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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 984/2013 & CM No.14966/2013 (for stay)

MANJU UPPAL

..... Petitioner

Through: Mr. Gaurav Mitra, Mr. Dhruv Kapur,
Ms. Deepali Dwivedi & Ms.
Rashmita, Advs.

Versus

RAM LAL BANSIWAL & ORS

..... Respondents

Through: Mr. Ramesh Kumar, Adv. for R-1.
Mr. Rajat Aneja, Ms. Vandna Aneja &
Ms. Chandrika Gupta, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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31.08.2017

1. On 13th July, 2017 when this petition came up, the following order was passed:

“1. This petition under Article 227 of the Constitution of India impugns the order [dated 5th June, 2013 of the Court of Additional District Judge (Central), Tis Hazari Courts, Delhi in Civil Suit No.104/11 (Unique ID No.02401C0402752003)] dismissing the application of the petitioner / defendant under Order VIII Rule 1A of the Code of Civil Procedure, 1908 (CPC) for taking on record additional documents.

2. Vide interim order / arrangement in this petition, there is a stay of proceedings in the suit from which this petition arises and it appears that the hearing of final arguments in the suit is not taking place owing to the pendency of the present petition for the last nearly four years.

3. The counsel for the petitioner / defendant has been heard. He has argued (i) that the respondent no.1 Ram Lal Bansiwal has instituted a suit for specific performance of an Agreement of Sale of immoveable property impleading respondent no.2 Mohan Lal Bansiwal as Agreement Seller and respondent no.3 Asha Nanda and one Neetu Nanda as subsequent purchasers of the ground floor and first floor of the property; (ii) that it is *inter alia* the case of the respondent no.1 / plaintiff that the sale by the respondent no.2 Mohan Lal Bansiwal in favour of respondent no.3 Asha Nanda and the said Neetu Nanda is *sham* and fictitious, only to avoid the specific performance claimed by the respondent no.1 / plaintiff; (iii) it is the case of the respondent no.1 / plaintiff that though the consideration of the Agreement to Sell by the respondent no.2 Mohan Lal Bansiwal in favour of the respondent no.1 / plaintiff was Rs.12,00,000/-, the sale in favour of the respondent no.3 Asha Nanda and Neetu Nanda is Rs.3,00,000/- in aggregate; (iv) that the petitioner / defendant has since acquired the first floor from Neetu Nanda and has been substituted in place of Neetu Nanda; and, (v) that it is the case of the petitioner / defendant that respondent no.3 Asha Nanda and Neetu Nanda though had paid only a sum of Rs.3,00,000/- to the respondent no.2 Mohan Lal Bansiwal as purchase consideration but had also paid Rs.11,51,000/- to the tenant in occupation of the entire property as consideration for the tenant vacating the premises and the documents which were sought to be brought on record were the documents to show such payment of Rs.11,51,000/- to the tenant for consideration.

4. I have enquired from the counsel for the petitioner / defendant, whether the aforesaid aspect is in issue. Evidence can be permitted to be led only on the issues pressed and framed and not in vacuum, even if there is a plea to the said effect; that is the whole purpose of framing of issues i.e. to guide the trial.
 5. The counsel for the petitioner / defendant states that he has not seen the issues and has not filed copies of the issues before this Court.
 6. It is unfortunate that the petition is filed without material documents and the interim stay of proceedings before the Trial Court has continued therein.
 7. The counsel for the petitioner / defendant seeks adjournment.
 8. Subject to deposit of costs by the petitioner/defendant with the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi of Rs.20,000/-, opportunity is given to the petitioner / defendant to produce before this Court not only the issues but also all other record of the suit which may be required by this Court for deciding the petition.
 9. List on 31st August, 2017.”
2. The counsel for the petitioner has filed copy of order dated 7th April, 2006 in the suit whereby the following issues were framed:
- “(1) Whether plaintiff failed to comply with the terms & conditions of the agreement dated 09/12/2002? OPD1.
 - (2) Whether plaintiff is entitled to the Decree of Declaration as claimed? OPP
 - (3) Relief.”

The counsels on enquiry state that the aforesaid issues stand and have not been amended or modified.

3. I have enquired from the counsel for the petitioner as to how in the aforesaid issues, it can be said that there is an issue qua the erstwhile defendant no.2 Asha Nanda and defendant no.3 Neetu Nanda being *bona fide* purchasers for value within the meaning of Section 19 of the Specific Relief Act, 1963.

4. The counsel for the petitioner has drawn attention to para no.16 of the plaint filed by the respondent no.1 / plaintiff wherein the respondent no.1 / plaintiff has pleaded as under:

“16. These two sale deeds on the face of it are illegal and void ab-initio. The stamp papers for these sale deeds have been purchased on 2.4.2003, the sale deed has been drafted on 3.04.2003 and its registration has taken place on 16.4.2003. Plaintiff had already sent a notice dated 5.4.2003 to defendant no.1 by registered post as well as UPC and the same had been received by the defendant no.1 on 9.4.2003 and as such defendant no.1 ought to have refrained himself from presenting the sale deeds for registration before the office of Sub-Registrar on 16.4.2003.

The conduct of the defendants show that negotiations between defendant no.1 and other defendants must have started prior to 31.3.2003 which was the cut-off date mentioned in the agreement dated 9.12.2002 for execution of sale deed in favour of plaintiff by defendant no.1. It makes clear that defendant no.1 never had the intention to honour the agreement dated 9.12.2002 at any time upto 31.03.03.

The sale deeds are sham and bogus documents in as much as the same have been executed to defeat the rights of the plaintiff under the agreement dated 9.12.2002. These sale deeds were never made public nor the physical possession was delivered by defendant no.1 to the other defendants until February 2004. On 21.11.2003, plaintiff had filed this suit, notice of which was issued for 28.11.2003 and thereafter for 2.12.2003. Defendants no.2&3 having come to know of this suit, applied for mutation in the office of MCD on or after 5.12.2003. From April, 2003 upto December 2003, no action was taken by defendants No.2&3 to make these sale deeds public. It was not done for the obvious reasons that defendant no.1 had given a word to the plaintiff that he would execute the sale deed in favour of the plaintiff on or before 31.10.2003. No action was taken even thereafter also by the defendants no.2&3 as they were observing the reaction of the plaintiff upon non-execution of the sale deed in his favour by defendant no.1.

The plaintiff had agreed to purchase the entire suit property for a sum of Rs.12 lacs, whereas the defendants no.2&3 together have purchased the same for Rs.3 lacs. It is obviously a cheating on the corpus of Public Ex-chequer and a deliberate attempt has been made by the defendants to evade stamp duty. It is a criminal offence and for prosecution of the defendants, separate action is being initiated by the plaintiff.

However, it confirm that the two sale deeds have been executed just for the name sake and in the name of bogus purchasers posing them as defendants No.2&3. In the garb of sale deeds, the only intention is to somehow ensure the defeat of the rights of the plaintiff under the agreement dated 9.12.2002.

Had this not been the case, then defendant No.1 would have sold the suit property for Rs.12 lacs instead of Rs.3 lacs even if there was some delay taking place in the completion of the agreement dated 9.12.2002 & the defendant No.1 was already apprised of the intention of the plaintiff to purchase the property through the notice dated 5.04.03.

The defendants have tried to justify the nominal consideration mentioned in the sale deeds by making allegations in the sale deed that the property under sale is in occupation of an unauthorised person. It was not true because the said property was in possession of the tenant as was mentioned in the agreement dated 9.12.2002. The plaintiff had agreed to purchase the suit property with the sitting tenant for Rs.12 lacs. Defendant no.1 having agreed to accept Rs.3 lacs as the sale consideration for the same portion is obviously making a frivolous attempt to justify the sale of suit property to defendants no.2&3.

Shri Mahender Nanda is the husband of defendant no.2 and father-in-law of defendant no.3. He is also a tenant under the plaintiff in respect of the other properties of the plaintiff. Shri Haqiqat Rai Nanda, brother of Shri Mahender Nanda is also a tenant under the plaintiff. Various litigations are pending since long between the plaintiff and these two brothers. It appears that these two brothers got the smell of the agreement dated 9.12.2002 and out of vengeance have thereafter colluded with defendant no.1 to defeat the rights of plaintiff under the said agreement. Consequently, the result has been the execution of two frivolous sale deeds in favour of defendants No.2&3.

Viewing the matter from any angle, these sale deeds are absolutely illegal, unjust and void ab-initio and can not confer any right, title or interest upon the defendants No.2&3. These sale deeds are accordingly liable to be cancelled and intimation thereof be sent to the concerned Sub-Registrar for rectification of their records.”

It is contended that the issue no.(2) aforesaid has been framed on the aforesaid plea in the plaint and which encompasses a plea of the defendant no.2 Asha Nanda and erstwhile defendant no.3 Neetu Nanda not being *bona fide* purchasers for value.

5. I have further enquired from the counsel for the petitioner, as to what difference does the payment claimed by petitioner/defendant to have been made by respondent no.3 / defendant no.2 Asha Nanda and erstwhile defendant no.3 Neetu Nanda to the tenant in the property makes inasmuch as the same would not be a part of purchase consideration. In this context, it has also been enquired, whether the Agreement to Sell of which specific performance is claimed by the respondent no.1 / plaintiff also required the respondent no.2/defendant no.1 to deliver vacant possession of the premises.

6. Though the Agreement to Sell of which specific performance is claimed is not on record but the counsel for the respondent no.1/plaintiff has drawn attention to para no.5 of the plaint as under:

“5. Since the said property was in possession of the tenant therefore, only the symbolic possession of the same was agreed to be delivered to the plaintiff.”

and to *para no.16* of the plaint already reproduced hereinabove containing a plea that the agreement of the respondent no.1 / plaintiff was for purchase with the tenant in possession.

7. It thus appears that the purchase consideration by respondent no.3 / defendant no.2 Asha Nanda and erstwhile defendant no.3 Neetu Nanda would remain Rs.3 lacs only and the payment if any made by respondent no.3/ defendant no.2 Asha Nanda and erstwhile defendant no.3 Neetu Nanda to the tenant for vacating the property cannot be said to be the purchase consideration receivable by the respondent no.2 / defendant no.1.

8. However a perusal of the written statement filed by respondent no.3 / defendant no.2 Asha Nanda and erstwhile defendant no.3 Neetu Nanda and by which written statement the petitioner is also bound shows the said respondent no.3 / defendant no.2 Asha Nanda and erstwhile defendant no.3 Neetu Nanda to have in response to para 16 of the plaint pleaded payment to the tenant without however specifying any amount.

9. The counsel for the petitioner / defendant has then argued that in fact the counsel for the respondent no.1 / plaintiff has already cross-examined Avtar Singh, witness of the respondent no.3/defendant no.2 Asha Nanda and erstwhile defendant no.3 Neetu Nanda with respect to the documents for taking which on record, the application under Order VIII Rule 1A of the CPC was filed and the said application was filed by way of abundant caution only.

10. On enquiry as to the need of the application, attention has been drawn to the proceedings of 19th February, 2010 in the suit where at the time of tendering of the affidavit by way of examination-in-chief of the aforesaid Avtar Singh, it is recorded “the documents mentioned in my affidavit are not exhibited”.

It is also argued that the petitioner does not want to examine Avtar Singh again or any other witness in proof of the documents qua which the application under Order VIII Rule 1A of the CPC has been filed and which was filed by way of abundant caution.

11. In the light of the aforesaid, it has been suggested that binding the petitioner to the aforesaid statement and to producing Avtar Singh, on her own responsibility, for further cross-examination if any by the respondent no.1/plaintiff, an option be given to the counsel for the respondent no.1/plaintiff for further cross-examining Avtar Singh if so desires.

12. The counsel for the petitioner/defendant is agreeable thereto.

13. The counsel for the respondent no.1/plaintiff on the aforesaid terms has also agreed thereto.

14. The counsel for the respondent no.1/plaintiff states that in view of the observations aforesaid, he does not want to cross-examine Avtar Singh any further qua those documents with liberty to contend that the said documents do not stand proved by way of affidavit of Avtar Singh. The counsel for the respondent no.1/plaintiff further states that the respondent no.1/plaintiff also does not want to lead any further evidence in rebuttal to the aforesaid documents and the suit may proceed for final arguments for which it is already listed.

15. Accordingly, the petition is disposed of by setting aside of the order dated 5th June, 2013 and by directing that the documents for which the application under Order VIII Rule 1A of the CPC was filed be treated as on record and leaving it open to the parties to, at the time of final arguments, contend whether the said documents have been admitted in evidence

as contended by the counsel for the petitioner/defendant or do not stand admitted into evidence and proved as contended by the counsel for the respondent no.1/plaintiff.

16. The line “the documents mentioned in my affidavit are not exhibited” aforesaid be read as “the counsel for the respondent no.1/plaintiff objects to the admission of the documents mentioned in the affidavit into evidence – objection kept open”.

17. The parties to appear before the Suit Court on 18th September, 2017.

RAJIV SAHAI ENDLAW, J

AUGUST 31, 2017

‘gsr’..