

Court No. - 92

Case :- APPLICATION U/S 482 No. - 11542 of 2013

Applicant :- Smt. Sangeeta Gupta And 2 Others

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Amit Singh

Counsel for Opposite Party :- Govt. Advocate, Keshav Kumar Srivastava

And

Case :- APPLICATION U/S 482 No. - 9410 of 2013

Applicant :- Shyam Babu Singhal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Deepak Kumar Pandey, Rajul Bhargava

Counsel for Opposite Party :- Govt. Advocate, Keshav Kumar Srivastava

Hon'ble Anish Kumar Gupta, J.

1. Heard Shri Amit Singh, learned counsel for the applicant and Shri Prem Prakash Tripathi, learned A.G.A for the State are present.

2. No one is appearing on behalf of applicant in connected Criminal Misc. Application No.9410 of 2013. However, since both the cases are arising out of same case crime number, same are being dealt with together.

3. Brief facts of the case are that applicant Shyam Babu Singhal in the connected case was the owner of the portion of land in Khasra Nos. 191, 192, 259 and 268 situated in village Abdul Nabipur, sewage for Jamuna Paidh Padhav situated at Hathras Road Mathura. The said Shaym Babu Singhal executed an agreement to sell in favour of one Harender Singh on 12.06.1993 for total sale consideration of Rs.7,50,000/- out of which Rs.2,50,000/- was paid by said Harender Singh to the applicants Shaym Babu Singhal and the balance amount of Rs. 2,50,000/- was to be paid within six months and the remaining amount of Rs.2,50,000/- was to be paid at the time of the registration of the sale deed. It is submitted that the said Harender Singh, despite the said agreement did not pay the balance amount, therefore, no sale deed could be executed in

favour of the Harender Singh and the property continued in the name of Shri Shyam Babu Singhal. Subsequently, the applicant no.1 Smt. Sangeeta Gupta entered into agreement with the Shyam Babu Singhal, the original owner of the said property on 14.08.2012. Whereby the applicant Smt. Sangeeta Gupta agreed to purchase the said property for a total sum of Rs.90,00,000/- out of which Rs.15,00,000/- was paid as advance and Rs.75,00,000/- was to be paid at the time of the execution of the sale deed.

4. In the meantime, it is submitted that the said Harender Singh has died on 28.07.2011, prior to the agreement to sell executed by the applicant Shaym Babu Singhal in favour of the applicant Smt. Sangeeta Gupta. During his life time, the said Harender Singh failed to comply with the terms of the agreement to sell no sale deed was executed and the property continued in the name of Shri Shaym Babu Singhal from whom Smt. Sangeeta Gupta had agreed to purchase the said property.

5. Learned counsel for the applicant submits that after the death of the Harender Singh, the opposite party no.2 claiming himself to be the power of attorney holder of the said Harender Singh has filed the application under Section 156(3) Cr.P.C on 06.09.2012. Learned counsel for the applicant submits that after the death of Harender Singh i.e., on 28.07.2011 the opposite party ceases to be power of attorney holder of the said Harender Singh. Therefore, the application under Section 156(3) filed by the opposite party no.2 itself was not maintainable. Therefore, the subsequent FIR and the charge-sheet lodged on the basis of the complaint of the opposite party no.2 who claims to be the power of attorney holder of the deceased Harender Singh is not sustainable in the eye of law.

6. Learned counsel for the applicant further submits that ultimately this dispute is with regard to the agreement to sell executed between the parties, which is purely civil in nature and no offence is attracted by execution of agreement to sell between the parties, which has been executed by the recorded owner of the land on the date of execution of agreement to sell. Therefore, the criminal prosecution of the applicants is mis-conceived and cannot be sustained.

7. Learned A.G.A for the State submits that since the said Harender Singh has already died on 28.07.2011 whose death certificate is available on record, the opposite party no.2 ceases to be power of attorney holder of the Harender Singh on the death of Harender Singh. Therefore, the complaint filed by the opposite party no.2 after the death of said Harender Singh was not maintainable.

8. Having heard the rival submissions made by learned counsel for the parties this court has gone through the record of the case and from the record it is categorically clear that the opposite party no.2 has no connection with the property in question. The earlier agreement to sell was executed by Shaym Babu Singhal in favour of Harender Singh on 12.06.1993, since the said Harender Singh has failed to comply with the terms of the agreement to sell, therefore, no sale deed was executed in favour of Harender Singh, therefore, Harender Singh had no right title or interest in the property and due to the lapse of time prescribed for execution of the sale deed the said Shaym Babu Singhal continued to be the owner of the said property and since the opposite party no.2 claims to be power of attorney holder of Harender Singh who had already died on 28.07.2011, the complaint filed by the opposite party no.2 on 06.09.2012 is not maintainable in the eye of law as the opposite party No.2 has already seized to be the power of attorney holder of the said Harender Singh, who had died on 28.07.2011.

9. Otherwise also, the dispute between the parties was of purely civil in nature with regard to the agreement to sell executed between the parties and the opposite party no.2 has no connection whatsoever with the property in question. Therefore, the complaint or the criminal prosecution initiated by the opposite party no.2 is not sustainable in the eye of law. In view of the instant observation both the instant applications are **allowed** and the entire proceedings of Case No.1649/IX/2012, arising out of Case Crime No.206 of 2012, under Sections 420 and 406 I.P.C, Police Station-Mahawan, District- Mathura pending in the court of Judicial Magistrate, Mathura are hereby quashed.

Order Date :- 30.10.2023

A Gautam