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

Date of Decision : 03.02.2020

+ **EX.F.A. 33/2019 & CM 37306/2019**

SOMWATI (DECEASED) THR LRS Appellants
Through: Mr.Vipin Kumar Saini, Mr.Pawan
Kumar, Advs.

versus

NAGARMAL YADAV Respondent
Through: Mr.K.Venkataraman, Mr.Dinesh
Kumar Chawla, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This appeal has been filed by the appellants challenging the order dated 30.07.2019 passed by the learned Additional District Judge-07(South East), Saket Courts in Ex. Pet. No.995/2017 titled *Nagarmal Yadav vs. Somwati (Now Deceased) Through LRs*. dismissing the application seeking review of the order dated 23.04.2019 passed by the said Court.

2. The respondent had filed a suit being Suit No.1018/1994 titled *Nagarmal Yadav vs. Somwati* seeking specific performance of an Agreement to Sell dated 20.10.1992 executed by Smt. Somwati. The said suit was decreed by the

learned ADJ by the judgment and order dated 27.08.2002. In the said suit, Issue no.3 was to the following effect:

“iii. Whether the transaction between the parties was a loan transaction, as claimed by the defendant in the WS? OPD.”

3. This issue was answered by the learned Trial Court observing as under:

“Issue No.3

Whether the transaction between the parties was a loan transaction, as claimed by the defendant in the written statement? OPD.

28. One of the plea of the defendant on which this issue was framed was that she and her husband in the month of March, 1992 have taken a loan of Rs.2.50 lacs from Shri Rameshwar Yadav, the brother of the plaintiff and at that time Shri Rameshwar Yadav has got a mortgage deed executed by the defendant. In doing so, he obtained thumb impression of the defendant on several documents. But neither the mortgage deed executed by Shri Rameshwar Yadav is proved by the defendant on record nor the documents of the litigation between the defendant and her husband with Shri Rameshwar Yadav pending in the High Court are proved on record though certified copy of the pleadings of the case are filed but not proved by the defendant. Shri Rameshwar Yadav is also not summoned as a witness nor any other person except DW1 Shri Om Parkash, the husband of the defendant is produced in support of the plea that the transaction between the parties was a loan

transaction as claimed by the defendant in the written statement. Further, in view of my findings on issue no.1 agreement to sell Ex.PW1/1 is found not to be a fabricated or forged document and therefore can be acted upon.

In view of the above, issue is decided in favour of the plaintiff and against the defendant.”

4. The learned counsel for the appellants submits that the said judgment and order has been obtained by the respondent by exercising fraud on the Court. He submits that the appellants were unable to prove the above issue only because they were not in possession of the Mortgage Deed/Ikrarnama and in absence thereof, the learned Trial Court disbelieved the defence set up by the appellants. Placing reliance on the judgment of the Supreme Court in **A.V.Papayya Sastry and Ors. vs. Govt. of A.P. & Ors.** (2007) 4 SCC 221, he submits that fraud vitiates the entire proceedings and therefore, even though the judgment and order passed by the learned Trial Court may have gain finality, the same cannot be executed.

5. The learned counsel for the appellants submits that fraud has been unraveled only when the respondent filed a copy of the Ikrarnama dated 30.12.1991 in a suit filed by the respondents seeking electricity connection. As it is now proved that there was a loan transaction between the brother of the respondent and husband of Smt.Somwati, the judgment and order dated 27.08.2002 cannot be executed.

6. The learned counsel for the appellants further submits that even the Ikrarnama now filed by the respondent is a forged document as it is stated to have been executed by Sh.Omprakash Gupta, that is the husband of Smt.Somwati, in favour of Smt. Urmila Yadav, who is the real sister of the respondent.

7. On the other hand, the learned counsel for the respondent has taken this Court through various proceedings that have been initiated by the appellants to submit that the objections raised by the appellants were in fact in gross abuse of the process of the Court and have been rightly rejected by the learned Executing Court.

8. I have considered the submissions made by the learned counsels for the parties.

9. Admittedly, in the suit filed by the respondent, a specific issue was framed with respect to the loan transaction as alleged by the appellants. The same was decided against the appellants by holding that the appellants have failed to prove such transaction. Apart from the fact that the appellant did not produce a copy of the Mortgage Deed, the learned Trial Court also observed that even Sh.Rameshwar Yadav, from whom the appellants claim to have taken the loan and who, it is alleged, made the appellant execute certain documents, was not summoned as a witness to the suit.

10. The appellants feeling aggrieved of the said judgment and order, filed an appeal before this Court being RFA No.7/2003. The same was dismissed for non-prosecution on 09.09.2010. It was again dismissed in default on 15.05.2013 and thereafter again on 28.10.2015. The application seeking restoration of the appeal was dismissed by this Court by an order dated 14.12.2015 and thereafter, by an order dated 10.02.2016. Even the review application filed by the appellants was dismissed by this Court on 05.05.2016. The appellants thereafter, filed a Special Leave Petition before the Supreme Court, being SLP(C) No.4682/2018, which was also dismissed by the Supreme Court by its order dated 04.05.2018.

11. It is settled law that the executing Court cannot go behind the decree or review the same. In the execution proceedings filed by the respondent, the appellants filed their objections which were dismissed by the Executing Court by an order dated 20.09.2018. The appellants thereafter filed yet another objection to the execution petition, which has been dismissed by the Impugned Order.

12. A perusal of the above would clearly show that it is in fact the appellants who have been making a mockery of the judicial process and have been misusing the same repeatedly for delaying the adjudication of the claim of the respondent.

13. It is further important to note here that the appellant, Smt. Somwati, and Sh.Omprakash had also filed another suit being

CS(OS) No.2496/1994 before this Court in relation to another property being TA no.171/1, Tuglakabad Extension, New Delhi alleging that the brother of the respondent had got certain documents in relation to the said property executed from the appellant-Smt. Somwati in relation to a loan transaction against the said property. This Court by its judgment and order dated 25.03.2011 dismissed the said suit, again disbelieving the case of the appellant with respect to any loan transaction and in fact, believed the case of the brother of the respondent that the appellant-Smt. Somwati had executed an Agreement to Sell and other documents transferring the said property in favour of the defendants therein (including the respondent herein).

14. The appeal filed against the said judgment and order was dismissed by the Division Bench of this Court by its judgment and order dated 05.12.2011 and the Special Leave Petition filed thereagainst was dismissed by the Supreme Court by its order dated 29.10.2012. The Supreme Court also dismissed the review filed thereagainst by an order dated 17.01.2013.

15. The successor in interest of the appellant-Smt. Somwati had also filed another suit being CS No.1709/2018 titled ***Subhash Chandra & Ors. vs. Nagarmal Yadav***, challenging the judgment and order dated 27.08.2002 of which execution is being sought by the respondent. The said suit was dismissed by the learned ADJ-03, South-East, Saket Courts by an order dated

17.12.2018. It is admitted by the learned counsel for the appellants that the said order remains unchallenged.

16. A perusal of the above sequence would clearly show that the present appeal is in fact an abuse of the process of the Court wherein the appellants have left no stone unturned to prolong the execution of the decree that has been passed in favour of the respondent. Even the document that is now sought to be made basis of the present appeal, admittedly, came to the knowledge and possession of the appellants sometime in the year 2013. There is absolutely no justification for the appellants not having made submission on the basis of the said document earlier at the time of filing of the appeal/SLP/objections in the execution petition. In fact, it is admitted that the document was not even filed in the suit that was specifically filed by the appellants challenging the judgment and order of which execution has been sought by the respondent.

17. I therefore, find no merit in the present appeal and the same is dismissed with cost quantified at Rs.50,000/-.

NAVIN CHAWLA, J

FEBRUARY 03, 2020

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