

\$~39

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

+ CRL.A. 862/2018

PALLAVI KUNDRA & ANR.

..... Appellants

Through: Mr. Rakesh Khanna, Sr. Adv. with
Mr. Sanjay Kumar and Mr. Rohit
Agarwal, Advs.

versus

DEEPAK GARG

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **27.08.2018**

1. Respondent (plaintiff) filed a suit for possession, declaration and injunction against the petitioners (defendants) in respect of property bearing no. AG-1-94B, DDA MIG Flats, 1st Floor, Vikas Puri, New Delhi-110018. After the trial, suit has been disposed of vide judgment and decree dated 5th July, 2018 by the Additional District Judge, Pilot Court: South-West District, Dwarka Courts, New Delhi.
2. While disposing of the suit trial court has held that defendants (petitioners) had set up false defence/claim and had adduced false evidence, which amounted to committing offences under Sections 191/193/209 of the Indian Penal Code, consequently ordered for filing of the complaint under Section 340 Cr.P.C, in as much as proceeded to file a complaint in the court

of learned CMM, South West District. The complaint case is pending before the learned CMM.

3. Aggrieved by the directions passed by the learned Additional Sessions Judge under Section 340 Cr.P.C, petitioners have preferred this appeal under Sections 341 Cr.P.C.

4. Briefly stated, the facts leading to passing of impugned order are that respondent alleged in the plaint that petitioners were permitted by him, his father and mother to stay in the suit property in the year 2005, on their assurances that they would vacate the suit property as and when respondent would ask them to do so. In the month of November, 2012, after the death of mother of respondent, petitioners were asked to vacate the suit property. Petitioners did not vacate the suit property; instead threatened him with dire consequences. Respondent issued a legal notice dated 07/09/2013 through his counsel to petitioners thereby calling upon them to vacate the suit property within 30 days, failing which criminal as well as civil proceedings to follow. No reply was received, accordingly, reminder notice dated 09/10/13 was sent which was replied.

5. Petitioners filed written statement and claimed that they were in possession of the suit property since 2004, that is, for more than 12 years,

thus, had become owner by way of adverse possession. Further, that respondent had sold the suit property to petitioner no.1 by executing GPA, SPA, Will, Receipt, Possession Letter etc, against sale consideration. Respondent was not the owner of suit property having sold the same to petitioner no.1, inasmuch as, one third person was claiming himself to be the registered owner of suit property. Receipt of legal notice dated 07/09/2013 was denied. It was stated that reminder notice dated 09/10/13 was received which was duly replied.

6. Trial court framed seven issues including that of adverse possession and regarding execution of GPA, SPA, Will, Possession Letter, all dated 19/02/2001. On scrutiny of evidence adduced by the parties, trial court concluded that though petitioners had denied the receipt of notice dated 07/09/2013 (Ex. PW1/1) but, in fact, the said notice was duly replied by the petitioners vide reply (Ex. PW1/3). Petitioners had made a false statement that notice dated 07/09/2013 was not received by them. Trial court held that in reply dated 09/10/13, petitioners had specifically alleged that though entire sale consideration had been paid in various instalments but the mother of respondent died before documents could be executed, however, in the written statement petitioners had pleaded that respondent had executed

documents such as GPA, SPA, Agreement to Sell, etc. It was further held that documents could not be proved by the petitioners, inasmuch as, only photocopies were placed on record. The documents appeared to be an act of fabrication. In these facts, learned trial court proceeded to form a, prima facie, view that petitioners had raised false defence/claim and had adduced false evidence.

7. By placing reliance on Amarsang Nathaji as Himself & Ors...vs. Hardik Harshadbhai Patel & Ors. (2017) 1 SCC 113, Madhukar Vishwanath Sonawane Vs. State of Maharashtra & Ors. 2002 (2) MhLj 414, Kunnummal Raghavan Vs. M. Narayana Menon AIR 1970 Ker 15 and Chintamani Malviya Vs. High Court of Madhya Pradesh (2018) 6 SCC 151, learned senior counsel has contended that the impugned order under Section 340 Cr.P.C. has been passed by the trial court, without holding a preliminary enquiry as envisaged under Section 341 Cr.P.C., inasmuch as, no show cause notice was given to petitioner, thus, is illegal and liable to be set aside. It is further submitted that mere fact that a person had made contradictory statements in a judicial proceeding is not itself always sufficient to justify the prosecution. It must be shown that such person had intentionally given false statement at any stage of the judicial proceedings or had fabricated

false evidence, for the purpose of using the same at any stage of the judicial proceeding to his benefit. The court has to form an opinion that it is expedient in the interest of justice to initiate prosecution into the offences of false evidence and offences against public justice having regard to the overall factual matrix of the case. Learned senior counsel has further contended that while answering issues no. 1 and 2, the trial court has not given any reason for forming an opinion that petitioners had taken false pleas and adduced false evidence before the Court, amounting to offences under Sections 191/193 and 209 IPC. It is further contended that respondent had admitted in the plaint that petitioners had sent a reply dated 09/10/2013, after reminder to the legal notice was received. Petitioners had replied the legal notice on receipt of reminder notice dated 9th October, 2013, which was replica of the earlier notice dated 07/09/2013.

8. I have considered the arguments canvassed by the learned Senior Counsel and perused the judgments relied upon by him. I find the judgments to be in the context of different facts. Even otherwise, in *Amarsang Nathaji* (Supra), Supreme Court has held thus“.....It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court

that an offence as referred to under [Section 340](#) Cr.P.C. has been committed, the court may dispense with the preliminary inquiry.” Accordingly, contention of learned senior counsel that impugned order is vitiated as preliminary enquiry was not held has no force. In the present case, opinion has been formed by the trial court that petitioners had raised false defence/claim and adduced false evidence before the court after a full-fledged trial on scrutiny of ocular as well as documentary evidence adduced by the parties. Accordingly, in my view, no such preliminarily enquiry was required to be conducted after issuing a show cause notice. On the basis of evidence adduced by the parties, trial court has come to the conclusion that a false statement was made in the written statement regarding non receipt of notice dated 07/10/13 which fact is deducible from the documentary evidence on record. I have also perused Ex. PW1/3 which makes it clear that notice dated 07/10/13 was indeed received by the petitioner and it is this notice which was replied to and not the the reminder notice. It is, otherwise, highly improbable that reminder notice dated 09/10/13 (Ex. PW1/2), sent by the respondent to petitioner through speed post/courier on 09/10/13 could have been received by the petitioners on the same day and replied through the lawyer, on same very day. In the subject column of

Ex.PW1/3, it has been mentioned thus “Reply of Notice Dated 07/09/13”. It is, thus, clear that notice dated 07/10/13 was duly received by the petitioners. Despite this, a categorical statement was made in the written statement that notice dated 07/09/13 was not received by the petitioners.

9. While deciding issue no. 2, trial court has noted that petitioners had claimed that suit property was sold by the respondent to petitioner no.1 vide various documents, that is, GPA, SPA, Will, Receipt, Possession Letter all dated 22/11/2006 on receipt of sale consideration paid in the presence of Yogesh Sharma. However, original documents were not produced, inasmuch as, photocopies were also not proved by way of secondary evidence. It is further noted that even Yogesh Sharma was not produced in the witness box. No other evidence was led to prove the payment of sale consideration. The plea taken in the reply to the legal notice, that respondent had agreed to sell the property in presence of his mother and entire sale consideration was paid in instalments but before the documents could be executed the mother of respondent expired. As against this, a contrary plea was taken in the written statement that documents were executed by the plaintiff against sale consideration.

10. On the basis of evidence adduced by the parties, trial court has

concluded that the defence taken by the petitioners was an afterthought and an act of fabrication. I do not find the view taken by the trial court to be based on no material. I am of the opinion that this is a fit case, in the interest of public justice, to initiate criminal proceedings against the petitioners. I do not find any irregularity in the impugned order under Section 340 Cr.C.P.

11. For the foregoing reasons, petition is dismissed.

A.K. PATHAK, J.

AUGUST 27, 2018

ga