



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

% **Judgment reserved on : 07 December 2023**
Judgment pronounced on : 23 January 2024

+ **FAO 190/2023 & CM APPL. 39074/2023**

PRADEEP SHARMA

..... Appellant

Through: Mr. A.K. Singla, Senior
Advocate with Mr. Akash
Jandial, Adv.

versus

RAJIV GARG

..... Respondent

Through: Mr. Supriya Juneja and Mr.
Raghev Anthwal, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. This judgment shall decide an appeal preferred by the appellant, who is the plaintiff in the main suit pending before the District Court, under Order XLIII Rule 1 (r) of The Code of Civil Procedure, 1908¹ read with Delhi High Court Rules, 2018 assailing impugned order dated 05.07.2023 passed by the learned Additional District Judge-07, West District, Tis Hazari Courts, Delhi, in Civil Suit No. 13143/2016 titled 'Pradeep Sharma v. Rajiv Garg'.

IMPUGNED ORDER:

2. The impugned order allowed an application under Order XXXIX Rule 4 read with Section 151 of the CPC, moved on behalf of

¹ CPC



the respondent, who is defendant in the main suit, for vacation of *ex-parte* injunction dated 24.03.2015. Shorn off unnecessary details, the appellant/plaintiff filed the above-noted civil suit seeking declaration, to the effect that he is the owner of Flat No. 201, J-1/162, Rajouri Garden, New Delhi by virtue of a registered Sale Deed dated 22.04.1996 and sought recovery of possession besides *mesne* damages claiming that the respondent/defendant was never in actual or physical possession of the said property at any point of time. The appellant/plaintiff, in order to substantiate his pleas, *inter alia* relied upon the contents of FIR No. 822/2001 lodged under Section 448/380/34 of the Indian Penal Code, 1860², with the PS Rajouri Garden, Delhi as well.

3. *Per contra*, it was the case of the respondent/defendant that he has been the lawful owner of the property in question which had been purchased by him by virtue of an Agreement to Sell dated 12.07.1999 and other sale documents in the nature of General Power of Attorney, Receipt, etc. and that he was forcibly dispossessed on 28.08.2001 from the suit property by the appellant/plaintiff in connivance with his wife, who was a Sub-Inspector in Delhi Police, besides the then SHO Sh. Rajender Sharma and SI Ashish Tyagi of Police Station Rajouri Garden, Delhi.

4. Evidently, the respondent/defendant had instituted a suit for permanent injunction for restraining the appellant/plaintiff and his associates from forcibly dispossessing him from the suit premises and he also filed another Civil Suit No. 98/2003 seeking recovery of

² IPC



possession under Section 6 of the Specific Relief Act, 1964³. The proceedings under the SRA, which were initially contested by the appellant/ plaintiff, but as he failed to appear and lead evidence, it resulted in an *ex-parte* decree in favour of the respondent/defendant vide judgment and decree dated 03.04.2007.

5. It is pertinent to indicate that the *ex-parte* judgment-cum-decree dated 03.04.2007 hinged on the fact that the FIR No. 822/2001 under Section 448/380/34 of the IPC with PS Rajouri Garden, Delhi, registered on 28.08.2001 at the behest of the appellant/plaintiff showed that respondent/defendant was in actual possession of the suit property as on 28.08.2001.

6. To cut the long story short, the said decree was challenged by the appellant in revision before this Court which was dismissed vide order dated 23.04.2012. Thereafter, this judgment was challenged before the Supreme Court but in vain as the SLP was dismissed vide order dated 03.11.2014. The respondent/defendant/Decree holder accordingly instituted an application for execution of *ex-parte* decree dated 03.04.2007 and warrants of possession in respect of the suit property were issued by the learned Trial Court/Executing Court vide order dated 21.02.2015.

7. It was at that juncture that Civil Suit (OS) 697/2015 was then instituted by the appellant/plaintiff on 12.03.2015, seeking relief of declaration of title, recovery and injunction *qua* the suit property against the respondent/defendant and an ad-interim *ex-parte* injunction was granted in favour of the appellant/plaintiff, by a co-ordinate bench

³ SRA



of this Court vide order dated 24.03.2015. On the respondent/defendant getting served with the notice of the present suit and filing reply besides application under Order XXXIX Rule 4 of the CPC, learned Trial Court passed the impugned order dated 05.07.2023, which is assailed in the present appeal.

ANALYSIS AND DECISION:

8. Having given my thoughtful consideration to the submissions advanced by learned counsel for the rival parties at the Bar and on perusal of the entire record of this appeal, at the outset, I find that the present appeal is bereft of any merits.

9. **First things first**, it would be relevant to reproduce the observations made by learned Trial Court while rendering the impugned decision/order; which reads as under:-

“6. It is the contention of the defendant that the plaintiff has made false and misleading facts in relation to the address of the defendant and also made several other misleading facts in the present case. It is the contention of the defendant that the plaintiff despite knowing the correct present address of the defendant has intentionally not served the defendant on the said address but has served on the address which was not in existence at the date when the present suit was filed with a view to obtain injunction order from the Court. It is submitted that the address i.e. B-163, SBM Colony, New Delhi where the defendant was served was already demolished in 2004-05 and the defendant used to live at the said address up till 2003-04. The contention of the defendant that the said colony has been demolished many years back is substantiated with the report of the process server dated 30/04/2015. It is the contention of the defendant that the plaintiff was having the knowledge of the present address of the defendant as in the year 2007 he has filed the civil revision petition (CRP No.157/2007) before the Hon’ble High Court of Delhi wherein the memo of parties was filed and the correct prevailing address of the defendant i.e. I-286, Karampura, New Delhi was mentioned by the plaintiff. It is further submitted that the plaintiff thereafter has filed the review petition before the Hon’ble High Court of Delhi and the SLP



before the Hon'ble Supreme Court wherein the correct present address of the defendant of Karampura, New Delhi was mentioned. It is further submitted that in the year 2012, the plaintiff has filed the complaint u/s 156(3) CrPC was against the defendant and in the said complaint, the plaintiff has mentioned current address of the defendant i.e. A-240, Sudarshan Park, New Delhi and the said address was also verified by the police in a status report filed in the aforesaid complaint case. The defendant has also filed the copy of the complaint filed by the plaintiff against the defendant wherein the address of Sudarshan Park, New Delhi was mentioned. Therefore, the aforesaid facts clearly show that the plaintiff was aware about the current address of the defendant as he has already mentioned the said address in the aforesaid subsequent proceedings initiated by him against the defendant. This fact that the plaintiff has intentionally filed the wrong address of the defendant for the compliance of provision u/o 39 Rule 3 CPC is also proved by the fact that after the summons were sent at the wrong address, the plaintiff was directed to file fresh and complete address of the defendant and thereafter the plaintiff in compliance of the said order has filed the correct address of the defendant of Karampura, New Delhi which further shows that the plaintiff intentionally earlier has not filed the correct current address despite having knowledge of the same.

7. It is the case of the plaintiff that the defendant was never in possession of the suit property. On the other hand, it is the case of the defendant that he was in possession of the suit property and on 28/08/2001, he was forcibly dispossessed from the suit property by the plaintiff in conspiracy with his wife who was Sub-Inspector in Delhi Police and the then SHO Sh. Rajender Sharma and SI Ashish Tyagi of police station Rajouri Garden, Delhi and the plaintiff has falsely lodged a complaint in police station Rajouri Garden and the FIR No.822/01 under Section 448/380/34 IPC was registered. The plaintiff has also filed the copy of the status report, wherein the fact of lodging of the aforesaid FIR by the plaintiff has also been mentioned. The registration of the aforesaid FIR by the plaintiff itself shows that the defendant was earlier in physical possession of the suit property. In the civil suit filed under Section 6 of the Specific Relief Act, the judgment and decree dated 03/04/2007 was passed in favour of the defendant and it was held therein that the defendant was in possession of the suit property. The said judgment and decree was challenged by the defendant up to the Hon'ble Supreme Court but he has remained unsuccessful.



8. It is the contention of the defendant that he has filed a complaint with the vigilance department against SI Ashish Tyagi and SHO Sh. Rajender Sharma and the inquiry was conducted against them by the vigilance department and the same was concluded and it was found that the aforesaid police officials have connived with the plaintiff and his wife which further supports the contention of the defendant.

9. In view of my above discussions, it is seen that the plaintiff has filed the present suit by misleading facts in relation to the address of the defendant as well as with regard to the other facts as discussed above. Therefore, the present application is allowed and the direction given vide order dated 24/03/2015 for the parties to maintain status quo with regard to title and possession of the suit property is vacated. The stay in the proceedings in the execution petition no.138/2007 also stands vacated. It is clarified that the proceedings in the execution petition be carried out as per law.”

10. On a careful perusal of the aforesaid observations passed by the learned Trial Court, it is evident that vide judgement dated 03.04.2007 in Civil Suit No. 98/2003 titled ‘Rajiv Garg v. Pradeep Sharma’, the address of the present respondent i.e., Rajiv Garg was described as B-163, SBM Colony, New Delhi-110015. It is also evident on perusal of the above-noted judgment that three issues were framed based on the pleadings of the parties, which read as under:-

- “1. Whether the suit property was duly purchased by the plaintiff from the defendant.? OPP
2. Whether the plaintiff was in possession of the suit property before 28.8.01? OPP
3. Whether the plaintiff was dispossessed from the suit property by the defendant on 28.8.01? OPP
4. Whether the plaintiff is entitled to be kept in possession of the suit property? OPP
5. Relief.”

11. Without going into the discussion on merits in the above-noted case, it is suffice to state that all the issues were decided in favour of the respondent/defendant in the instant appeal i.e., Rajiv Garg. The



said order was challenged by the appellant/plaintiff Pradeep Sharma in C.R.P. No. 157/2007, CM No. 12281/2007 and CM No. 16600/2010 before this Court and the civil revision petition was dismissed vide detailed judgment dated 28.03.2012, and the appellant/plaintiff then preferred a Special Leave Petition (Civil) No. 14781-14782/2012 before the Supreme Court which also came to be dismissed, wherein the following order was passed:-

“Issue notice.

Subject to petitioner’s depositing a sum of Rs. 10,000/- per month from the date of the passing of the decree by the trial court i.e. 03.04.2007, the execution of the impugned judgment and order shall remain stayed pending further orders.

Current monthly use and occupation charges shall also be deposited by the petitioner before the trial court at the rate mentioned above. Upon deposit, the amount shall be invested by the trial court in a term deposit to ensure for the benefit of the successful party. Arrears to be deposited within two weeks from today.”

12. It is an admitted fact that the aforesaid directions of the Supreme Court have not been complied with by the appellant/plaintiff. Further, there was a calculated and well-conceived manoeuvre on part of the appellant/plaintiff, who on filing CS(OS) No. 13143/2016 impleaded the respondent/defendant by citing his previous address viz. B-163, SBM Colony, New Delhi-110015, which to the knowledge of the appellant/plaintiff stood demolished long time back; and thereby deliberately omitted or concealed the fresh address or the new address to which respondent had moved viz. as I-286, Karampura, Delhi, which address had been mentioned in all previous legal proceedings between the same parties, even up to the Supreme Court, and thereby securing ad-interim *ex-parte* injunction dated 24.03.2015. The



appellant/plaintiff falls foul of common law principle *suppressio veri, suggestio falsi* i.e., wilful concealment of the truth when one is bound to reveal it and such concealment is construed as an expression of falsehood. Be that as it may, even on merits he has no case since he has failed to comply with the directions of the Supreme Court and therefore, there could be no stay of the execution of the decree dated 03.04.2007 in Civil Suit No. 98/2003.

RELIEF:

13. In view of the foregoing discussion, this Court is unable to find any illegality, perversity or incorrect approach adopted by the learned Trial Court in vacating the ad-interim *ex-parte* injunction dated 24.03.2015 and thereby allowing the application of the respondent/defendant under Order XXXIX Rule 4 of the CPC. Hence, the present appeal is dismissed with the cost of Rs. 25,000/-. All interim orders stand vacated accordingly.

14. The appeal is disposed of accordingly. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JANUARY 23, 2024

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