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

+ W.P.(CRL) 143/2015

RAJ KUMAR SHARMA

..... Petitioner

Through: Mr.Dhanesh Relan, Advocate with Ms.Kajri
Gupta, Advocate

versus

RAJ DULARI & ANR

..... Respondents

Through: Mr.A.K.Sharma, Advocate with
Mr.S.K.Dureja, Advocate for R-1
Mr.Sanjay Lao, ASC with ASI Ram Roop,
PS Subhash Place

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **26.10.2017**

Crl.M.A.No.17490/2017

The learned counsel for GNCTD accepts notice and states that he has no objection to the impleadment.

The impleadment is allowed.

The application is disposed off.

W.P.(Crl.) No.143/2015

1. Heard the learned counsel for the parties.
2. In this writ petition, the petitioner seeks quashing of FIR No. 16/2015 registered at PS Subhash Place, North West District, New Delhi, under Sections 465/471, IPC. It is the petitioner's case that the FIR is a wilful

concoction conceived to harass the petitioner, who was engaged in a previous round of litigation with the complainant. The petitioner herein claims to be the owner of the property bearing No. 61, now No. 536, Siri Nagar Colony, Shakur Basti, Delhi -110034, admeasuring 200 sq. yards, in which Smt. Raj Dulari resides as an unauthorized and illegal occupant. He had sought her eviction through Suit No.148/11/04, in which the receipt issued by the respondent No. 1 of having received a copy of the sale deed executed in favour of the petitioner was annexed.

3. The petitioner claims that soon after the purchase of the suit property, he had brought the above fact to the notice of the respondent by supplying her a copy of the sale-deed dated 21.05.1998 and she was to pay the rent to the petitioner with effect from 25.5.1998. However, Smt. Raj Dulari denied having received any such document and had replied in her written statement as under:-

“3. That the present suit is also not maintainable in the eyes of law as the plaintiff has no locus standi to file the present suit against the defendant. The plaintiff has no stand to file the present suit as he has no concern whatsoever with the property in question. Hence, the present suit is liable to be dismissed on this ground alone.

4. That the plaintiff has dragged the defendant in vexatious litigation and the allegations made in the plaint are false to his own fabricated knowledge, therefore, the defendant is entitled to the compensatory cost under Section 35 A Code of Civil Procedure.

5. That the present suit of the plaintiff is also not maintainable in the eyes of law as no document has been supplied to the defendant by the plaintiff and the defendant reserves her right to amend her written statement as and when

the same is supplied to him.

6. *That the present suit, being false, frivolous, vexatious, vague, misconceived, is also not maintainable in the eyes of law under the provisions of Section 41(h) of the Specific Relief Act, hence the same is liable to be dismissed outrightly as the plaintiff is neither the owner nor the landlord of the suit premises. As such the question of any relief of injunction does not arise at all. Hence, the present suit is liable to be dismissed with costs on this sole ground alone.*

7. *That the suit of the plaintiff is also not maintainable as the suit is bad in the eyes of law for misjoinder and non joinder of the parties. It is submitted the plaintiff has unnecessarily dragged the defendant into a false litigation and deliberately not impleaded the necessary party.*

8. *That the suit of the plaintiff is also not maintainable in the eyes of the law as this Hon'ble Court has got no jurisdiction to try, entertain and decide the present suit. Hence, the same is liable to be dismissed but rightly.*

9. *That the suit of the plaintiff is also not maintainable in the eyes of law as the plaintiff has not paid the advalorem court fee on the plaint. Hence, the present suit is liable to be dismissed on this ground alone.*

10. *That the plaintiff is also not entitled for the discretionary relief of injunction as prayed for by him in the present suit. The plaintiff must approach this Hon'ble Court with clean hands. In fact, the plaintiff has tried to misconceive this Hon'ble Court by stating incorrect and wrong averments. The present suit as such is liable to be dismissed and the plaintiff is guilty of "suppressio-veri-suggestio falsi" as the true and material facts are stated herein under as:-*

(i) *That the defendant is neither the tenant of the plaintiff nor she ever executed any rent note in favour of anybody at any*

point of time.

(ii) The plaintiff has failed to disclose the fact as to whom he purchased the property in question. The plaintiff neither brought every brought any fact into the knowledge of the defendant nor supplied any copy of any document as alleged.

(iii) That the plaintiff is under no obligation to raise any claim for any account what to say of a rent since alleged period. In the absence of proper relationship or owner/landlord and tenant, there arises no question of paying any amount to the plaintiff by the defendant.

(iv) The plaintiff has no right or status to claim any amount from the defendant. Since there exists no relationship that or owner/landlord and tenant between the plaintiff and defendant, hence, there arises no question of paying any amount to the defendant being in arrears of rent as alleged.

(v) That the plaintiff is no one to deal with the affairs of the property in question. The plaintiff is under no obligation to take possession or terminate the tenancy in the absence of relationship that of owner/landlord and tenant between the plaintiff and defendant.

4. The petitioner had tendered in his evidence a letter dated 17.01.2005 marked as Annexure P-7 herein. He was cross-examined particularly with respect to the aforesaid document/receipt, annexed in the present petition at page 126, which reads as under:-

“It is incorrect that there is no relationship of landlord and tenant between the parties. Vol. At the time of purchase of suit property I had supplied a copy of the sale deed to the defendant against receipt. I have seen the defendant writing and signing and can identify her handwriting/signature. It is incorrect that the defendant had never accepted me as a landlord either

verbally or in writing. I have brought the original of Ex. PW 1/1 (Original seen and returned). The document is in the hand of the defendant. It is also signed by her. It is incorrect that the document is neither in the hand of the defendant nor has been signed by her. It is incorrect that document Ex. PW 1/1 has been forged. It is incorrect that I had received notice Mark-X from the defendant in reply to my notice. It is correct that the notice has been issued at my correct address vide Mark-X1 and Mark-X2. It is incorrect to suggest that I had received notice Mark-X vide a Mark-X1 and Mark-X2. It is incorrect to suggest that the defendant had not paid rent to me."

5. The learned counsel for the petitioner argues that the existence and veracity of the document were tested through cross-examination and that Smt. Raj Dulari was aware of the existence of the said document. Therefore, for her to now contend that the document was brought to her notice only in 2013 is a deliberate falsehood, and there is no basis for the registration of the FIR in question.

6. The FIR refers to the document, purported to be forged and fabricated, bearing the writing as under:-

"MANE SH. RAJ KUMAR SHARMA PUTAR SWARGIYA
SH. BOTH RAJ SHARMA NIWASI MAKAN NO-13A,
RAMGARH COLONY BASAI DARA PUR, DELHI SE SALE
DEED KI EK PRATI PRAPT KI TAKI SANAD RAYE"

6.1 This aforesaid statement is extracted from the receipt issued by the respondent No. 1 of having received a copy of the Sale Deed executed in favour of the petitioner, which was filed along with the suit instituted in 2004.

7. The complainant however states that it was only during the proceedings in the Civil Suit bearing No. 1028/2013, titled as Raj Kumar

Sharma vs. Raj Dulari, did she come across this document for the first time. It is noted that the aforesaid contention of the respondent is wholly untrue because the said receipt refers to a document which had formed part of an earlier proceeding wherein she had responded to the said document in detail. It is another matter that the said suit was withdrawn and a fresh suit was filed; nevertheless the subsequent suit, as aforesaid, also relied upon the same document which forms the basis of the aforesaid complaint.

8. Mr. Sanjay Lao, the Additional Standing Counsel (Crl.) for the GNCTD, states that on the basis of the FIR, the documents were sent for forensic examination and he has handed over the Status Report signed by Insp. Sanjiv Kumar. The report furnished by the FSL Laboratory states that the signatures of the complainant on the said document has been opined as scanned/photocopied i.e. the documents, which form the basis of the complainant and her claim of ownership to the suit property, have been found to be scanned. The Status Report reads as under:-

“In continuous of previous status report dated 16/08/2016, it is submitted that handwriting report of the instrument allegedly bearing forged and fabricated writing of the complainant which was filed by the alleged Rajkumar in a recovery suit has been received from FSL Rohini, Delhi according to which said instrument/document bears the handwriting of complainant marked S-5 to S-8 but the signature of the complainant on the said instrument has been opined as scanned/photocopy in nature. The handwriting report so received contradicts the version of the complainant as part of the document bear her writings. The further investigation of this case is in progress”.

9. While the Status Report is only an indicator as to the veracity of the documents relied upon by the complainant, nevertheless the registration of the FIR by the respondent after 11 years of the documents being brought to

her notice is clearly an afterthought and an abuse of the process of the law. In view of the aforesaid discussion, it is evident that Raj Dulari was aware of the existence of the said documents, and that being so she could have pursued the matter in her civil suit since the case is in the nature of a civil dispute. There is no occasion for her to file a complaint instituting criminal proceedings against the petitioner now. No case is made out for registration of the FIR when the complainant evidently knew about the documents she now doubts and on which she had full opportunity to cross-examine the petitioner over a decade ago, in his earlier suit. Initiation of criminal process in these circumstances is not warranted. For the aforesaid reasons, the FIR is quashed.

10. The petition is allowed in the above terms.

NAJMI WAZIRI, J.

OCTOBER 26, 2017

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