

\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 1055/2013 and CM No.15657/2013 (Stay)

%

Decided on: 24th March, 2015

UMESH SAROHA

..... Petitioner

Through: Mr.Aman Mehta, Advocate.

versus

NATHA SINGH

..... Respondent

Through: Mr. Deepak Kumar, Advocate for
Respondent No.1.

Mr.T.C.Sharma, Advocate for
Respondent No.2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The facts leading to filing of the present petition are that Natha Singh, the Respondent herein filed Civil Suit No.77/2004 against the Petitioner Dr.Umesh Saroha and others seeking declaration and permanent injunction. Since no ad-valorem court fee was paid objection was taken by Dr. Umesh Saroha whereafter amended plaint was filed paying ad-valorem court fees and enclosing the site plan along with the application under Order 6 Rule 17 CPC. Since the suit was beyond pecuniary jurisdiction of the Civil Judge, the same was returned and refiled in the Court of learned District Judge.
2. Dr. Umesh Saroha and other Defendants filed an application under Order 3 Rule 2 read with Order 7 Rule 11 read with Section 151 CPC on the ground that Natha Singh had executed the Sale Deed dated 28th July, 2001 in favour of Dr. Umesh Saroha and his wife in the capacity of General Power

of Attorney holder of Shri Manphool Singh. Hence Natha Singh could not have instituted the civil suit in his individual capacity.

3. The said application filed by Dr. Umesh Saroha was disposed of vide order dated 23rd September, 2005 as Natha Singh stated that he will file the amended memo of parties. The suit was thus titled as “Manphool Singh through GPA Natha Singh vs. Dr. Umesh Saroha and others”. Dr. Umesh Saroha along with other Defendants filed the written statement.

4. During the course of the proceedings on 16th January, 2007 an application under Order 23 Rule 1 read with Section 151 CPC was filed by Manphool Singh to withdraw the suit in the light of the compromise between the parties. The statement of Manphool Singh was duly recorded and the application was allowed. The suit titled as “Manphool Singh through GPA Natha Singh vs. Dr. Umesh Saroha and others” was withdrawn and file consigned to Record Room vide order dated 16th January, 2007.

5. On 9th February, 2007 Manphool Singh filed an application under Section 151 CPC seeking restoring of the Suit No.417/2004 to its original number and stage. During the course of hearing, the learned Additional District Judge directed Manphool Singh and Natha Singh to appear in person on 13th July, 2009 for making statement under Order 10 CPC. Natha Singh filed application under Section 151 CPC read with Order 10 (2) CPC and Section 340 CPC seeking restoration of the suit transposing Natha Singh as the original Plaintiff in the suit and taking appropriate legal action against the Defendants under Section 340 Cr.P.C. Since neither Manphool Singh nor Natha Singh appeared before the Court the matter was listed for 9th October, 2009 for directions to appear. On 20th July, 2009 Manphool Singh filed an application under Order 23 Rule 1 read with Section 151 CPC

seeking withdrawal of the suit. He stated that the suit was dismissed as withdrawn on 16th January, 2007 but thereafter his attorney Natha Singh approached him and got signed some blank papers on the pretext of submitting the same to the revenue authority which were misused by his attorney to file the application. On 9th October, 2009 neither Natha Singh appeared in person despite directions nor did his counsel appear. In the light of statement of Manphool Singh under Order 10 CPC application of Manphool Singh under Order 23 Rule 1 CPC read with Section 151 CPC was allowed and the application under Section 151 was ordered to be consigned to the record room.

6. The application of Natha Singh under Section 151 CPC read with Order 10 (2) CPC read with Section 340 Cr.P.C. was adjourned for arguments on maintainability. Arguments were heard on the application under Section 340 Cr.P.C. from both the parties when the learned ADJ directed the presence of Manphool Singh before the Court vide order dated 2nd May, 2013. The Petitioner filed an application under Section 151 CPC seeking recalling of the order dated 2nd May, 2013 in the light of the previous proceedings particularly, the statement of Manphool Singh under Order 10 CPC which was dismissed vide the impugned order dated 15th July, 2013.

7. Both the parties do not dispute the proceedings. The only issue urged by the learned counsel for the Petitioner is that once the statement of Manphool Singh was recorded under Order 10 CPC, the learned Trial Court had no jurisdiction to issue notice to Manphool Singh to appear in person again while deciding the application of Natha Singh under Section 340 Cr.P.C.

8. The scope of an application under Section 340 Cr.P.C. is in the nature of a preliminary inquiry by a Court to form an opinion whether it is expedient in the interest of justice that an inquiry should be conducted into any offence referred to in Clause (b) of Sub-Section (1) of Section 195 Cr.P.C. which appears to have been committed in or in relation to a proceeding in that Code or in relation to a document produced or given in evidence.

9. Section 340 Cr.P.C. provides as under:

“340. Procedure in cases mentioned in section 195.-

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195.

10. Thus before referring the complaint to the Magistrate for inquiry, the Court is required to conduct a preliminary inquiry for which it can summon person who is acquainted with the facts. Merely because the Court had earlier recorded the statement of Manphool Singh under Order 10 CPC, the same would not be a bar to the Court calling Manphool Singh for the purpose of a preliminary inquiry as envisaged under Section 340 Cr.P.C.

11. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 24, 2015/‘vn’