

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

% *Judgment Reserved on : February 02, 2016*
Judgment Delivered on : February 04, 2016

+ **FAO(OS) 77/2015**

NARENDER KUMAR AGARWAL & ORS Appellants
Represented by: Mr.Shesh Datt Sharma, Advocate

versus

PARDEEP GUPTA & ORS Respondents
Represented by: Mr.B.S.Mathur, Advocate with
Mr.Rajat Mathur, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The five sons of late Radhey Lal Gupta : (i) Narender Kumar Agrawal, (ii) Ravi Kumar, (iii) Amrish Kumar, (iv) Mahesh Kumar Gupta and (v) Sushil Gupta joined as co-plaintiffs and filed a suit for declaration, partition and rendition of accounts. Pradeep Gupta and Hari Gupta, sons of Vishnu Kumar Gupta were impleaded as defendants No.1 and 2. Vishnu Kumar Gupta and Suresh Kumar Gupta, sons of Radhey Lal Gupta were impleaded as defendants No.3 and 4. Laxmi Devi, Brijbala and Usha Rani, daughters of Radhey Lal Gupta were impleaded as defendants No.5 to 7. Plaintiff No.5 : Sushil Gupta instituted the plaint and he signed and verified the pleadings claiming that he had been authorized by his other four brothers to represent them.

2. It is apparent that the siblings, being the sons and daughters of

Radhey Lal Gupta were litigating. Pradeep Gupta and Hari Gupta had been impleaded because they are the sons of Vishnu Kumar S/o Radhey Lal.

3. As per the plaint, the joint family came into being from the era of late Shri Anant Ram, father of late Shri Radhey Lal Gupta. As per the plaint the estate of the HUF comprised a property 188, Katra Bariyan, Fatehpuri, Delhi wherefrom transport business under the name M/s.Anant Ram Radhey Lal was conducted. It was pleaded that on December 03, 2001, a family settlement had been arrived at as per which 71% of the space in the building at Fatehpuri was allotted to the plaintiffs. In the plaint a right to property No.AG-63, Sanjay Gandhi Transport Nagar, New Delhi was made on the pleading that the same had been allotted in the names of seven sons of Radhey Lal, out of which five were the plaintiffs.

4. Defendant No.1 : Pradeep Gupta son of Vishnu Kumar Gupta filed a written statement pleading that the suit property had been taken on rent by Anant Ram and on his death Radhey Lal inherited the tenancy. In the year 1970 Radhey Lal surrendered the tenancy in favour of defendant No.1 and since then he had been paying rent of the property to the landlord. On October 29, 2001 he purchased the property, in which the seller had made a reference to the fact that as landlord he had accepted him as the tenant and now as the purchaser of the property. He pleaded that the firm Anant Ram Radhey Lal was his sole proprietary firm.

5. The suit meandered. Filed in the year 2001, even issues were not settled. Applications after applications were filed and hearing was deferred for one reason or the other till when IA No.10515/2006 (wrongly mentioned as IA No.10575/2006 in the order dated September 19, 2006) was filed under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure.

6. The application bears the signatures of Shri Sushil Kumar as also those of Pradeep Gupta - defendant No.1. Sharad Kumar Agrawal and Sangeeta Grover have also signed the application as counsels for the plaintiffs. One Sanjeev Srivastava has signed the application as the counsel for defendant No.1.

7. A compromise therein is recorded as per which the five plaintiffs were to receive ₹1 lakh, ₹50 thousand, ₹1.50 lakhs, ₹2 lakhs and ₹2 lakhs to give up their right in the property at Fatehpuri as also Sanjay Gandhi Transport Nagar simultaneously recognizing defendant No.1 to be the full owner thereof. Affidavit in support of the application was deposed to by Sushil Kumar.

8. Listed before the Court on September 19, 2006, the application was accepted and in terms thereof the suit was disposed of. We only wish that the learned Single Judge had required the presence of the parties. One Atul Kumar Gupta appeared in the Court claiming to be the special attorney constituted by plaintiff No.5. He took the bank drafts in the names of the plaintiffs.

9. It so transpired that Atul Kumar Gupta, who took the bank drafts, is an advocate and is the son of Mahesh Kumar Gupta : plaintiff No.4. He was an associate advocate of Sharad Kumar Agrawal.

10. Sushil Gupta, the person who was authorized by the other four plaintiffs to represent them, thereafter filed IA No.507/2007 pointing out that he had never executed any special power of attorney dated June 16, 2006 in favour of Atul Kumar Gupta, on the strength of which Atul Kumar Gupta represented the plaintiffs at the compromise and received the bank drafts. He pleaded that Atul Kumar Gupta was an associate of Sharad

Kumar Agrawal. He pleaded that he was the son of his brother Mahesh Gupta. He pleaded that a fraud had been perpetuated. He denied his signatures on IA No.10515/2006.

11. Taking cognizance of the application, notice was issued and thereupon commenced a journey of investigation. On January 24, 2007 the Court directed Economic Offences Wing of Delhi Police to conduct an investigation and submit a report. The compromise application, the affidavit in support thereof, the power of attorney relied upon by Atul Kumar Gupta as being executed in his favour by Sushil Kumar were directed to be handed over to the Investigating Officer.

12. Rather than await the report by the Investigating Officer, the counsel for the plaintiffs thought that he could milk the plaintiff. He filed a spate of applications; all gibberish, pleading nonsense and the result was the proceedings getting unnecessarily delayed. The applications filed would be:

IA No.1947/2007	U/Section 151 CPC
IA No.1948/2007	U/Section 151 CPC
IA No.12486/2007	U/Section 151 CPC
IA No.12769/2007	U/Section 151 CPC
IA No.1394/2009	U/Section 151 CPC
IA No.5131/2009	U/Section 151 CPC
IA No.7064/2009	U/Section 151 CPC
IA No.10139/2010	U/Section 151 CPC
IA No.17498/2010	U/Section 151 CPC
O.A.No.32/2011	Chapter 2 Rule 4 DHC Rules
IA No.4252/2011	U/Section 151 CPC
IA No.4253/2011	U/Section 151 CPC
IA No.12440/2011	U/Section 151 CPC
IA No.13723/2006	U/Section 195/340 Cr.PC
CrI.M.A.No.3924/2007	U/Section 340 Cr.PC
IA No.3987/2007	U/Section 151 CPC

IA No...../2005	U/Section 151 CPC
IA No.3705/2012	U/Order 46 Rule 12 r/w Section 151 CPC
IA No.14293/2012	U/Section 151 CPC
IA No.920/2013	U/Section 151 CPC
IA No.9998/2014	U/Order 22 Rule 2 CPC
IA No.9999/2014	U/Section 151 CPC
IA No.12563/2014	U/Order 1 Rule 10(2) CPC
IA No.12564/2014	U/Section 151 CPC
IA No.13113/2014	U/Order 22 Rule 2 CPC
IA No.21995/2014	U/Section 151 CPC

13. We are highlighting said fact to bring to notice a very disturbing trend which this Court is seeing. Some counsels have taken upon themselves the duty to choke the courts and milk their clients. They simply file applications out of the hat unconcerned with the nature of dispute. This has happened in the instant case.

14. Reverting to the facts, a report was submitted by the Investigating Officer, and concerning the signatures on IA No.10515/2006, affidavit in support of the application, terms and conditions of the settlement and a special power of attorney executed by Sushil Kumar in favour of Atul Gupta, the report of the Directorate of Forensic Science, Chandigarh dated August 16, 2007 gave an opinion that the signatures were those of Sushil Kumar. But it surfaced that Sharad Kumar Agrawal and Atul Kumar Gupta opened fictitious accounts in the name of the plaintiffs and siphoned away the money.

15. This necessitated the recording of evidence for the reason after all what the Court got from the Investigating Officer was the report of investigation and material gathered. Sharad Agrawal Advocate, Atul Kumar Gupta Advocate etc. had to be examined. The bank officials in which

accounts were opened and cheques deposited had to be examined. It surfaced that the bank draft in the name of Sushil Gupta was deposited in Saving Account No.11505 with Mahamedha Urban Cooperative Bank Ltd., Ghaziabad, the bank draft in the name of Ravi Kumar was deposited in SB Account No.50504 with UCO Bank, Delhi High Court, the draft in the name of Narender Gupta was deposited in Account No.628601517137 ICICI Bank, Raj Nagar, Ghaziabad and in the name of Amrish Kumar in Account No.508010084552 Vysya Bank, Navyug Market, Ghaziabad and a bank draft in sum of ₹3 lakhs was admittedly deposited in SB Account No.39802 in the joint names of Atul Gupta and Sharad K.Agrawal with UCO Bank, Delhi High Court. The managers of said bank were summoned the record for their statements to be recorded. But unfortunately the directions issued for their statements to be recorded were not taken to the logical conclusion and the record of the suit would show that the statements of the managers of aforementioned banks were not recorded.

16. Proceedings lingered on and on and on. To a large extent counsel for the plaintiffs was responsible who repeatedly bombarded the court with applications.

17. On September 22, 2011 it was directed that the matter would be taken up in the category of 'Final Hearing Matters' when all applications would be decided.

18. On November 29, 2011, listed in the category of 'Final Hearing Matters', the matter was called up. Learned Single Judge noted that in view of the material before the Court some clarification was required from the Manager of Mahamedha Urban Co-operative Bank for the reason recorded in the said order. The matter remained in the list of 'Final Hearing Matters'

but unfortunately could not be taken up for hearing. It reached for hearing on January 08, 2013 but on account of nobody appearing for the plaintiff and counsel for defendant No.1 being not available it was directed that the matter should remain on board.

19. On January 10, 2013 in the absence of representation from the side of the plaintiff IA No.507/2007 was dismissed in default.

20. IA No.920/2013 was thereafter filed praying that IA No.507/2007 be recalled. Said application has been dismissed by the learned Single Judge vide impugned order dated November 13, 2014. Learned Single Judge has noted that the application was signed by one Shivam claiming to be a *Parokar* of the plaintiffs and son of plaintiff No.5. Learned Single Judge noted that no power of attorney had been executed by any of the plaintiffs in favour of Shivam. Noting that affidavits of Narender Kumar plaintiff No.1 and Sushil plaintiff No.5 were filed in support of the application seeking restoration of IA No.507/2007 the learned Single Judge has ignored them on the reason that they were filed after an objection was taken by the defendant No.1 concerning Shivam having filed IA No.920/2013 for restoration of IA No.507/2007. Accordingly, learned Single Judge has held that he did not find any sufficient cause to restore IA No.920/2013.

21. Now, concerning Shivam being the signatory to IA No.920/2013, relevant would it be to note that it was filed around the time when Sushil Kumar was unwell and we note that Sushil Kumar died on April 04, 2013. Shivam was thereafter sought to be got impleaded when he filed IA No.998/2014 under Order 22 Rule 3 of the Code of Civil Procedure regrettably, no orders have been passed till date in the said application and we find that on November 13, 2014, IA No.920/2013 which prayed for

restoration of IA No.507/2007 was dismissed for the reasons recorded in the order.

22. Since we are setting aside the impugned order and restoring IA No.507/2007, we do not wish to comment upon the evidence recorded till date but would highlight that in terms of the orders passed in the suit the Managers of Mahamedha Urban Cooperative Bank Ltd., Ghaziabad, UCO Bank, Delhi High Court, ICICI Bank, Raj Nagar, Ghaziabad and Vysya Bank, Navyug Market, Ghaziabad had yet to be examined.

23. Nobody disputing Sushil Kumar having died, if Shivam was brought on record the defect in Shivam being the signatory to IA No.920/2013 could have been rectified. It is trite that ministerial acts are capable of being rectified.

24. If what is pleaded in IA No.507/2007 is established, it would be certainly a lamentable miscarriage of justice if the case is allowed to rest as has been allowed to be done by the learned Single Judge.

25. It is not a simple matter between two litigating parties with the Court having no concern in the matter beyond the duty of exercising its judicial function to decide a lis between two parties. In the peculiar facts of this case we find that over and above the duty of exercising its judicial functions there is involved in the instant case a principle of supreme importance, which the learned Single Judge has disregarded.

26. It is incumbent on the Court to be scrupulous in the extreme and very serious to see that no taint or touch of fraud or deception or misrepresentation is found in the conduct of its ministers; and lawyers have always been treated as officers of the Court. A Court has a duty to ensure that proceedings before it do not fall below the standard of honesty and the

slightest suspicion of trickery affects the honour of the Court and impairs its usefulness. It would be disastrous, it would be absolutely shocking, if the Court were to enforce a fraudulent compromise.

27. We therefore dispose of the appeal setting aside the impugned order dated November 13, 2014. IA No.920/2013 is allowed. Order dated November 10, 2013 dismissing IA No.507/2007 is set aside. Said application is restored for adjudication on merits. As noted above large number of applications including substitution of the legal heir of Sushil Kumar are pending and no orders qua them dismissing the same have been passed. All pending applications would be decided by the learned Single Judge.

28. As regards IA No.507/2007, as we have noted above pursuant to orders passed Managers of Mahamedha Urban Cooperative Bank Ltd., Ghaziabad, UCO Bank, Delhi High Court, ICICI Bank, Raj Nagar, Ghaziabad and Vysya Bank, Navyug Market, Ghaziabad require to be examined, for which the learned Single Judge would pass appropriate orders.

29. The Registry would list the pending applications in the suit for directions before the learned Single Judge on February 08, 2016 who shall pass the necessary order in the suit for its onward march.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 04, 2016/rk