

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

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**C.M.(M) No.842/2014 and C.M.Nos.15138/2014 (Stay) and
15139/2014 (Exemption)**

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12th September, 2014

SMT. USHA KIRAN

.....Petitioner

Through: Mr.H.S.Phoolka, Sr.Advocate with
Mr.D.S.Patial and Ms.Shilpa Dewan,
Advocates.

VERSUS

SH. G.S.LAMBA & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Challenge by means of this petition under Article 227 of the Constitution of India is to the concurrent judgments of the courts below; of the Additional Rent Controller dated 30.8.2014 and the Rent Control Tribunal/First Appellate Court dated 06.9.2014; by which objections filed by the petitioner, against execution of the judgment and decree of eviction dated 01.5.1999, passed against her husband, have been dismissed.

2. The present case is symptomatic of those litigants who abuse the process of law, not once but repeatedly. This, I am forced to observe because on the very same ground on which objections have been filed, the husband of the petitioner/ respondent in the eviction petition contested the proceedings, lost through till the appellate tiers, but once again the petitioner/wife wants to urge the same aspects as objections to the execution of the judgment and decree dated 01.5.1999.

3. The facts of the case are that the respondent no.1 herein Sh.G.S.Lamba/decreed holder filed an eviction petition against the respondent no.2 herein namely Sh.Sukhdev Raj and who is the husband of the petitioner. After contest, this eviction petition filed for non-payment of rent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') was decreed by the Additional Rent Controller vide judgment dated 01.5.1999. Challenge was laid by the respondent no.2/husband of the petitioner before the Rent Control Tribunal and this challenge also failed as the Rent Control Tribunal dismissed the first appeal vide its judgment dated 06.7.1999. Respondent no.2 further challenged the concurrent judgments of the Additional Rent Controller and Rent Control Tribunal before this Court in CM(M) No.593/1999, but this petition filed

under Article 227 of the Constitution of India was not pursued and hence the same was ultimately dismissed in default on 16.4.2007. Really, therefore since the year 1989 i.e from the last 26 years, respondent no.1 has been endeavouring to take possession of the suit property, but has failed on account of respondent no.2 and now the petitioner is causing delay in the proceedings

4. A reading of the judgment of the Additional Rent Controller dated 01.5.1999 shows that respondent no.1 herein had claimed rights in the suit property on the basis of the usual documentation being agreement to sell, general power of attorney, affidavit, sale deed etc dated 29.8.1988, and which were executed in his favour by the petitioner herein/wife. These documents were duly proved and exhibited before the Additional Rent Controller confirming the transfer of rights in the suit property to the respondent no.1 herein. The relevant para of the judgment of the Additional Rent Controller dated 01.5.1999 is para 9, and which reads as under:-

“ 9. The petitioner has further alleged that after the purchase of the suit premises from the wife of the respondent, the physical vacant possession was handed over to the petitioner but because the respondent was not able to find any alternative accommodation they were inducted as tenant in the suit premises at a monthly rent of Rs.800/-. The petitioner has placed on record the rent receipt Ex.AW1/2 whereby the respondent has paid rent for two months, i.e September 1988 and October, 1988. The said rent receipt is duly

signed by Sukhdev Raj who has also admitted his signatures on the same. The rent receipts clearly shows that there exist a relationship of landlord and tenant between the parties and that he has also paid rent for the period of two months. The relationship of landlord and tenant is therefore established between the parties. The plea was taken by respondent that he had needly occurred loan from petitioner and that he had signed of the documents but contents were stated to be fabricated. The onus was on the respondent to prove this defence which he failed to do as his defence was struck off.”

5. As already stated above, the judgment of the Additional Rent Controller was further challenged before the Rent Control Tribunal but the challenge failed and thereafter the petition filed in this Court was also dismissed in default.

6. Thereafter when the respondent no.1 filed execution proceedings, petitioner/wife of the respondent in the eviction petition and who is the respondent no.2 herein, filed objections and in which objections once again the same case is pleaded with respect to the fact that the petitioner herein is the owner of the property because it is stated that the documents which were executed in favour of the respondent no.1 herein were only as a loan and not for transferring of the property. It is also pleaded that the general power of attorney was cancelled by means of a notice dated 06.3.1996. These aspects are stated in paras 3 to 6 of the objections filed on behalf of the petitioner, and which read as under:-

“ 3. That the applicant had taken the loan of Rs.40,000/- (Rupees Forty Thousand Only) from Sh. G.S. Lamba, which has been returned to him, but due to some dispute regarding payment of interest, Sh. G.S. Lamba did not return the original documents of the property in question and also the documents he had got signed from the applicant.

4. That thereafter, there were some difference between the applicant and her husband, due to which the husband of the applicant got colluded with the aforesaid Sh. G.S. Lamba and got filed an eviction petition bearing No.E-363/89 against himself by alleging that he is tenant under him in respect of the premises above mentioned.

5. That when the applicant got the knowledge of the above mentioned petition, served a notice upon Sh. G.S. Lamba dated 06.3.1996 specifically cancelling his power of attorney and he was instructed not to appear or to contest the aforesaid eviction petition and she also directed Sh. Sukhdev Raj her husband make payment of the rent to her. However, they both managed to got the eviction petition decreed, which was challenged by Sh. Sukhdev Raj in the Hon'ble High Court of Delhi at New Delhi.

6. That since the GPA of Sh. G.S. Lamba was cancelled and in the meantime, there has been compromise between the applicant and her husband Sh. Sukhdev Raj and since the loan amount was returned to the aforesaid decree holder, the aforesaid petition bearing No.C.M.(M) No.593/1999 filed before the Hon'ble High Court of Delhi at New Delhi was dismissed in default, but later on Sh. G.S. Lamba taking undue advantage of the dismissal of the petition in the Hon'ble High Court of Delhi at New Delhi, filed the present execution bearing No.23/12 before this Hon'ble Court, knowing-fully well that the applicant is in possession of the premises in question being the owner of the same and he had no right to do so.”

6. Both the Additional Rent Controller and the Rent Control Tribunal in the impugned concurrent orders dismissing the objections note that there is

no reason if the general power of attorney was cancelled way back in 1996/1999 then till the year 2012 (i.e period of about 13 years) no suit was filed by the petitioner to cancel the documentations dated 29.8.1988.

7. Rent Control Tribunal also notes that the so-called story dished out of disputes between the husband and wife i.e respondent no.2 and the petitioner is false because no matrimonial disputes had ever come to the court and no legal proceedings were ever filed.

8. Learned senior counsel for the petitioner argues before this Court that the only right of the petitioner is to file objections and the petitioner does not have a right to file a suit. Reliance is placed upon Order XXI Rules 97 to 103 CPC read with Section 25 of the Act. It is further argued that objections could not have been dismissed.

9. No doubt, learned senior counsel for the petitioner is correct in arguing that objections have to be heard and decided, but that is actually what has been done by the courts below by deciding the objections and holding the same to be *malafide* and not maintainable and consequently dismissing the same.

10. The petitioner in one sense does not really claim any independent title because independent title is being claimed by pleading that documents dated 29.8.1988 were never executed by her in favour of respondent no.1 herein, but that plea has already been decided against the husband of the petitioner, respondent no.2 herein, and therefore really in one way to look at this aspect is that the petitioner is in fact claiming through her husband because the husband had relied upon the documents dated 29.8.1988. Even if we consider that the petitioner was not a party to the earlier eviction proceedings, and therefore is claiming an independent title, the claim for an independent title would be maintainable only if some basis was laid out in the objections with respect to the independent title. However, the only basis which is laid out in the objections is that the general power of attorney dated 29.8.1988 was cancelled by a notice of the year 1999 and which is said to create an independent title by restoring title to the petitioner which was transferred to the respondent no.1 by means of the documents dated 29.8.1988. This contention is however *ex facie* misconceived because a contractual document of transferring title in the property by receiving valuable consideration cannot simply be cancelled by a legal notice. A suit is required to be filed and plaintiff has to succeed in decreeing the suit for

cancellation of documents transferring rights in an immovable property. If a contractual document could be cancelled unilaterally, then surely a sale deed could be cancelled by means of unilateral notices, but that is not the legal position. Once the very basis of claiming an independent title being of cancellation of the general power of attorney by the notice of the year 1999 fails, there cannot be any independent title claimed to the premises as claimed by the petitioner. The claim for an independent title on the basis of the cancellation of the general power of attorney is misconceived because if finality had to be given to cancellation of the documents dated 29.8.1988 being the agreement to sell, general power of attorney etc, then such a suit as per Articles 56 and 58 of the Limitation Act, 1963 had to be filed within a period of three years when the right to sue is accrued, but admittedly, no suit has been filed till date from 1999 to cancel or set aside the documentations dated 29.8.1988, and consequently the documents dated 29.8.1988 have become final as against the petitioner/objector. As already stated above, the courts below have noted that no suit has been filed till date to enforce the legal notice of cancellation of the documents which was issued in the year 1999.

11. It is, therefore clear that both the courts below have rightly dismissed the objections of the petitioner/wife because the objections were lacking in honesty besides being not legally maintainable.

12. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

SEPTEMBER 12, 2014
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