr. Vikrant Arora, Adv.
for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns an order dated 26.5.2012 whereby the appellate court dismissed the petitioner's appeal against the judgement and decree dated 26.9.2011. The impugned order also imposed a cost of Rs.10,000/- payable equally to the Delhi Legal Services Authority Fund (Central) and respondent No.1.
2. Mr. Didar Singh/respondent No.1 had filed a suit for declaration, possession and damages against respondent Nos.2 to 9, being Suit No.463/1996 (old No.121/1988), in respect of the suit property, being plot Nos.143 & 144 measuring 200 sq.yds. bearing khasra No.13/23 situated at Guru Nanak Nagar, Post Office Tilak Nagar, Delhi. The suit was decreed on 31.5.2005 and the sale deed dated 21.3.1996 registered on 28.3.1996 executed by Shri Molar Singh for himself and

his attorney of his brother Ram Bhajan relating to plot Nos.143 & 144 measuring 200 sq.yds. bearing khasra No.13/23 situated at Guru Nanak Nagar, Post Office Tilak Nagar, Delhi was declared null & void. A decree of possession in respect of plot admeasuring 100 sq.yds. bearing No.144 forming part of khasra No.12/23, Guru Nanak Nagar, P.S. Tilak Nagar was granted in favour of respondent No.1 after demolition of construction over the same. A decree of damages also was granted in his favour. However, the Judgement Debtors failed to comply with the decree and accordingly the execution petition was filed in which the petitioner's objections were dismissed. The Appellate Court was of the view that the basis of the petitioner's claim was a General Power of Attorney, Agreement to Sell, Will, Receipt and affidavit all executed on 8.4.2004 by Shri Ratan Singh (respondent No.5 earlier in the aforesaid suit) apropos plot admeasuring 50 sq.yds. bearing No.144, Gali No.7 out of khasra No.13/23 in colony known as Guru Nanak Nagar, Village Kesheopur, Delhi. The chain of events was sourced back to Shri Molar Singh. However, since the sale deed of 21.3.1966 executed in favour of Shri Molar Singh had already been declared as null & void it was held that every subsequent transaction through sourcing him would be *void ab initio* and would not confer any right, title or interest to successive parties claiming through him. The Appellate Court further relied upon the *dicta* of the Supreme Court in ***Suraj Lamp Industries Pvt. Ltd. V. State of Haryana & Anr.* AIR 2012 SC 206** on the point that unregistered documents unimplemented by public authorities would

be void and cannot be acted upon. The Appellate Court was further of the view that the alleged purchase by the appellant does not create any right in her favour during the pendency of the suit No.463/1996, hence she was not a *bona fide* purchaser of the suit property and would be covered under Section 54 of the Transfer of Property Act, 1882 and she would accordingly be bound by the principle of *lis pendens*. The Trial Court was further of the view that the appeal against the judgement and decree of 31.5.2005 had been dismissed by this Court, therefore, it had attained finality. The appellate court was further of the view that the judgement would apply as *res judicata* since the issue had been settled between the parties by the court of competent jurisdiction in distinct proceedings. The appeal was dismissed with costs of Rs.10,000/-.

3. The learned counsel for the petitioner would submit that the judgement and decree was brought about on account of misleading by the plaintiff and by playing a fraud upon the Court. He submits that the sale deed in favour of Shrimati Veeran Bai, mother of Mr. Didar Singh was a forged and concocted one, since Banta Singh, the seller did not have any valid documents in his favour hence the said document could not be relied upon and the entire transaction ought to have been declared null and void. He submits that the suit was hopelessly barred by time since it was filed for possession after 12 years hence it could not have been entertained under Section 3 of the Limitation Act, 1963. In support of his contention, the learned counsel relied upon the dicta of the Supreme Court in *Union of India*

v. Punjab Singh AIR 2003 SC 3321 and Narene Ram Murthy v. Ravula Somasundaram 2005 (6) SCC 614. The learned counsel further submitted that since the court was misled by the plaintiff by withdrawing vital documents and by fraud, therefore, the judgement and decree ought to be set aside and this ground can be taken at any stage as held in ***S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. AIR 1994 SC 853.*** He submits that the issues raised in objection by the petitioner were such that would mandate a proper investigation and inquiry under the mandate of Order 21 Rules 58 and 101 of the Code of Civil Procedure, 1908; that insofar as both the executing as well as the appellate court failed to adopt the said procedure the impugned order suffered from material irregularity hence recourse could be taken before this Court under Article 227 of the Constitution of India under which this petition has been filed. In support of his contention he relied upon the judgement in ***Manoj v. Guruvayoor Devaswom (2011) KLT 1022.*** He further contends that there has been a manifest miscarriage of justice hence it needs to be set aside. He relied upon a number of judgements in support of this contention including in ***Surya Dev Rai v. Ram Chander Rai & Ors. 2003 (3) KLT 490.*** He finally submitted that the petitioner had right, title and interest in the suit property and was in possession thereof and since she had disputed the ownership rights of the decree holder, the objections ought to have been tried through a separate suit by an executing court and ought not to have been dismissed the objections summarily without framing issues to

determine the matter.

4. In response Mr. Sanjiv Bahl, learned counsel for respondent No.1 submitted that this petition is not maintainable because successive courts have upheld the decree. He submits that the decree was passed in 2005 which was upheld by this Court in appeal. Subsequently the executing court also dismissed the objections, so did the appellate court; that this is the 5th round of litigation apropos the judgement and decree. He submitted that this is nothing but a frivolous and vexatious litigation by the petitioner. He further submits that the executing court has already covered all the grounds now sought to be urged, which incidentally are based upon the same documents of one of the defendants, i.e., Mr. Ratan Singh.
5. In view of the fact that the judgment and decree dated 31.5.2005 has attained finality and it clearly declared the sale deed of 21.3.1966 registered on 28.3.1966 as null & void executed by Shri Molar Singh for himself and the attorney of his brother Shri Ram Bhajan, any claim by the petitioner through said Molar Singh would be a mirage. If Mr. Molar Singh had nothing to give, the petitioner could receive nothing, whereas the plaintiff/respondent No.1, i.e. Didar Singh, had set up his case through purchase documents of his mother Smt. Veeran Bai by sale deed of 10.8.1956 registered on 31.12.1956. The petitioner's claim is based on unregistered documents and would be covered by the principle of *lis pendis* under Section 54 of the Transfer of Property Act.
6. The executing court as well as the appellate court have dealt with all

the issues raised by the parties. The petitioner has sought to urge the same issues before this Court as have been urged before the courts below.

7. In view of the aforesaid discussion, this Court is of the view that no case made out against the petitioner. The impugned order does not suffer from any material irregularity. The petition is without merit and is accordingly dismissed with costs of Rs.20,000/- to be shared equal measure between Delhi High Court Legal Services Committee and respondent No.1.

OCTOBER 01, 2014
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NAJMI WAZIRI, J.