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HIGH COURT OF DELHI AT NEW DELHI

Decided on: 19th October, 2015

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**C.R. P. 43/2015 & CM APPL.5600/2015 &
CM APPL.5601/2015**

PREM CHAND RANA & ANR. Petitioners

Through: Mr. S.S. Dahiya, Adv. with
Ms. Padmini, Adv. &
Ms. Sangeeta Gaur, Adv.

Versus

RAMESH CHANDER & ANR. Respondents

Through: Mr. Kamal Nijhawan, Adv. with
Mr. Sumit Gaur, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 09.04.2014 by virtue of which the stay order granted by the learned Trial Judge on an application under Order 39 Rule 1 & 2 CPC was vacated by the learned Senior Civil Judge-cum-Rent Controller (North), Rohini Courts, Delhi.
2. I have heard the learned counsel for the petitioners as well as the learned counsel for the respondents. I have also gone through the impugned order.

3. Suffice it would here to mention that the present petitioners filed a suit for declaration and permanent injunction against the respondents stating that their father Rai Singh Rana during the consolidation proceedings in village Khera Kalan, Delhi in 1996-97 got allotted land in various khasras in the aforesaid village. It was alleged that respondent No.2 (defendant no.1 in the original suit) forged various documents purported to have been executed by the father of the present petitioner on 23.07.1981 regarding the sale of Khasra No.21/7 and 21/8. The Sale Deed was also alleged to have been registered on the basis of the said documents on 17.03.1982 and a mutation was also applied by respondent No.2 with the Revenue Authorities whereupon Rai Singh Rana, the father of the present petitioner had raised objections. It was alleged that the respondents had forcefully tried to dispossess the petitioners which resulted in registration of a criminal case against them. Respondent no.2/Defendant No.1 is also stated to have allegedly further transacted the suit property by way of power of attorney in favour of father of defendants No.2 (the respondent no.1 herein) and they also tried to dispossess the petitioners from

the suit property which was given now the Plot No.106/227, situated within the extended Phirni of village Khera Kalan, Delhi. In order to prevent the respondents/defendants from taking any action which may dispossess the petitioners, an application under Order 39 Rule 1 & 2 CPC was also filed. The defendants/respondents filed their written statement and contested the claim. Along with written statement the prayer for ad interim injunction was also contested. It is stated in the impugned order that after passing of considerable length of time since the institution of suit, the Trial Court abruptly passed the order on application under Order 39 Rule 1 & 2 in favour of the petitioners and against the respondents restraining them from dispossessing the present petitioners from the suit property. However, the said order was only an interim order till the next date of hearing and that the application under Order 39 Rule 1 & 2 CPC was not completely disposed of.

4. The respondents feeling aggrieved by the aforesaid order preferred an appeal and the learned Senior Civil Judge-cum-Rent Controller, Rohini Courts, Delhi by impugned order dated 09.04.2014 set aside

that ad interim order holding that when the application for grant of ad interim order remained pending for almost four years, there was absolutely no justification midway to pass the order of restrain on the respondents and accordingly the stay was vacated.

5. The petitioners feeling aggrieved by this order of vacation of ad interim stay, which was valid till the next date of hearing only, have chosen to file the present revision petition.
6. The learned counsel for the petitioners has contested that the First Appellate Court could not have modified the stay because the order passed on an application Under Order 39 Rule 1 & 2 CPC could not have been appealed against. He had also questioned the correctness of the order by citing various judgments passed in (i) *Municipal Corporation of Delhi v. M/s. Adways & Anr.*, AIR 1998 Delhi 141; (ii) *Hanuman Datt & Ors. v. State of M.P. & Ors.*, AIR 2003 MP 190; and (iii) *Kadiyala Rama Rao v. Gutala Kahna Rao (Dead) by LRs & Ors.*, (2000) 3 SCC 87; and (iv) *Rubinder Singh v. Rajasthan Financial Corporation*; 1995 Supp (2) SCC 93.

7. I have gone through these judgments and given my careful consideration to the submission made by the learned counsel for the parties.
8. I find myself unable to accept the proposition that the judgments which have been relied upon by the petitioners are of any help to the petitioners. The reason for this is that the learned Trial Judge was totally wrong by abruptly passing the order under Order 39 Rule 1 & 2 CPC and restraining the respondents from dispossessing the petitioners from the suit property. The order was wrong not because of the reasoning that the petitioners could have been dispossessed but the order was wrong on account of the fact that the said application for ad interim remained pending for almost four years and there was no such interim protection enjoyed by the petitioners. Therefore, the Trial Judge should not have, in haste, passed the interim order for no rhyme or reason, especially when there was no fresh application filed apprehending any precipitative action being taken by the respondents.

9. Secondly, if at all the application under Order 39 Rule 1 & 2 CPC was being considered by the Trial Judge, he ought to have disposed of the application itself so that the aggrieved party could have gone in an appeal.
10. The learned counsel for the petitioners is right to a certain extent that the appeal which was filed by the respondents against the order of restraint was not maintainable because the application was still pending before the learned Civil Judge. To that extent the argument of the learned counsel for the petitioners is absolutely correct but in any case, even if this incorrect order was passed, the order is innocuous in nature in as much as it was not actuated by the reason that the court had any animus against the petitioners. Therefore, to that extent the order deserves to be affirmed.
11. There is more fundamental question arising from the present revision petition on account of its maintainability. An order passed by the Court below can be subject matter of revision under Section 115 proviso only if the petitioners who were applicants in the court below would have filed the revision petition against any order passed by the learned Civil Judge which would have resulted in

termination of the proceedings, meaning thereby that the revision petition is maintainable only when the relief granted by the learned Civil Judge to the revisionists/petitioners is of such a nature that it would have brought an end to the suit itself only then the revision can be entertained. Therefore, the purpose of maintaining the revision is to ensure that the suit itself can be treated as disposed of in case of the objections of the respondents are upheld.

12. In the instant case the order on the revision petition cannot be passed because there was no possibility of getting the suit of the present petitioners dismissed by virtue of the impugned order.
13. For the abovementioned reasons, I feel that the present revision petition is totally misconceived and accordingly, the same is dismissed.
14. Pending applications also stands disposed of.

V.K. SHALI, J.

OCTOBER 19, 2015

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