

. * IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Order delivered on: January 23, 2014*

+ TR.P.(C) 25/2012 & I.A. No.18693/2012

SHIKHA MISHRA & ORS. Petitioners
Through Ms.Geeta Luthra, Sr.Adv. with
Mr.Attin Shankar Rastogi, Adv.

versus

S KRISHNAMURTHY Respondent
Through Mr.Rajat Aneja, Adv. with
Mr.Ishaan Chhaya, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. Admittedly the respondent earlier filed a suit against the petitioners for recovery of possession, arrears of rent, damages and mesne profit in respect of the suit premises which is pending before the learned Civil Judge, Saket Courts, New Delhi. In the said suit, evidence of the respondent has already been concluded. The matter is fixed for petitioners' evidence.
2. It is not denied by the petitioners that the petitioner No.1 was inducted as tenant in the suit premises by the deceased wife of the respondent by virtue of a Lease Deed dated 25th February, 1987 at the monthly rent of ₹2,000/-.
3. Upon knowledge of the suit of the respondent, the petitioners had filed a suit for specific performance and grant of perpetual injunction in respect of property bearing No. 128, Pocket B, SFS, DDA, East of Kailash, New Delhi

(hereinafter referred to as “suit premises”) before this Court being CS (OS) No.1854/2011. Issues in the matter are yet to be framed.

4. The present petition has been filed under Section 24 read with Section 151 of Code of Civil Procedure, 1908 by the petitioners for transfer of the case pending before the Civil Judge, Saket before this Court stating that a connected suit pertaining to the same issue is pending before this Court.

5. It is the case of the petitioners that both the pending matters pertain to the same property and between the same parties and the outcome of both the matters shall have definite bearing upon each other, so both be heard by the same Court i.e. this Court.

6. It has been averred by the petitioners in the suit for specific performance that on 15th August, 1989, the wife of the respondent told the petitioners that she would like to sell the suit premises to the petitioners, to which the petitioners agreed and decided that a Sale Deed would be executed soon to this affect, however, the wife of the respondent passed away in the year 1990. After the death of the wife of the respondent, the respondent became the sole owner thereof.

7. It has been averred by the petitioners that the respondent told and assured the petitioners that as the suit premises was in the name of his wife, he would complete the paper work for getting the same transferred in his name in the DDA records and then complete the sale proceedings with the petitioners as the same was the wish of the wife of the respondent. Subsequently on 19th April, 1992, the respondent entered into an Agreement to Sell with the petitioner in respect of 1st floor of the suit premises at market rate which would be prevalent on the day the DDA/Competent Authority shall convey/transfer the suit premises in the name of the respondent. It has

been stated that in the meanwhile, the respondent told the petitioners to keep paying a monthly/annual lumpsum which he assured would adjusted towards final sale price and the petitioners started paying the lumpsum payments accordingly.

8. It has been stated by the petitioners that the monthly rent being ₹2,000/- in addition to some amount towards sale consideration amounting to ₹1.5 lakhs per annum was paid on the respondent's demands and that finally, the petitioner were paying ₹2 lakhs per annum as advance amounts. It is averred that a total of ₹18,81,000/- has been paid till date to the respondent towards the sale consideration by the petitioners.

9. It has been further submitted that vide a letter dated 20th December, 2010, the respondent informed about the mutation/conveyance deed with respect to the suit premises being executed in favour on 29th November, 2009. The petitioners thereafter expressed their willingness and readiness to complete the sale transaction, however, the respondent kept on delaying the proceedings by making false excuses. Subsequently, the petitioners sent a legal notice to the respondent, failure to receive the reply thereto led the petitioner to file the suit for specific performance against the respondent before this Court.

10. The petitioner's petition seeking transfer of the said suit to this Court is strongly opposed by the respondent. In the reply to the present petition, the respondent has contended that the only attempt of the petitioners is to somehow prolong their unauthorized occupation in the suit premises.

11. The respondent has also filed an application bearing I.A. No.18513/2012 under Section 10 CPC in the pending suit bearing CS (OS) No.1854/2011 seeking stay of the said suit. It is stated in the said application

under Section 10 CPC that the said suit filed by the petitioner is liable to be stayed in view of an earlier suit filed by the respondent prior in time i.e. on 1st July, 2011, whereas the said suit filed by the petitioner was filed on or after 28th July, 2011.

12. The respondent has admitted that the suit premises was let out by the wife of the respondent to the petitioner No.1 at monthly rent of ₹2,000/-, however, it was stated that by the passage of time, the rent being paid by the petitioners became ₹13,000/- per month which was revised around the year 1997. Thereafter since January, 2008, the rent was further increased after mutual agreement of parties to a sum of ₹17,000/- per month. The suit filed by the petitioners is false and frivolous on the basis of the forged document

13. It has also been stated by the respondent that he had been residing in another property bearing no. A-1/273, Safdarjung Enclave, New Delhi-110029 belonging to his cousin brother who asked the respondent to vacate the same in the year 2010, as his cousin brother required the same for his own use. By the reason thereof the respondent approached the petitioners and requested them to vacate the suit premises, to which they are stated to have agreed initially and requested for a few months time to look for an alternate accommodation. However, to the shock of the respondent, the petitioners sent him a legal notice dated 9th April, 2011 stating the alleged story of the agreement to sell the suit premises to the petitioners by the respondent. Alongwith the reply to the said legal notice sent by the petitioners, the respondent served a legal notice upon the petitioners dated 25th May, 2011 terminating the tenancy of the petitioners in respect of the suit premises. The said legal notice was stated to be refused to be received by the petitioners and so the respondent served another notice dated 6th June,

2011 reiterating the contents of the earlier legal notice, which was duly served.

14. However since the petitioners failed to comply with the said legal notice, the respondent filed the suit for possession against the petitioner in the Saket Court. It has been stated in the application filed by the respondent under Section 10 CPC that the suit filed by the petitioners is liable to be stayed in order to await the decision of the earlier suit filed by the respondent in Saket Courts. The intention of the petitioners is to cause perpetual delay in disposal of the said suit filed by the respondent for which numerous adjournments have been taken by the petitioners.

15. It has been stated by the respondent that he is an old man of about 80 years and is forced to reside at Bangalore in the house of his brother-in-law because he has no other residential accommodation with him except the suit premises which the petitioners have refused to vacate.

16. Left with no option, the respondent filed the suit for possession and damages against the petitioners. It is averred by the counsel for the respondent that every attempt has been made by the petitioners to delay the decision of the suit of the respondent which is filed for possession. The counsel has read few orders passed in his suit where main adjournments have been granted in favour of the petitioners. He states that the matter is fixed for evidence of the petitioners on 24th January, 2014, thereafter final arguments would be addressed by the parties. He further states that his client i.e. respondent has to spend huge amount for coming to Delhi from Bangalore to attend the hearing at the Courts and there is a great hardship on the respondent and on the other hand the petitioners without any valid

reasons are delaying the final decision in the suit for possession filed by his client on one pretext or the other.

17. Ms. Geeta Luthra, learned Senior counsel appearing on behalf of the petitioners argued that no prejudice would be caused if the suit filed by the respondent be clubbed with the suit filed by the petitioners as there is common cause of action in both cases. Learned senior counsel assured that the petitioners would not take any adjournment in case the made in the transfer petition be allowed

18. Learned senior counsel appearing on behalf of the petitioners has referred to the following decisions in support of her contentions:

- (i) ***R. Kanthimathi and Ors. vs. Beatrice Xavier***, AIR 2003 SC 4149
- (ii) ***Chhanka Ram v. Rehman, Etc.*** (1975) ILR 2 Punjab and Haryana 277

19. The respondent has submitted that the suit for possession filed by the respondent before the learned Civil Judge can neither be clubbed nor stayed for any reason, in as much as the cause of action for filing the suit for possession is distinct and since the same is premised upon the landlord-tenant relationship between the parties which has come to end by termination of their tenancy.

20. On the other hand the suit filed by the petitioners is premised on a mere unregistered agreement to sell, which is stated by the respondent to be forged and fabricated and which cannot entitle the petitioner to seek stay of the suit of the respondent or for getting the two matters clubbed, which would cause grave and irreparable loss to the respondent.

21. Mr. Aneja, learned counsel appearing on behalf of the respondent has referred to the following decisions in support of his submissions:

- (i) ***Sunil Kapoor vs. Himmat Singh and Ors.***, 167 (2010) DLT 806, wherein was observed as under:

“11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in *Jiwan Das v. Narain Das* AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.”

“12. Section 53A of the Transfer of Property Act codifies the doctrine of part performance. A purchaser of immovable property, who in pursuance to an agreement to sell in writing has been put into possession of the property, is entitled to so remain in possession. However, in the present case, there is no agreement to sell in writing”

“15. What follows is that even if the petitioner/defendant were to succeed in his suit for specific performance of agreement to sell, till the execution of a conveyance deed in pursuance to the decree, if any, in favour of the petitioner, the petitioner has no ground in law to save his possession of the premises. The status of the petitioner would continue to be as before i.e. of a tenant whose tenancy has been determined.

16. Once that is found to be the position in law, the defence of the agreement to sell is not a legal defence available to the petitioner in the suit for ejectment. If that be so, there is no common question involved in the previously instituted suit for

specific performance and the subsequently instituted suit for ejectment.

17. I also find that beside the judgments relied by the counsel for the respondents/plaintiffs, another Single Judge of the Andhra Pradesh High Court in *Gollu Bhavani Sankar v. Bhogavalli Rajeswara Rao* and the Madhya Pradesh High Court in *Prakash ChandSoni v. Anita Jain* have also refused to stay the eviction proceedings due to pendency of suits for specific performance of agreement to sell.”

- (ii) ***K. Mani vs. M.D. Jayavel and Ors.***, 2012 (1) RCR (Rent) 111, wherein it was observed that “12. Admittedly, the said agreement to sell is not a registered one and in such a case, the question of invoking Section 53A of the Transfer of Property Act would not arise at all and the contentions of the Appellants based on Section 53A, have to be rejected in limini.”

22. It is admitted position that in the suit filed by the respondent for possession, the evidence of the respondent/plaintiff therein has been concluded. Now the matter is fixed for petitioners’/defendant therein evidence on 24th January, 2014. However, in the suit filed by the petitioner for specific performance, issues are yet to be framed. Thus it is clear that the stage of the two suits filed by the parties are different.

23. Despite of that, this Court is of the opinion, in view of the settled position of law, that the suit filed by the respondent for possession cannot be ordered to be clubbed in the suit filed by the petitioners considering the strong opposition as well as the settled position in law.

24. None of the decisions referred by the petitioner’s counsel are applicable to the facts of the present case as in the case of ***R. Kanthimathi*** (supra) it was specifically held that after the surrender of lease and portion of the sale consideration are accepted by the seller under only those circumstances the relationship of landlord-tenant cease to exist, however, in

the present case, both the things are missing. The respondent has specifically alleged that no consideration was paid nor the lease was surrendered. Thus, the said decision does not help the case of the petitioners. Similarly, the facts of another decision ***Chhanka Ram*** (Supra) are also materially different.

25. In view of the above said reasons, the present transfer petition filed by the petitioners is totally false and frivolous and the same has been filed in order to delay the decision of the suit filed by the respondent for possession.

26. The present petition was filed in October, 2012. Though no stay order was passed in the proceedings of the suit for possession filed by the respondent, but the admitted position is that the said suit was delayed on account of this transfer petition. Thus, the said proceedings are expedited.

27. As far as the present petition is concerned, the same is dismissed with costs of ₹20,000/- which shall be paid by the petitioners to the respondent within two weeks from today.

28. The petition is accordingly disposed off. Pending application stands disposed of.

29. Copy of this order be given *Dasti* to both the parties under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

JANUARY 23, 2014