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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 509/2019 & CRL.M.A. 5040/2023**

SATI BHATTACHARYAPetitioner

Through: Mr. T.V. George, Advocate.

versus

ASHOK BISWAL & ORSRespondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
07.08.2024

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1. This petition has been filed for setting aside order dated 19th March, 2019, passed by Ld. MM, South District Saket Court in case no. 626626/2016. Despite publication, no one has appeared for the respondent, who is therefore proceeded *ex parte*.
2. By this order, the Magistrate dismissed the complaint filed by the complainant/ petitioner on the basis there was no material on record to proceed further against the proposed accused.
3. The basis of the complaint was relating to plot no. E-929, CR Park, New Delhi, which property belonged to the complainant's father and devolved upon her, her brother and her sister-in-law by virtue of the will of her mother dated 09th January, 1998.



4. In 2001, the complainant's mother had permitted one Mr. Piyush Dutta to live in the rear portion of the property on a licence fee, which kept on getting extended by Mr. Dutta illegally.
5. Subsequently, on 03rd February, 2009, the rights in the property were converted into freehold. Mr. Dutta filed a false suit against the complainant and her brother and sister-in-law claiming to be a tenant.
6. In this process, the accused respondent Mr. Ashok Biswal on a promise that he would purchase the property, stated that he would help with the settlement of the suit filed by Mr. Dutta.
7. The accused kept on persuading the complainant to sell the property on the pretext that they would develop a property by creating a four-storey building, and will transfer the rear side portion of the lower ground floor to the complainant.
8. Accordingly, a sale deed was executed on 23rd May 2011 in favour of the accused no. 2 (*wife of the accused Mr. Biswal*) by petitioner, her brother and her sister-in-law; and a reciprocal agreement to sell was executed in favour of the complainant for providing her the rear portion of the property, post the re-construction. For this, a consideration of Rs. 10 lacs had also been provided by the complainant to the accused.
9. Later, the complainant was never provided the said property post re-construction, despite having transferred the rights of the complete property through the sale deed.
10. It also transpired that the accused had forged and fabricated several agreements to sell in 2005, in respect of the property in their favour and



cheated several persons and received huge amounts from them, leading to numerous litigations.

11. Ld. MM, upon presentation of the complaint, dismissed it on the basis that the Will had not been brought on record, basis which the property had devolved to the complainant, as well as the original of the 2011 sale deed and the agreement to sell was also not brought on record.

12. Counsel for the petitioner states that the question of the Will being produced was not necessary considering there was a registered sale deed of 2011, by which the title had been transferred to the accused no. 2, as also the originals of both the sale deed and the agreement to sell of 2011, could not be produced because they were part of the civil court record, where a suit had been filed by the complainant seeking specific performance.

13. An additional affidavit had been executed stating facts relating to this property with reference to the title documents, deposited on 30th August, 2018, which was not taken into account by the Ld. MM.

14. The more critical part of the complaint i.e. copies of forged agreements to sell of 2005, were given with the complaint, since the question of the complainant having originals of these fabricated documents did not arise (considering that she had never been given the originals of the same by the accused).

15. A perusal of the signatures of the complainant on the registered sale deed, and the signatures purporting to be of complainant (as well as of her brother and her sister-in-law) on the forged and fabricated agreements to sell, are evidently quite different, even on a bare perusal of the same.

16. The Court has perused the documents which the counsel for



petitioner has pointed out, and in the opinion of the Court, the Ld. MM. has not exercised jurisdiction in the proper manner, and not considered relevant documents which were already on the record, by which the complainant alleged criminality, in particular of the forged and fabricated agreements to sell of 2005, basis which the accused allegedly cheated other persons as well.

17. Therefore, the revision petition is allowed, the impugned order of 19th March, 2019 is set aside. The complaint is remanded back to the Court of the Magistrate, South District Saket Court, to be considered afresh for the purpose of summoning of the accused.

18. Accordingly, petition is disposed of.

19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

AUGUST 7, 2024/RK

Click here to check corrigendum, if any