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

\+ CRL.M.C. 3784/2011

GURDEEP KAUR & ANR ..... Petitioners

Represented by: Mr. Vijay Kapoor, petitioner No.2 in person.

versus

STATE & ANR ..... Respondents

Represented by: Ms. Rajni Gupta, APP for the State.
Mr. Rajan Sabharwal, Advocate for respondent No. 2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% **03.11.2016**

<u>Crl. M.A. No. 17117/2016 (Exemption)</u>

Allowed, subject to all just exceptions.

<u>CRL.M.C. 3784/2011 and Crl. M.A. No. 17116/2016 (under Section 340 Cr.P.C for intiating criminal proceedings against respondent No.2.)</u>

1. By the present petition, the petitioners seeks quashing of FIR No. 33/2008 under Sections 406/471/468/120B/34 IPC registered at PS Daryaganj on the grounds that the complaint was filed after 4 years of the alleged transaction and the same has not been explained; respondent no. 2 suppressed the material fact that FIR No. 70/2007 was pending against him for trespassing; the ingredients of offence of cheating are missing and the respondent no. 2 has categorically admitted in the legal notice dated 28th October, 2005 that the petitioner No.1 is the owner of the disputed property

and he is the tenant under the petitioner no. 1.

2. The facts stated by respondent No.2 in the FIR are that the respondent No. 2 was the builder and owner of house No. 35/15, Third Floor, Old Rajender Nagar, New Delhi. He sold the aforesaid property to petitioner No.1 Smt. Gurdeep Kaur for a consideration of ₹2,50,000/-. The sale deed dated 18th November, 2004 was registered in the office of the sub-registrar. At the time of the registration of Sale Deed, a cheque bearing No. 84981 of ₹2,50,000/- drawn on Union Bank of India, Safdurjang Enclave was given by the petitioner No.1 to the respondent No. 2. However, the same was not handed over to the respondent No. 2 on the ground that she did not have sufficient funds and assured him to pay the sale consideration within one week. It was further pointed out in the FIR that the petitioner No. 2 obtained the signatures of the respondent No. 2 on two blank papers for exchange of possession and one of such blank paper was misused in preparing a fake receipt of sale consideration.

3. Respondent No. 2 served a legal notice dated 28th October, 2005 upon the petitioner No. 1 to accept rent for the month of October, 2005 and issue receipts and whereby it was admitted that the respondent No. 2 is the lawful tenant of the petitioner No.1.

4. The first allegation in the above-noted FIR is that the complainant/respondent No. 2 is the owner of the disputed property. To constitute the offences noted above, the first and the foremost requirement was to show the factum of ownership. Respondent No. 2, before alleging that there was a purported sale agreement and his signatures were obtained on blank papers, was required to show that he was the lawful owner of the disputed property. However, the respondent no. 2 has failed to show the

same by any documentary evidence.

5. A fact can be proved either by oral evidence or documentary evidence. Some facts can be proved either by oral evidence or documentary evidence. However, some facts can only be proved with the aid of documentary evidence. The factum of ownership of a property can be proved by documentary evidence only. Mere oral assertions that a person is an owner are not sufficient as some documentary evidence is necessary to show ownership in the property.

6. The Supreme Court in the decision reported as (2012) 5 SCC 370 _Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira_ while affirming the above view held that:

> *"66. A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.*
>
> *67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.*

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

(a) who is or are the owner or owners of the property;

(b) title of the property;

(c) who is in possession of the title documents;

(d) identity of the claimant or claimants to possession;

(e) the date of entry into possession;

(f) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;

> *(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;*
>
> *(h) If taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;*
>
> *(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;*
>
> *(j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and*
>
> *(k) basis of his claim that not to deliver possession but continue in possession.*
>
> *71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.*
>
> *72. The court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.*

7. Further in the decision reported as 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 <u>*State of Haryana v. Bhajan Lal,*</u> the Supreme Court noting cases wherein the inherent powers under Section 482 Cr.P.C. should be exercised held:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

> *103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.*

8. Respondent No. 2 in his examination under Order X of Code of Civil Procedure, 1908 admitted that the documents namely the receipt for sale consideration and possession letter contained his signature. Respondent No.2 also admitted having issued the two legal notices dated 28th October, 2015; 28th June, 2006, wherein he admitted himself to be the tenant of

petitioner No.1. Thus on the one hand respondent No.2 has produced no document during investigation to show that he was the owner of the property in question and on the other hand there is an admission of the respondent No.2 that he was a tenant of the petitioner No.1. The allegation of the respondent No.2 that he was made to sign on a blank paper and a fake receipt was prepared thereon is belied by his own subsequent admission in the notices that he was a tenant of the petitioner No.1. Thus the necessary ingredients of the offences aforesaid having not been substantiated, continuation of the above-noted FIR and the proceedings thereon are an abuse of the process of Court.

9. Consequently FIR No. 33/2008 under Sections 406/471/468/120B/34 IPC registered at PS Darya Ganj, Delhi and all the proceedings pursuant thereto are hereby quashed.

10. Petition and application are disposed.

MUKTA GUPTA, J.

NOVEMBER 03, 2016
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