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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2455/2013, OA No.116/2019 and IA No.14043/2019 (for
condonation of 19 days delay in applying thereof)
SANDEEP KOHLI & ANR Plaintiffs
Through: Mr. Achal Gupta & Ms. Annie Rais,
Adv.
Versus
TARA HELMS & ORS Defendants
Through: Mr. R.R. Kumar, Adv.
AND
+ CS(OS) 1079/2014, IA No.7853/2019 (u/O I R-10 CPC) & IA
No.7908/2019 (u/O VI R-17 CPC)
TARA HELMS Plaintiff
Through: Mr. R.R. Kumar, Adv.
Versus
SANDEEP KOHLI & ANR Defendants
Through: Mr. Achal Gupta & Ms. Annie Rais,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.12.2019

**OA No.116/2019 and IA No.14043/2019 (for condonation of 19 days
delay in filing thereof) in CS(OS) 2455/2013.**

1. The plaintiffs have preferred this Chamber Appeal against the order dated 27th July, 2019 of the Joint Registrar of dismissal of IA No.11093/2017 filed by the plaintiffs for summoning the defendant no.2 to give sample of her handwriting for comparison of Mark Z1 and Mark 1/PX-1 with the said handwriting by sending the same to the Central Forensic Science Laboratory (CFSL).
2. The counsel for the plaintiffs first sought passover on the ground of non-availability of the briefed senior counsel.

3. If all matters are so passed over, Court time would be wasted. The counsel for the plaintiffs, having briefed the senior counsel, is expected to know the case and has been asked to argue.
4. The Joint Registrar has dismissed the application, reasoning that since the documents with which comparison is sought are photocopies, the report of CFSL will not serve any purpose.
5. The counsel for the plaintiffs states that both Mark Z1 and Mark 1/PX-1 are originals and not photocopies.
6. The counsel for the plaintiffs is however unable to point out from the file the documents Mark Z1 and Mark 1/PX-1 and though gives page numbers, but the same are erroneous.
7. I have nevertheless enquired from the counsel, whether the plaintiffs are ready to be bound with the report of the CFSL in terms of Section 20 of the Evidence Act, 1872 and ready to have the suit dismissed if the report is against the plaintiffs.
8. The counsel for the plaintiffs states he will have to take instructions.
9. If counsels do not know what to enquire from their clients before appearing, it is expedient that the clients always accompany the counsels so that such situations are avoided. Hence, it is directed that both the plaintiffs or any one of the plaintiffs authorized to speak on behalf of other, to remain present in the Court on all future dates, for the purpose of avoiding adjournments.
10. The counsel for the defendants on enquiry, whether the defendants are willing to be bound by the report of the CFSL, states that Mark 1/PX-1 is the handwriting sample given by the defendant no.2 in the Court itself.

11. The counsel for the defendants, on being pointedly asked whether the defendants are willing to be bound by the report of the CFSL qua Mark Z1, states that the defendants are not willing.

12. I have again asked the counsel for the plaintiffs, whether he is willing to be bound by the report of CFSL. He states that he is not aware of the law and will check.

13. Subject to the plaintiffs depositing costs of Rs.20,000/- with the Delhi High Court Advocates Welfare Trust, list on 5th February, 2020.

CS(OS) No.2455/2013

14. The two plaintiffs viz. Sandeep Kohli and his wife Shah-E-Naaz Kohli, instituted this suit against the three defendants viz. (i) Tara Helms, (ii) Neeta Helms @ Neeta Helms Vallerand Parisi, and (iii) Reena Helms Park, for (i) recovery of Rs.2 crores on account of damages for defamation; and, (ii) mandatory injunction directing the defendants to publish an unconditional apology to the plaintiffs.

15. The suit was filed pleading, that (i) the plaintiff no.1 was approached by the defendants in December, 2005 for sale of agricultural property out of Khasra No.738/1/1 measuring 0 Bigha 14 Biswas, Khasra No.738/2/1 measuring 1 Bigha 16 Biswas, Khasra No.738/2/2 measuring 1 Bigha 8 Biswas, Khasra No.738/1/2 measuring 14 Biswas and Khasra No.787/1 measuring 4 Biswas, situated at Revenue Estate of Village Chattarpur, Tehsil Mehrauli, New Delhi, representing themselves to be the owners thereof; (ii) the plaintiff no.1 agreed to purchase the aforesaid property from the defendants and paid the entire consideration under acknowledgment

(the counsel for the plaintiffs on enquiry states that the payment of Rs.11/- lacs was by cash and US\$ 1,55,000 was transferred from the bank account of the plaintiffs in Singapore to the bank account of the defendants in Canada); (iii) the defendants, in March, 2006 executed an Agreement to Sell and other documents (which are not specified) in favour of plaintiff no.1; (iv) the plaintiff no.1 came in lawful possession of the property in March, 2006; (v) the plaintiff no.1 learnt that there was a case filed by one Jinesh Jain with respect to the property; (vi) the defendants, on being approached informed that the dispute was with the sister-in-law of defendant no.1 and the husband of defendant no.1 had revoked the Power of Attorney in favour of the sister-in-law much prior to entering into the transaction with the plaintiffs; (vii) the case filed by Jinesh Jain was finally decided in favour of the defendants; (viii) the defendants thereafter started threatening the plaintiff no.1 with legal action and asking for further monies from the plaintiff no.1, taking advantage of the fact that the plaintiff no.1 did not have title to the property; (ix) the plaintiff no.1 was threatened on 21st June, 2013, 6th July, 2013 and 15th July, 2013; (x) in January, 2013, the plaintiff no.1, based on the documents executed by the defendants in his favour, transferred his interest in the property and handed over possession to the purchaser; (xi) the defendants thereafter through their lawyer issued a public notice dated 18th July, 2013 containing false imputations, not only against plaintiff no.1 but also against plaintiff no.2, intentionally, to defame the plaintiffs; (xii) the name of the plaintiff no.2 was dragged in the notice even though she had nothing to do with the transaction; (xiii) the plaintiffs, called upon the defendants to publish an unconditional apology, which the defendants did

not; and, (xiv) the plaintiffs filed a criminal complaint of defamation against the defendants (the counsel for the plaintiffs states that it is still at the stage of pre-summoning evidence). Hence, this suit.

16. The suit, unaccompanied with any application came up for admission before the Joint Registrar on 10th December, 2013 when, without going into the aspect of admissibility/maintainability thereof, summons thereof were ordered to be issued.

17. The defendants have contested the suit by filing a written statement, but need to go into the contents thereof is not felt. Similarly, the need to refer to the replication of the plaintiffs is not felt. Suffice it is to state that on the pleadings of the parties, vide order dated 6th August, 2015 the following issues were framed in the suit:

- “(i) Whether there was any justification for publication of the aforesaid notice dated 18.7.2013, and if so, its effect? OPD
- (ii) Whether the plaintiffs are entitled to recover damages and for what amount? OPP
- (iii) Whether the plaintiffs are entitled to seek injunction against the defendants? OPP
- (iv) Did defendants legally appoint plaintiff No.1 and/or plaintiffs’ as their authorized representative(s) for selling their Chattarpur lands/properties in DLF Farms to any third party? OPP
- (v) Did defendants sell the Chattarpur lands/properties in DLF farms to the plaintiff No.1/plaintiffs? OPP
- (vi) Did defendants herein appoint plaintiff No.1 herein as their authorized representative to defend their interests/represent them in a suit for specific performance vide CS(OS) No.1154/1989 filed by Jinesh Kumar Jain in respect of Chattarpur lands/properties in DLF farms before this Hon’ble Court? OPP

- (vii) Did defendants jointly and/or severally threaten the plaintiff No.1 and/or plaintiffs? If yes, how and when? OPP
- (viii) Did plaintiff No.1/plaintiffs misrepresent themselves as authorized representative(s) of the defendants in CS(OS) No.1154/1989 and owner(s) of defendants Chattarpur lands/properties in DLF farms? OPD
- (ix) Did plaintiffs sell the defendants Chattarpur lands/properties in DLF farms to third party? If yes, to whom and when? OPP
- (x) Did defendants jointly and/or severally defame the plaintiffs? OPP
- (xi) Relief”

and the parties relegated to evidence, with the evidence of the defendants being ordered to be recorded first.

18. The plaintiffs, during the cross-examination of defendant no.2, confronted her with some documents, and on which the defendant no.2 denied her handwriting. The plaintiffs thus moved an application being IA No.11093/2017 for obtaining specimen handwriting of defendant no.2 and for sending the same along with the disputed signatures to CFSL.

19. The Joint Registrar, vide order dated 27th July, 2019 dismissed the said application, reasoning that since the disputed signatures were a photocopy there could be no comparison therewith. The plaintiffs preferred Chamber Appeal being OA No.116/2019 aforesaid, which came up before this Court on 11th October, 2019 and on which date, while going through the file, the nature aforesaid of the suit was found out and it was enquired from the counsels, whether there was any other litigation pending with respect to the property.

20. The counsel for the defendants stated that CS(OS) No.1079/2014 in that respect was also pending before this Court.

21. It was *inter alia* ordered on 11th October, 2019:

“10. Though issues have been framed in this suit, including an issue with respect to the justification for the publication by the defendants but it appears that the question of justification for the publication, requiring adjudication of rights in immovable property, cannot be adjudicated in a suit for recovery of damages for defamation and is to be adjudicated only in a substantial suit with respect to the title to the property between the parties i.e. CS(OS)1079/2014. Even otherwise, the question, who has title to the property and whether the averments in the notice got published by the defendants are correct or not, cannot be subject matter of a suit for recovery of damages for defamation and a substantial suit has to be filed therefor. The remedy of the plaintiffs, if at all the title of the plaintiffs to the property was under cloud because of the publication aforesaid, was to sue for declaration and not have their title adjudicated in a suit for compensation for defamation.

11. It is thus deemed appropriate to list both the suits before this Bench on 9th December, 2019.

12. The counsels to come prepared to address on the aforesaid aspect also.”

22. The counsel for the plaintiffs has been heard on the aspect of maintainability.

23. CS(OS) No.1079/2014 is also listed before this Court today and the same is found to have been filed by the defendant no.1 herein against the two plaintiffs herein (the counsel for the plaintiffs herein states that the name of plaintiff no.2 Shah-E-Naaz Kohli as defendant no.2 in CS(OS) No.1079/2014 has since been deleted on the statement that she has nothing to do with the transaction) for (i) permanent injunction to restrain the

plaintiff no.1 herein from representing himself to be the owner or purchaser or the authorized representative of the defendant no.1; (ii) mandatory injunction directing the plaintiff no.1 herein to return to the defendant no.1 herein the signed blank papers / stamp papers entrusted to the plaintiff no.1 herein as also any other document created with respect to the said property; and, (iii) for recovery of Rs.2,01,00,000/- as compensation for loss to the defendant no.1.

24. During the hearing it has also transpired that the plaintiff no.1 has not till date instituted any suit for specific performance of the Agreement to Sell claimed by the plaintiff no.1 to have been executed by the defendants in the year 2006. On enquiry, it is also stated that there is no registered document executed by the defendants herein in favour of the plaintiff no.1. On yet further enquiry, it is also disclosed that the sale by the plaintiff no.1 to AKN Developers of the property, is also by unregistered documents of Agreement of Sale, Power of Attorney etc. and of January, 2013.

25. I have thus enquired from the counsel for the plaintiffs, the title of the plaintiffs to the property. The sale in favour of the plaintiff no.1 being of after 24th September, 2001 i.e. after coming into force of the Registration & Other Related Laws (Amendment) Act, 2001 since when the plea of possession in part performance also cannot exist without the Agreement to Sell being registered, the said plea is also not available to the plaintiffs. There is thus indeed a dispute as to the claim of the plaintiffs of the defendants having sold the property to the plaintiff no.1, as claimed by the plaintiff no.1.

26. The relief, even if any available to the plaintiff no.1 for suing for specific performance of an Agreement of Sale of immovable property, is now barred by time.

27. The defendants are admitted by the plaintiffs also to be the owner of the property. Once the defendants were reneging from the Agreement to Sell, the remedy of the plaintiffs was to sue for specific performance and not to sue for defamation, on the defendants, as owners, cautioning the public to not deal with the plaintiffs qua the property. A substantive suit with respect to the rights claimed by the plaintiffs in the property, at the instance of the defendants is already pending consideration. Though issues have been framed in this suit qua the title claimed by the plaintiffs, but an enquiry of title of the plaintiff no.1 in a suit for compensation for defamation is not apposite.

28. Now the counsel for the plaintiffs states that Issues no.(iv) to (x) aforesaid were deleted on 20th November, 2015, and on enquiry states that the plaintiffs had applied for deletion of the said issues and to which the defendants had consented. Even if the limitation for suing for specific performance were to be counted therefrom, the same has again lapsed.

29. In the circumstances aforesaid, it cannot be said that the plaintiffs have any title to the property, for the plaintiffs to have a cause of action to sue for defamation from the notice aforesaid got published by the defendants, who are admittedly the owners of the property.

30. The counsel for the plaintiffs has raised two arguments. Firstly, it is contended that it is not as if according to the defendants, the plaintiffs are strangers. It is stated that the defendants, in their written statement, in para no.20 of the preliminary submissions have admitted to have authorized the plaintiff no.1 to sell the property.

31. I have perused para no.1 to 28 of the preliminary submissions in the written statement of the defendants. The defendants therein have pleaded that, (i) the defendant no.1 was born as Tara Mahajan and moved to Canada in the year 1986 and became a Canadian citizen in 1998; (ii) the defendants no.2 and 3 are the daughters of the defendant no.1; (iii) the plaintiff no.1 is an old family friend of the defendants' family and the plaintiff no.1 remained in touch with the defendant no.2 even after she moved to New York; (iv) the defendant no.1's late husband had purchased the property aforesaid; (v) the husband of the defendant no.1 bequeathed the aforesaid property to the defendant no.1; (vi) the plaintiff no.1 offered to help the defendant no.1 to maintain the aforesaid property, but the defendant no.1 did not give any authorization to the plaintiffs for managing the property; (vii) the plaintiff no.1 played on the fear of the defendants of the Indian relatives of the defendants usurping the property and proposed to the defendants that they could execute certain paper abroad authorizing the plaintiff no.1 to sell the property and the consideration received could thereafter be transferred to defendant no.1; (viii) due to intense persuasion of plaintiff no.1, the defendant no.1 signed certain blank papers and other blank stamp papers which were purportedly to be utilized for the purpose of authorizing the plaintiffs to sell the property; (ix) the defendants otherwise did not execute any documents in favour of the plaintiffs; (x) after signing the blank papers, the defendants became alarmed when the plaintiff no.1 informed the defendant no.2 that the properties had been acquired by the government, and offered to litigate with the government on behalf of the defendants and on the said pretext, got some more blank papers signed from the defendants,

purportedly for affidavits for legal proceedings; (xi) after sometime, the plaintiff no.1 advised the defendants to sell the property, which the defendants refused; (xii) the defendants became suspicious of plaintiffs conduct and got the public notices published on 19th August, 2012 and 18th July, 2013; and, (xiii) the defendant no.2 tried to reason with the plaintiffs, but the plaintiff no.1 conveyed to the defendants that they had executed the Receipts, Power of Attorneys, Agreement to Sell and Will in respect of the properties in favour of the plaintiffs, and the plaintiffs were the owners of the property.

32. I am unable to agree with the first contention aforesaid of the counsel for the plaintiffs, of the admission of the defendants of having authorized the plaintiffs to sell the property, entitling the plaintiffs, even without any lawful title to the property, to on the defendants cautioning the public of dealing with the plaintiffs with respect to their property, having cause of action to sue for defamation. The only cause of action which such public notice could accrue in favour of the plaintiffs was for a claim for specific performance, and which has not been preferred.

33. Thus, the said admission of the defendants does not make the suit maintainable in the light of the plaintiffs having till date failed to sue for specific performance.

34. The only other contention of the counsel for the plaintiffs is, that the plaintiff no.2 had nothing to do with the transaction and from the defendants having included the name of plaintiff no.2 in the public notices, the plaintiff no.2 has been defamed.

35. I am unable to agree with the said contention either.

36. The status of the plaintiff no.2 as wife of the plaintiff no.1 cannot be lost sight of. It is quite normal, while obtaining Agreement to Sell and Will with respect to property, to have the Power of Attorney executed in favour of close confidant of the purchaser, to enable sale in pursuance thereto from the attorney of the seller to the purchaser. It is the plea of the defendants that the plaintiff no.1 had represented that there were documents in favour of both plaintiffs and the factum of the defendants in the public notices including the name of plaintiff no.2 would not entitle the plaintiff no.2 to any independent cause of action for defamation.

37. I have also perused the public notices. The same is in the Classified Columns of the newspaper and only informs the public at large that the plaintiffs were misrepresenting themselves to be the owners and/or Power of Attorney Holders and / or authorized representatives of the defendants but were not so authorized and any person dealing with them with respect to the property would be dealing at his own peril. Such public notices relating to immovable properties have come to be a norm, with more than one being generally found in the newspapers each day. Moreover, whenever a right or title of any person to a property is challenged, the remedy of that person is either to have that right declared or to have that right enforced in a Court of law, and not to sue for defamation.

38. It is also significant that the plaintiffs claim to have transferred the property as far back as in January, 2013 i.e. prior to the notice of defamation and for this reason also had no right to institute the suit.

39. Thus, CS(OS) No.2455/2013 is found to be totally misconceived and a deadwood and no purpose would be served in wasting time thereon.

40. The suit is resultantly dismissed with costs to the defendants assessed at Rs.2 lacs.

41. Decree sheet be drawn up.

CS(OS) No.1079/2014

42. CS(OS) No.1079/2014, as aforesaid, has been instituted by Tara Helms against Sandeep Kohli, for (i) permanent injunction to restrain Sandeep Kohli from representing himself as the owner or purchaser of property out of Khasra No.738/1/1 measuring 0 Bigha 14 Biswas, Khasra No.738/2/1 measuring 1 Bigha 16 Biswas, Khasra No.738/2/2 measuring 1 Bigha 8 Biswas, Khasra No.738/1/2 measuring 14 Biswas, Khasra No.787/1 measuring 4 Biswas, Khasra No.787/2 measuring 1 Bigha 13 Biswas, and Khasra No.788/2 measuring 1 Bigha 6 Biswa, situated at Revenue Estate of Village Chattarpur, Tehsil Mehrauli, New Delhi and / or from claiming to be the authorized representative of Tara Helms qua the said property; (ii) mandatory injunction to direct Sandeep Kohli to return to Tara Helms her signed blank papers / stamp papers entrusted to Sandeep Kohli and any documents created therefrom by Sandeep Kohli in respect of property aforesaid, namely, but not limited to, Power of Attorney, Special Power of Attorney, General Power of Attorney, Receipt, Agreement to Sell, Will, Deed of Declaration etc.; and, (iii) recovery of Rs.2,01,00,000/- as compensation and damages suffered by Tara Helms.

43. It being the case of Sandeep Kohli, that he had as far back as on January, 2013 executed Power of Attorney, Agreement to Sell etc. with respect to the said property in favour of Arun Sahni and AKN Developers and having handed over all documents claimed to have been executed by Tara Helms and her daughters Neeta Helms @ Neeta Helms Vallerand Parisi and Reena Helms Park in favour of Sandeep Kohli, vide order dated

20th September, 2018, the application for interim injunction was held to not survive and disposed of as infructuous.

44. The counsel for Sandeep Kohli today also states that Sandeep Kohli, after January, 2013, has not represented himself to be the owner and purchaser of property aforesaid or authorized representative of Tara Helms or her daughters, save in legal proceedings, and has no intention to do so in future also.

45. It is also his contention that all documents claimed by Sandeep Kohli to have been executed by Tara Helms and her daughters in favour of Sandeep Kohli were handed over by Sandeep Kohli to Arun Sahni and AKN Developers Pvt. Ltd.

46. The suit thus, as far as the relief of permanent injunction and mandatory injunction is concerned, need not to be proceeded with further and can be disposed of recording the aforesaid statement of Sandeep Kohli through his counsel.

47. The counsel for Tara Helms, on enquiry of the ground on which Rs.2,01,00,000/- has been claimed, states that it was claimed on account of Sandeep Kohli having defamed the Tara Helms by filing false complaint against her.

48. The counsel for Tara Helms, on enquiry as to whether not the remedy is to claim costs in the proceedings, states he does not press for the relief of recovery.

49. Thus, CS(OS) No.1079/2014 is disposed of, binding Sandeep Kohli to his statement aforesaid and clarifying that the same will not come in the way of Sandeep Kohli, in legal proceedings claiming execution of documents as

claimed by him in these two suits by Tara Helms and her two daughters in favour of Sandeep Kohli, and leaving the parties to bear their own costs.

50. Decree sheet be drawn up.

51. With the disposal of the suits, OA and all pending applications are disposed of and date of 5th February, 2020 is cancelled.

RAJIV SAHAI ENDLAW, J

DECEMBER 09, 2019

‘gsr’

(Corrected & released on 24th December, 2019)