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

+ **CS(OS) 3645/2014 & I.As. 23766-23767/2014**

MOHIT KUMAR Plaintiff

Through: Plaintiff in person.

versus

VIMAL DHASMANA AND ANR Defendants

Through: Mr. Sanjeev Agarwal, Advocate with
Mr. Ekansh Agarwal, Advocate.

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Reserved on : 28th January, 2015
Date of Decision : 02nd February, 2015.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Mr. Sanjeev Agarwal, learned counsel entered appearance on behalf of the defendants. He stated that the plaintiff who appears in person, is in the habit of filing false and frivolous litigations just to delay the disposal of various proceedings pending at final stages in the District Courts.
2. Mr. Agarwal stated that the suit property namely, 704, Sarvpriya Apartment, Sarvpriya Vihar, New Delhi is registered in the name of Mr. H.H. Swami Rama, the founder President of a Registered Society Himalayan Institute Hospital Trust. He further stated that there is a registered Will dated 09th April, 1996 of late Mr. H.H. Swami Rana by which his entire estate had been bequeathed in favour of the Society, which is disputed by

the plaintiff, who claims ownership on the basis of intestate succession.

3. Mr. Agarwal pointed out that it is the case of the Society that the suit property remained with the Society as its administrative office even during the life time of H.H. Swami Rama and plaintiff illegally trespassed and took over its unlawful possession. The Society has filed a suit No. 231/2003 (New No.786/2014) for the declaration and recovery of possession against the plaintiff. The said suit is pending in the Court of Additional District Judge, Tis Hazari Courts, New Delhi, whereas the probate matters are pending in the High Court of Lucknow.

4. Mr. Agarwal contended that the present suit for permanent injunction was deliberately mentioned for urgent listing before a coordinate Bench of this Court so that the Court did not get enough opportunity to peruse the file. He stated that the plaintiff who is himself a lawyer, did not bring to the notice of this Court an earlier order dated 23rd February, 2012 passed by another learned Single Judge of this Court in CM(M) 717/2007 wherein the present defendants had undertaken that they would not dispossess the plaintiff from the suit property without due process of law.

5. Mr. Sanjeev Agarwal, learned counsel contended that the real intent behind the present suit was to create a false ground for transfer of suit No. 786/2014 pending in the Court of Additional District Judge, Tis Hazari Courts, Delhi, for recovery of possession filed against him by the defendants in order to delay its disposal.

6. Mr. Agarwal further stated that the plaintiff had perfected a 'strategy' of filing frivolous suits in this Court only to seek stay and transfer of suits pending final hearing before the District Courts. He further stated that the 'strategy' had been adversely commented upon by this Court in different

proceedings. For instance, he drew the attention of this Court to the order dated 21st March, 2014 in ***Tr.P.(C) 28/2012 and Tr.P.(C) 14/2013, Mohit Kumar vs. Himalayan Institute Hospital Trust*** wherein the Court has observed as under:-

“20. The petitioner has relied on the decision of this Court dated 31.08.2010 in CM(M) 930/2009 to contend that the petitioner was held to be not responsible for the delay in disposing of the revision petition as it was the society/respondent in TR.P.(C) 28/2012, which was responsible for the delay in the progress of the petition. The suits have remained pending for 10 years and 14 years respectively. The present transfer petitions have been filed clearly without any merit and with the clear intention of delaying the progress of the suits.....”

(emphasis supplied)

7. Since Mr. Agarwal, learned counsel for defendants repeatedly emphasised that the order dated 23rd February, 2012 had not been noted by this Court while granting ex parte injunction in the present proceedings, the order dated 28th November, 2014 granting ex parte order in the present case is reproduced hereinbelow:-

“ This matter is listed upon mentioning. Plaintiff appears in person and submits that the plaintiff, his mother and sisters are the lawful owners of the suit property being flat No.704, Sarvapriya Apartments, Sarvapriya Vihar, New Delhi. It is submitted that defendants no.1 and 2 are closely related to the plaintiff. Plaintiff submits that yesterday i.e. on 27.11.2014 at around 7:00 / 7:30 p.m., plaintiff was stopped near Hauz Khas Market and threatened by three persons acting on behalf of the defendants with dire consequences, including that he would be dispossessed and the plaintiff and his family members would be killed. In these circumstances, plaintiff also prays for grant of ex parte ad interim injunction.

Issue summons in the suit and notice in the application by all modes, including DASTI, returnable on 28.1.2015.

I have heard learned counsel for the plaintiff and also perused the plaint, application and the documents filed along with the plaint. I am satisfied that it is a fit case for grant of ex parte ad interim injunction and in case injunction is not granted, the plaintiff will suffer an irreparable loss. Accordingly, till the next date of hearing, defendants, their servants, agents or anyone acting on their behalf are restrained from dispossessing the plaintiff or causing any disturbance in their peaceful possession or in any way obstructing the ingress and egress of the plaintiff, his family members or anyone visiting the residence of the plaintiff. Order passed today will be brought to the notice of the concerned SHO, who will ensure strict compliance.

Provisions of Order 39 Rule 3 CPC be complied with, within 4 days.

DASTI under the signature of Court Master.”

8. On the other hand, the plaintiff who appeared in person, contended rather aggressively that the present suit is maintainable as the undertaking given by the defendant in CM(M) 717/2007 had lapsed on 07th March, 2012 with the withdrawal of the earlier suit filed by the plaintiff.

9. He further stated that the present suit was maintainable as it was based on a new cause of action. He contended that as and when he is threatened, he would be entitled to file fresh suit.

10. Plaintiff also stated that he had made a full disclosure in the plaint of the orders referred to by the defendants. In this connection, he had drawn this Court's attention to the plaint and the order sheets filed along with the plaint.

11. In rejoinder, Mr. Agarwal, learned counsel for defendants stated that the undertaking dated 23rd February 2012 in CM(M) 717/2007 is still valid.

To avoid any controversy, he undertook to this Court that the defendants would not dispossess the plaintiff without due process of law that means, till disposal of suit No.786/2014 pending in the Court of Additional District Judge, Tis Hazari Courts, Delhi.

12. Upon perusal of the paper book, this Court finds that the present suit is filed for the following reliefs:-

“(i) Pass a decree of permanent prohibitory injunction against the defendants, their successors, assigns, servants, agents, etc., thereby restraining the defendants from claiming the suit property in any manner whatsoever/disturbing the peaceful possession of the plaintiff over the suit property.

(ii) Pass a decree, thereby directing the defendants to pay jointly or, severally, the amount of Rs. Five Lacs, as damages to the plaintiff and further directing the defendants to pay the simple interest at the rate of 18% per annum on the said amount pendente lite and till it is paid/realized.

(iii) Award the costs of the suit to the plaintiff.

(iv) Pass any other order or direction(s) in favour of the Plaintiff as may be deem fit, just and proper and expedient in the facts and circumstances of the present case.

13. As far as the relief of permanent injunction is concerned, this Court is of the view that the same is infructuous and unnecessary in view of the defendants' undertaking recorded in the order dated 23rd February, 2012 in CM(M) 717/2007. The order dated 23rd February, 2012 is reproduced hereinbelow:-

“ Respondent has appeared in person; he has filed a suit for permanent injunction which is pending before the Trial Court. It has been agreed between the parties that the respondent/plaintiff will withdraw the said suit; the petitioner undertakes that the respondent/plaintiff will not be dispossessed

*from the disputed property without due process of law.
With these directions, petition is disposed of.”*

14. Even the plaintiff in pursuance to the order dated 23rd February, 2012, withdrew his earlier civil Suit No.128/11 on 07th March, 2012. The order dated 07th March, 2012 is reproduced hereinbelow:-

“ Plaintiff has stated that he wants to withdraw the present suit in view of the agreement which has taken place with the defendant. He informs the court in the matter before the Hon’ble High Court in CM(M) No.717/07 and CM No.19865/11, it was agreed between the parties that the plaintiff shall withdraw the suit and defendant have undertaken not to dispossess the plaintiff from suit property without due process of law. This settlement is recorded in the order dated 23.02.2012 of the Hon’ble High Court. The plaintiff has placed the copy of the said order on the record in his statement as Ex.C-1.

In terms of the settlement, the plaintiff now wants to withdraw the present suit. I am satisfied with the statement made by the plaintiff Sh Mohit Kumar in the court and have considered the order dated 23.02.2012 of the Hon’ble High Court. In view of the prayer made by the plaintiff, the suit stands dismissed as withdrawn in view of the settlement. File be consigned to Record Room.”

15. Admittedly, the defendants’ suit No.786/2014 for declaration and recovery of possession against the plaintiff is still pending before the trial Court. The plaintiff’s submission that the undertaking dated 23rd February, 2012 had lapsed with the withdrawal of Suit No.128/2011 (Old No. being CS 20/1999) is wrong and untenable in law. In the opinion of this Court, the undertaking given by the defendants on 23rd February, 2012 is still legal, valid, binding and would continue till the disposal of the suit No.786/2014.

16. This Court may mention that though it had stated in open Court that it would like to comment on the concept of a chronic litigant, but as pleadings are not complete, it refrains from doing so. This Court reluctantly wishes to place on record that at that stage the plaintiff 'sensing the way' this Court was going to decide the matter, made a bald allegation that this Court was biased against him. Though this Court was inclined to initiate contempt of Court proceedings against the plaintiff as being a lawyer he is supposed to be fully familiar with the Court's practice and procedure, yet keeping in view the fact that he is appearing in person and could be emotionally involved in the present case, has refrained from doing so.

17. Since the relief of permanent injunction cannot be granted once again in view of the valid and subsisting undertaking given by the defendants in CM(M) 717/2007 and the District Court has the pecuniary jurisdiction to grant the surviving relief of damages, present plaint is directed to be returned to the plaintiff under Order VII Rule 10 CPC for re-filing in the District Court.

18. However, it is directed that pendency of the present suit would not be a ground to adjourn or delay the suit for declaration and possession being Suit No.786/2014 filed by the defendants. With the foresaid findings and directions, pending applications stand disposed of and the interim order dated 28th November, 2014 stands vacated.

MANMOHAN, J

FEBRUARY 02, 2015

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