

\$~44

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 855/2017**
VIJAY KUMAR SEHDEV Petitioner

Through: Mr. P.P. Ahuja, Adv.

Versus

MONICA JAIN & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **09.08.2017**

CM No.28457/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 855/2017 & CM No.28456 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 17th October, 2016 and 30th May, 2017 in Civil Suit No.10905/2016 of the Court of Additional District Judge (ADJ)-13, Central District, Tis Hazari Courts, Delhi.
4. The order dated 17th October, 2016 is of dismissal of an application filed by the petitioner / plaintiff under Order XI Rules 12 and 14 of the Code of Civil Procedure, 1908 (CPC).
5. The order dated 30th May, 2017 is of dismissal of the application of the petitioners / plaintiffs under Section 151 of the CPC seeking to place on record additional documents.
6. It is not understandable as to how, against two orders, separated in time by about seven months, this common petition is preferred. However since it is found that the petitioner / plaintiff has been intentionally delaying

the proceedings to perpetuate his possession of the immovable property, it is not deemed appropriate to reject the petition on the said technicality inasmuch as it is felt that taking advantage thereof further delay would be caused in the suit by filing two separate petitions before this Court and seeking adjournments on the said ground in the Suit Court.

7. Thus, the counsel for the petitioner / plaintiff has been heard on the petition.

8. The learned ADJ in a very lucid and elaborate manner has in the order dated 17th October, 2016 recorded i) that the petitioner / plaintiff has instituted the suit from which this petition arises for declaration and cancellation of the sale deed dated 11th January, 2002 and lease deed dated 11th January, 2002 with the consequential relief of permanent injunction, claiming himself to be owner of the immovable property notwithstanding admitted execution of deed of sale of property and of taking the property on lease from the respondents / defendants; ii) that it is *inter alia* the case of the petitioner / plaintiff that he was in need of money and had approached the respondents / defendants for loan and was made to sign various documents purported to be mortgage deeds; iii) that subsequently the loan transaction as envisaged did not materialise and the petitioner / plaintiff returned whatever money had been received from the respondents / defendants by putting signatures against the entry in the diary maintained by the respondents / defendants; iv) that the petitioner / plaintiff subsequently received a legal notice from the respondents / defendants wherein the respondents / defendants claimed to be the owners of the property on the basis of sale deed dated 11th January, 2002 and to have let out the said property to the

petitioner / plaintiff vide lease deed dated 11th January, 2002; v) hence the suit; vi) that on the pleadings of the parties, the following issues were framed on 10th November, 2005:

- “1. Whether the suit is bad for mis-joinder of the parties? OPD.
2. Whether the suit is barred by time? OPD.
3. Whether the plaintiff has tampered with the diary maintained by him having the initial of defendant Nos.3 and 4? OPD.
4. Whether the plaintiff having inducted as tenant by the defendant nos.1 and 2 qua first floor of the suit property? OPD
5. Whether the plaintiff is entitled for the declaration to the effect that sale deed dated 11.01.2002 pertaining to one undivided share in suit property bearing no.N-74, Kirti Nagar, New Delhi, registered as documents No.365 and document No.366 are null and void and in-operative? OPP.
6. Whether the plaintiff is entitled for the declaration that the rent deed dated 11.01.2002 qua first floor of the suit property registered as document 373 in additional book No.1 volume No.10110 allegedly to be registered on 11.01.2002 is void and in-operative? OPP.
7. Whether the plaintiff is entitled for the permanent injunction as prayed for? OPP.
8. Relief.”

vii) that the documents sought from the respondents / defendants vide the application under Order XI Rules 12 and 14 of the CPC were the delivery notes of the supply of gold and jewellery as well as the invoice, income tax returns of the respondents / defendants of their business in the name and style of Popular Jewellery Mart; viii) that the balance sheets, books of

accounts, ledger accounts of Popular Jewellery Mart were not relevant for the adjudication of the issues in the suit which were purely qua cancellation of deeds; ix) that it was nowhere the case of the respondents / defendants that the petitioner / plaintiff had mortgaged his property against the jewellery which respondents / defendants claimed to have supplied to the petitioner / plaintiff; and, x) that the factum of the supply of gold and jewellery by the respondents / defendants to the petitioner / plaintiff was mentioned in the written statement reserving the right to initiate separate action in respect of those transactions.

9. The counsel for the petitioners / plaintiffs instead of addressing the reasoning given by the learned ADJ for dismissal of the application under Order XI Rules 12 and 14 of the CPC, has generally argued on the facts.

10. Once there is a reasoned order of the suit Court and the petitioners / plaintiffs want this Court to, in exercise of its supervisory jurisdiction, interfere therein, it is incumbent upon the counsel for the petitioner / plaintiff to show as to how the reasoning given is bad. No attempt even therefor is made.

11. No argument can possibly be urged in the face of the issues in the suit.

12. The trial in a suit is to be guided by the issues and for adjudication of which issues, the documents which were sought to be got produced from the respondents / defendants are indeed not relevant.

13. Not only so, this petition has been filed after nine months of the order dated 17th October, 2016 and cannot be entertained for the reason of laches and acquiescence also. The petitioner / plaintiff notwithstanding the

dismissal of his application under Order XI Rules 12 and 14 of the CPC, did not avail any remedy thereagainst and continued to participate in the suit. The inference is inescapable that the petitioner / plaintiff having chosen not to challenge the correctness of the said order dated 17th October, 2016 and having made a challenge thereto only while challenging the order dated 30th May, 2017.

14. Qua the order dated 30th May, 2017, the petitioner / plaintiff at the stage of his evidence wanted to file documents i) showing payment of house tax of the subject property by him; and, ii) the documents of other litigations between the parties.

15. The learned ADJ, in the order dated 30th May, 2017, has reasoned that the documents sought to be placed by the petitioners / plaintiffs were not relevant for the matter in controversy and on which issues had been framed and that payment of house tax or the litigations relating to other transaction between the parties had no bearing on the outcome of the suit.

16. Again, no challenge has been urged to the said order except for stating that the house tax records are documents of title. However, upon the counsel for the petitioners / plaintiffs being asked to show the case law in this regard, he has none.

17. It is well settled law that mere mutation entries do not confer title to the property which is governed by the provisions of the Transfer of Property Act, 1882.

18. Reference in this regard can be made to (i) ***Kamlesh Arora Vs. Municipal Corporation of Delhi*** 2001 (60) DRJ 277; (ii) ***Mohinder Singh Verma Through Legal Representative Vs. J.P. S. Verma*** (2014) 212 DLT

432; (iii) ***Krishan Kumar Wadhwa Vs. Delhi Development Authority*** 2016 SCC OnLine Del 4781; (iv) ***Dr. Mukesh Sharma Vs. Dr. Maheshwar Nath Sharma*** 2017 SCC OnLine Del 7237; and, (v) ***D.D.A. Vs. Ram Kaur*** 2017 SCC OnLine Del 7952 (DB).

19. Even otherwise, in the facts of the present case, where admittedly it is the petitioner / plaintiff who has executed the deed of sale of the property in favour of the respondents / defendants, there is nothing unusual in the petitioner / plaintiff continuing to be recorded in the house tax record as owner and the mere fact of payment of house tax by him would not make him the owner.

20. There is thus no merit in the challenge to the order dated 30th May, 2017 also.

21. The counsel for the petitioner /plaintiff then argues that the learned ADJ has by order dated 30th May, 2017 also closed the evidence of the petitioner / plaintiff.

22. That lets the cat out of the bag i.e. the real reason for challenging the orders dated 17th October, 2016 and 30th May, 2017 being but a facade for availing of another opportunity for leading evidence.

23. The learned ADJ in this regard has noted i) that the issues were framed in the suit as far back as on 10th November, 2005; ii) that since then the petitioner / plaintiff has been avoiding to lead evidence, first by filing an application under Order VII Rule 14(3) of the CPC and thereafter by filing an application under Order XIV Rule 5 and thereafter Order XI Rules 12 and 14 of the CPC; iii) that sufficient time had been granted to the petitioner / plaintiff; iv) that even in order dated 17th October, 2016, the petitioner /

plaintiff was cautioned as under:

“11. It is hereby also made clear to him that in case he assails this order before the Hon’ble High Court, he should not take it for granted that matter will be adjourned automatically on mere filing of appeal, revision or petition under article 227 of the Constitution of India or review, as the case may be, against the present order. If he does not want to lead evidence on the next date of hearing, he must obtain stay from the Hon’ble High Court, upon the proceedings of the present case. In case no evidence is led on the next date of hearing, plaintiff’s right to lead evidence shall stand forfeited.”

v) that notwithstanding the same, on the next date of hearing i.e. 27th January, 2017, the petitioner / plaintiff, instead of leading evidence, filed the application aforesaid under Section 151 CPC for placing additional documents; vi) that on 27th January, 2017 also, the petitioner / plaintiff was cautioned that if that application was not decided in favour of the petitioner / plaintiff, the evidence of the petitioner / plaintiff would stand closed; vii) that the petitioner / plaintiff still remained stubborn and did not choose to file affidavits by way of examination-in-chief; and, viii) that no challenge also to the order dated 27th January, 2017 was made.

24. In the circumstances, in terms of order dated 27th January, 2017, the evidence was closed.

25. During the hearing, it has also emerged that owing to the pendency of the subject suit, being the prior instituted suit, the proceedings for recovery of possession of the premises from the petitioner / plaintiff are held up.

26. That explains the reason for the petitioner / plaintiff to delay their own suit.

27. This Court cannot in the name of indulgence and leniency, as is sought to be urged, continue to interfere with the orders of the Trial Court, with which, as per the situation that emerged before the Trial Court, no fault can be found. If this Court continues to interfere, it would result in the suits remaining pending for long as the petitioner / plaintiff have succeeded in doing in the present case.

28. The petition is dismissed with costs of Rs.50,000/- to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi as a condition for further participation of the petitioner / plaintiff in the suit.

29. The petitioner / plaintiff to furnish the proof of payment of costs to the learned ADJ when the suit is listed next, as informed, on 11th September, 2017.

RAJIV SAHAI ENDLAW, J

AUGUST 09, 2017

'gsr'..

