

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

% *Judgment Reserved on: October 12, 2015*
Judgment Delivered on: October 16, 2015

+ **CM(M) 894/2015**

LATA SHARMA Petitioner
Through: Mr.Sanjay Agnihotri, Advocate

versus

K.R.SAINI & ORS. Respondents
Through: Mr.Manuj Aggarwal, Adv.for R-1 & R-2

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI
PRATIBHA RANI, J.

1. The petitioner has invoked the power vested in this Court under Article 227 of the Constitution of India with a prayer to set aside the impugned order dated 25th July, 2015 whereby the prayer to summon the original title documents seized in case FIR No.544/2004, PS Sultan Puri has been rejected.
2. Learned counsel for the petitioner submitted that it is a case where the petitioner is a layman and her counsel failed to realize that without proving the title deed, the petitioner's case has to fail. Learned counsel for the petitioner has drawn the attention of this Court to the stage of defence evidence on 20.04.2015 when the original title deeds were summoned by the learned Trial

Court for the purpose of confronting the defence witness. Limited prayer made before this Court is that the photocopies of the title deeds in favour of the petitioner, who is plaintiff in Civil Suit No.46/15, may be allowed to be proved in accordance with the provisions of Indian Evidence Act by summoning the original documents.

3. Learned counsel for the petitioner has also submitted that at the stage when evidence by way of affidavit was filed by the petitioner/plaintiff, photocopies of the title deeds were exhibited as Ex.PW-1/1 to PW-1/4. But when the affidavit was tendered, since the original documents were not produced, these documents were marked as Mark A to D. Learned counsel for the petitioner does not dispute that ample opportunities have been given by learned trial Court to the petitioner at all relevant stages but still the needful could not be done though the witnesses were also summoned along with the original title documents. The petitioner has prayed for one opportunity to prove the title deeds, photocopy of which has already been placed on record and form part of evidence by way of affidavit.

4. Learned counsel for the respondent Nos.1 and 2 has vehemently argued that it is a very common practice to put the blame on the counsel for the lapses committed by the party. Learned counsel for the respondent Nos.1 and 2 has submitted that even the counsel arguing before the learned trial Court has been conducting this case and when these documents were summoned, there was specific direction by learned trial Court that the witnesses will be summoned only to produce the record to confront the defence witness and the said order has attained finality. Now it is an attempt by the petitioner to reopen the case.

The order passed by the learned trial Court earlier declining the prayer of the petitioner to summon the witnesses has attained finality. The witnesses were present with the record on 28th April, 2015 and 26th May, 2015 but defence witnesses were not further cross-examined thus giving any permission at this stage would have the effect of filling up the lacuna left in the case. Hence the petition may be dismissed.

5. I have considered the rival contentions.

6. The case of the petitioner is that she purchased the property bearing No. Block A-20 & 21, Katyani Vihar, Rajeev Nagar Extn., Begumpur, Delhi-41 on 16th October, 2003 covering area of 400 sq. yards at a consideration amount of ₹4,11,000/- from Sh.Om Prakash, defendant No.4. In November, 2003 defendant Nos. 1 and 2 constructed a wall dividing the said plot in two plots of 200 sq. yards which was objected by the petitioner/plaintiff claiming herself to be the owner of entire 400 sq. yards of the plot and purchased from defendant No.4, Sh.Om Prakash. Case FIR No. 544/2004, PS Sultan Puri was also registered in respect of said dispute and the original title documents were seized by the police.

7. The petitioner initially filed a suit for permanent and mandatory injunction in the year 2004. In January, 2005 the petitioner sought amendment to the plaint and by way of amendment, claimed the relief of recovery of possession. The petitioner claimed decree for recovery of possession in respect of 200 sq. yards of plot from the defendant Nos. 1 and 2.

8. The petitioner has claimed possession on the basis of title deeds. The petitioner also initiated criminal proceedings by getting FIR registered in

respect of the suit property and submitted the original title deeds to the investigating officer. On the mode of proof of title documents photocopy of which have been filed in the Civil Suit and original submitted to the investigating officer, the petitioner was required to depend on the advice of her counsel. Undisputedly the photocopies of the titled documents were available on record from the very beginning, referred to in the affidavit filed by the petitioner at the stage of plaintiff's evidence but for want of original documents at that stage, photocopies were marked as Mark A to D.

9. It is a case where the entire claim of the petitioner to seek possession in respect of the suit property has to depend on title deeds, original of which are not in her power and possession. Learned Trial Court permitted the petitioner to summon the record with the condition that the documents should be used only for the purpose of confronting the defence evidence.

10. The question that needs consideration is whether the petitioner can be permitted to prove a title document when the case is at the stage of final arguments and similar prayer has been either restricted or declined by the learned trial Court.

11. Since right from the inception the case of the petitioner is that she is claiming herself to be the owner of the plot No. Block A-20 & 21, Katyani Vihar, Rajeev Nagar Extn., Begumpur, Delhi-41 measuring 400 sq. yards for sale consideration of ₹4,11,000/-, she claims dispossession by the respondents from half of the plot. It was the duty of the counsel for the petitioner to summon the original title deeds from the IO or from the Criminal Courts in case the challan has been filed by that date. The needful was not done by the

counsel. The grounds on which the petitioner filed application under Order XVIII Rule 17 & 18 CPC are contained in para nos.3 to 8 of the application and can be summarized as under:

- i) In the evidence by way of affidavit filed by the plaintiff the documents were referred to as Ex. PW-1/1 to PW-1/4 but when it was filed the same were marked as Mark A to D.
- ii) There is clear averment in the affidavit of having purchased the suit property on 16th October, 2013 from Sh. Om Prakash Verma for a consideration of ₹4,11,000/-.
- iii) The original documents were lying with IO Inspector Balbir Singh but later on filed the same in the Court of learned ACMM, Rohini.
- iv) The previous counsel did not summon the original documents for the reasons best known to him and committed a mistake.
- v) In the interest of justice one opportunity may be provided to him to prove her case as plaintiff being a layman had no knowledge about the intricacies of the law and acted as per instructions of her counsel.

12. Before dealing with the contentions raised before this Court, it is necessary to refer to the decision of Apex Court in Rafiq v. Munshilal, (1981) 2 SCC 788, wherein the Supreme Court has observed that on account of inaction or default of the counsel, the innocent party should not suffer. The necessary observations by the Apex Court are extracted hereunder:

“The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then

trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is not part of his job.... Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted....”

13. In a suit for possession on the basis of title, the plaintiff is required to prove the title deeds. It is a case where the title deeds were seized in case FIR No.544/2004, PS Sultan Puri and were not in power and possession of the petitioner/plaintiff. Though while leading evidence by way of affidavit

photocopies were exhibited, the same were rightly de-exhibited when the affidavit was tendered for the reason that without producing the original documents, photocopies could not have been proved. Obviously, the petitioner/plaintiff had to depend on the advice given by her counsel on mode of proving the documents, which was lacking in this case.

14. I find it to be a case where to avoid gross injustice to the petitioner/plaintiff, who is litigating for her claim in respect of 200 sq.yds. of plot, it is necessary that in exercise of extraordinary jurisdiction vested in this Court one opportunity should be granted to the petitioner to prove her title deeds in accordance with the provisions of Indian Evidence Act.

15. Accordingly, the petition is allowed and one opportunity is granted to the petitioner to prove her title deeds in accordance with the provisions of Indian Evidence Act subject to the cost of ₹50,000/-. The cost shall be deposited with “DBA Library Fund” having account No.0613000101913355 with Punjab National Bank, Gokhle Market Branch, Delhi within a week from the date of this order and proof thereof shall be filed before the learned Trial Court.

16. Parties are directed to appear before the learned trial Court on 26th October, 2015 on which date learned trial Court shall fix a date granting reasonable time to the petitioner to summon the record to prove her title documents.

17. It is made clear that if petitioner fails to deposit the cost within the time stipulated and avail the opportunity granted, no further opportunity shall be granted to the petitioner for the aforesaid purpose. If Presiding Officer happens

to be on leave on the date fixed for above purpose, the matter shall be taken up on the next working day.

18. The petition stands disposed of in above terms.

A copy of the order be sent to learned Trial Court and be also given dasti to learned counsel for the parties under the signature of Court Master.

CM No.21030/2015

Dismissed as infructuous.

**(PRATIBHA RANI)
JUDGE**

OCTOBER 16, 2015
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