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

Decided on: 15th February, 2018

\+ CM(M) 871/2015

POONAM VERMA & ANR ..... Petitioner
Through: Mr. Vishwendra Verma, Mr. K.C. Verma and Ms. Shivali, Advocates

versus

SHANTA SATIJA ..... Respondent
Through: Respondent in person

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The proceedings to which the present petition relates arise out of civil suit (CS No. 178/2014) which was instituted by the respondent (plaintiff) against the petitioners (defendants) seeking relief in the nature of declaration and permanent injunction.

2. It is undisputed that the plaintiff was the owner of property bearing no.292, Village Shalimar Bagh falling in the revenue estate of Village Haiderpur, Delhi-110 088 on the date a document in the nature of sale deed was executed and registered on 08.03.2013 by her whereby the said property was shown to be sold for a total consideration of Rs.13,00,000/- in favour of the defendants. The plaintiff's case before the trial Court is that the total consideration actually settled was Rs.25,00,000/- and only an amount of

Rs.5,00,000/- was paid. It is the contention of the plaintiff that the property was agreed to be sold without roof rights and physical possession was not handed over in as much as the entire sale consideration was not paid. She attributes malafide and dishonest intention on the part of the defendants, they having allegedly withheld the balance payment and having exercised duress. The reliefs claimed in the suit are in the nature of declaration that the sale deed registered on 08.03.2013 is null and void, the plaintiff having also made a prayer for prohibitory injunction to restrain the defendants *inter alia*, from creating third party interest or from taking over the vacant possession of the property from the plaintiff without due process of law, reference being made to a report of enquiry by the police as the status of possession as on 06.04.2013 favouring the contention of the plaintiff.

3. The petitioners, defendants in the suit, moved an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) seeking dismissal on the ground that admissions in the sale deed would preclude the contentions to above effect to the contrary being agitated before the trial court. The said application has been dismissed by the Additional District Judge by order dated 04.03.2015 which is under challenge before this Court.

4. In support of the contentions raised, the petitioners rely on *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Ors., AIR 2000 SC 2740; Deepak Kr. Arya Vs. Jatinder Gupta and Anr., 2010 (I) AD (Delhi) 508*; *Gajender Kumar Loond Vs. Samant Barara, 2012 IV AD (Delhi) 497*; and *SCJ Plastics Ltd. Vs. Creative Wares Ltd., 2012 VII AD (Delhi) 447*.

5. Having heard the counsel for the petitioner and having gone through the record, this court finds the rulings relied upon to be distinguishable on facts. In a case where the validity of the sale deed itself is under challenge, particularly on the basis of allegations of *malafide*, dishonest intention and exercise of duress, in effect raising a plea of fraud having been played and the sale consideration not having been paid, the application seeking dismissal of the suit – noticeably not rejection of the suit – on basis of "admissions" in the sale document is misconceived. The plaintiff, in all fairness, will be entitled to explain her position and prove her contentions at the trial.

6. The petition is, thus, dismissed.

R.K.GAUBA, J.

FEBRUARY 15, 2018
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