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

% Judgment delivered on: 16.03.2023

+ CM(M) 418/2023

BHAGAT SINGH & ORS

..... Petitioner

versus

TARBIA EDUCATION FOUNDATION & ORS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. A.K. Sen, Advocate

For the Respondent : Mr. Amandeep Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 12517/2023

1. This is an application seeking exemption from filing certified copies of the annexures/documents.
2. Exemption is allowed, subject to all just exceptions.
3. The application stands disposed of.

CM(M) 418/2023 & CM APPL. 12516/2023 (Stay)

4. The petitioners challenge the order dated 01.12.2022 passed by the learned Trial Court in CS No. 207601/2016 titled '*Kuldeep Singh & Ors vs. Tarbia Education Foundation & Ors*', whereby the application

under Order I Rule 10 of the Code of Civil Procedure, 1908 (in short “CPC”) filed by the petitioners, who were defendants no. 54 to 56 before the learned Trial Court, seeking transposition as plaintiffs, was dismissed.

5. Mr. A.K. Sen, learned counsel appearing for the petitioners submits that the learned Trial Court ought to have considered the application under Order I Rule 10 of CPC, in favour of the petitioners for the reason that the issue raised by the plaintiffs in the aforesaid suit was common to that of the petitioners/defendants in the suit.

6. Learned counsel submits that another relevant aspect why the impugned order is erroneous is for the reason that plaintiff himself who is *dominus litus*, also did not have any objection to such transposition. Learned counsel pointed out to certain judgments rendered by High Court of Patna as well as the Hon’ble Supreme Court in ‘**Kiran Tandon vs. Allahabad Development Authority & Ors.**’ reported in (2004) 10 SCC 745, to submit that instead of relegating parties to separate suits and thereby causing multiplicity of litigation, in suitable cases, the defendants, if required, may be transposed as plaintiffs.

7. In the present case, learned counsel submits that though the Power of Attorney was indeed executed sometime in the year 2004, however, it was only in the year 2013-14 that the petitioners realised the misuse of the Power of Attorney executed in favour of the attorney.

8. Learned counsel also submits that the moment the petitioners were served with the copy of the summons of the suit, even before the written statement was filed, the application seeking transposition was filed. In other words, learned counsel submits that no time was wasted

in placing before the Court the fact that the defendants need to be transposed as plaintiff.

9. Per Contra, Mr. Amandeep Singh, learned counsel for respondents no.1 to 3 submits that the question here is not in respect of whether the defendants can be transposed as plaintiffs or not, and whether the plaintiff has or does not have any objection. Learned counsel submits that it is only respondents no. 1 to 3, who are defendants no.1 to 3 before the learned Trial Court, who are the affected parties and who are the only sole and contesting parties whose interests are affected by the outcome of the suit.

10. Learned counsel submits that with the permission of the learned Trial Court, reply to the said application too was filed by the respondents.

11. Learned counsel submits that it was only subsequent to the purchase of the subject suit land that the suits were filed on false and frivolous grounds and the present petitioners being defendants no.54 to 56 also jumped in the fray to put across their false claim. Learned counsel submits that the petitioners have already sold their interests long back and had nothing to place before the learned Trial Court either as a defendant or even as a plaintiff.

12. This Court has considered the arguments of the parties as also considered the documents and the impugned order.

13. It would be apposite to extract paragraphs 3 to 5 of the impugned order hereunder:-

“3. Per contra, the Ld. Advocate for the defendants no.1, 2 and 3 had submitted that the aforesaid application should be dismissed by this Court because the defendants

no.54 to 56 have already sold their share qua the property forming subject matter of the impugned sale deed dated 29.06.2013 to Sh. Narender Chaudhary vide a GPA, agreement to sell transaction dated 14.11.2008 and have even made a statement to the said effect before Inspector Vipin Yadav, PS Jaitpur, during the investigation of FIR No.887/2015, PS Jaitpur; because the defendants no.54 to 56 have filed the aforesaid application, only to extort money from the defendants no.1 to 3 and because the Hon'ble High Court of Delhi vide order dated 04.03.2022, passed in CRL. M. C. 617/22, Tarbia Education Foundation & Ors. v State of NCT of Delhi, has quashed the FIR No.887/2015, PS Jaitpur, on the basis of compromise reached between the complainants of the said FIR and the defendant no.1.

4. In rejoinder, the Ld. Advocate for the defendants no.54 to 56, had emphatically denied that the defendants no.54 to 56 have already sold their share qua the property forming subject matter of the impugned sale deed dated 29.06.2013 to Sh. Narender Chaudhary vide a GPA, agreement to sell transaction dated 14.11.2008 and that the defendants no.54 to 56 have made a statement to the said effect before Inspector Vipin Yadav, PS Jaitpur, during the investigation of FIR No.887/2015, PS Jaitpur.

5. After the conclusion of the hearing, on 11.11.2022, the Ld. Advocate for the defendants no.1 to 3, after supplying a copy to the Ld. Advocate for the defendants no.54 to 56, has filed the certified copy of a copy of status report filed by Inspector Vipin Yadav in the Court of Ms. Swati Sharma, Ld. MM, Saket Courts, New Delhi, during the investigation of FIR No.887/2015, PS Jaitpur. In the said status report, it is clearly recorded that in their statements made as per Section 161 of CrPC, 1973 during the investigation of FIR No.887/2015, PS Jaitpur, the defendants no.54 to 56 had informed Inspector Vipin Yadav, PS Jaitpur that they have already sold their share qua the property forming subject matter of the impugned

sale deed dated 29.06.2013 to Sh. Narender Chaudhary vide a GPA, agreement to sell transaction dated 14.11.2008.”

14. A perusal of the aforesaid paragraphs bring to fore the fact that despite the fact that there was a statement recorded by the authority under Section 161 of the Code of Criminal Procedure, 1973, the petitioners had made statement before the learned Trial Court that no such statement was infact recorded by the Officer and the contents of the said statement also was denied.

15. The learned Trial Court was constrained to call for the record of the said statement recorded during the investigation of FIR No. 887/2015 pertaining to Police Station Jaitpur. Learned Trial Court had carefully scrutinized the said status report and concluded that each of the petitioners had specifically informed the Police Officer that they had sold their share qua the property forming subject matter of the impugned Sale Deed dated 29.06.2013 to Sh. Narender Chaudhary vide a GPA, Agreement to Sell transaction dated 14.11.2008.

16. Learned Trial Court was constrained to make an observation that the said defendants were not upfront with the Court. Despite the aforesaid observation made by the learned Trial Court, the Court had in all fairness and rightly so granted liberty to the petitioners/defendants no. 54 to 56 to file an independent suit to challenge the Sale Deed dated 29.06.2013.

17. At the outset, this Court had put a pertinent query to the learned counsel for the petitioners as to whether any such statement was made by the petitioners before the police authorities, learned counsel sought time to take instructions from the petitioners.

18. The reason is not far to see.
19. Learned counsel appearing for the respondents categorically pointed out that in the present record filed by the petitioners, intriguingly the reply of the contesting respondents, who are defendants no. 1 to 3, has not been filed.
20. This Court has also considered the status report handed over by learned counsel for the respondents and is of the view that having made the statements as reflected in the status report, the petitioners could not have sought this transposition as, *prima facie*, it appears they have no interest left.
21. In view the aforesaid facts and circumstances which have arisen in the case, this Court is of the considered opinion that the learned Trial Court had not committed any material irregularity, judicial impropriety or any infraction of law while passing the impugned order.
22. In the facts which have occasioned in the present petition, in that, the status report which was scrutinized by the learned Trial Court, no interference under supervisory jurisdiction under Article 227 of the Constitution of India is called for.
23. Accordingly, the petition is dismissed with costs of Rs.25,000/- to be paid to defendants no.1 to 3 before the learned Trial Court.
24. It is made clear that the liberty so granted by the learned Trial Court to the petitioners shall remain intact, in accordance with law.
25. Pending application stands disposed of.

TUSHAR RAO GEDELA, J.

MARCH 16, 2023

