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

+ **CRL.M.C. 4938/2022**

MRS. VATEENA BEGUM

.....Petitioner

Through: Md. Azam Ansari, Advocate.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Tarang Srivastava, APP for the
State.

SI Anil Kumar, PS Jamia Nagar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

21.08.2024

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1. The Petitioner has approached this Court challenging the Order dated 07.09.2022 passed by the learned Principal District & Sessions Judge, Saket Courts, Delhi upholding the Order dated 16.12.2021 by which the learned Metropolitan Magistrate had dismissed the application filed by the Petitioner under Section 200 CrPC.
2. The facts as stated by the Petitioner in her complaint are that the Complainant/Petitioner purchased a property in question being H. No. S-18/18, Joga Bai Extension, Batla House, New Delhi-110025 from one Dilawar Hussain Malik @ Guddu on 21.06.2012 for the sum of Rs.9 lakhs.
3. It is stated that the said property was purchased by the Petitioner by selling her ancestral property situated at Village Daha, Bagpat, U.P. and also selling a plot of land of her husband in Loni, Ghaziabad (Mohalla Dabar). It



is stated that after the purchase of the property, possession was taken by the Petitioner and she was in possession since 21.06.2012.

4. It is stated that the purchase of the property was on the basis of General Power of Attorney, Agreement to Sell, Purchase, Affidavit, Will, Possession Letter and receipt of money; all of which were executed on 21.06.2012 by the said Dilawar Hussain Malik in favour of the Petitioner herein.

5. It is stated that after seven years of the date of purchase of the property, the Petitioner came to know that a suit being Suit No.207/2012 has been filed by the Respondents herein claiming that they had purchased the property by way of a Advance receipt-cum-Agreement to Sell and Purchase from Dilawar Hussain Malik. A suit for specific performance of the contract was filed by the Respondents. The suit was decreed ex-parte. Execution petition was filed and the warrants of attachment were issued. The Petitioner filed her objection contending that she is a *bonafide* purchaser of the property in question. Objections were rejected. The Petitioner, thereafter, had approached this Court by filing EX. FA 9/2020. This Court *vide* Judgment dated 17.12.2020 set aside the Order passed by the Trial Court rejecting the objections. The said Judgment dated 17.12.2020 was taken up in appeal before the Apex Court and the Apex Court *vide* Order dated 25.01.2021 had stayed the Judgment dated 17.12.2020.

6. It is the case of the Petitioner that a suit was filed by the Respondent stating that there is an Advance Receipt-cum-Agreement To Sell dated 02.07.2012 executed in favour of the Respondent by Dilawar Hussain Malik and his wife Najma on the basis of which the suit for specific performance had been filed by the Respondents. It is stated that the suit had been filed by



the Respondents without impleading the Petitioner. It is stated that the said agreement to sell dated 21.07.2012 upon which the Respondents are relying on is a forged document and the suit has been decreed ex-parte which shows that the Respondents were hand in glove in defeating the rights of the Petitioner.

7. The complaint also states that after the payment of Rs.10,000/-, there is no proof of any substantial amount of money paid by the Respondents. Stating that the documents in question are all forged documents which have been made by the Respondents herein to defeat the rights of the Petitioner. The Petitioner gave a complaint to the Police. Since the FIR was not being registered, an application under Section 200 CrPC was filed.

8. Pre-summoning evidence was led. Vide Order dated 16.12.2021, the complaint was rejected by the learned Metropolitan Magistrate stating that the Respondents are also purchasers of the property and they filed a suit for specific performance. The Trial Court was of the opinion that *prima facie* that vendor of the Petitioner and the Respondents have sold the property twice, once to the Petitioner and once to the Respondents, and that he might have cheated both the persons but there is nothing on record to show that the Respondents have connived with the sellers , i.e., Dilawar Hussain Malik and his wife. The Trial Court was also of the opinion that there is nothing on record even to remotely suggest that the accused persons were even aware of the fact that the Petitioner is in possession of the property. A revision petition being Criminal Revision No.150/2022 was filed by the Petitioner challenging the said order passed by the learned Metropolitan Magistrate. The same has been rejected by the Impugned Order which is sought to be challenged in the present petition.



9. Heard the learned Counsel appearing for the Parties and perused the material on record.

10. Material on record indicates that since objections of the Petitioner had been rejected by the Trial Court *vide* Order dated 13.08.2020, the Petitioner had approached this Court challenging Order dated 13.08.2020 by filing EX. FA 9/2020 and this Court *vide* Judgment dated 17.12.2020 set aside the order of the Executing Court and directed the Executing Court to frame issues and adjudicate the objections after receiving evidence. The said order has been challenged by the Respondents by filing SLP (C) No.1060/2021 and the Apex Court *vide* Order dated 25.01.2021 has issued notice in the matter and stayed the implementation of the Judgment dated 17.12.2020. Material on record shows that the Respondents have filed a petition under Section 340 CrPC against the Petitioner contending that the Petitioner has filed a false case on the basis of false documents contending that the documents of the Petitioner upon which the Petitioner places reliance is dated 21.06.2012 whereas the stamp papers have been purchased only on 10.07.2012 and 27.08.2012 and therefore the Petitioner could not have executed these documents on the stamp paper on 10.07.2012 and 27.08.2012.

11. The proceedings under Section 340 CrPC are going on. The revisional court after examining the documents on record found that the complaint has been rightly rejected by the learned Metropolitan Magistrate and the Petitioner has approached this Court assailing the said orders.

12. It is the contention of the learned Counsel for the Petitioner that the Petitioner/Complainant has been taken for a ride and the vendors have prepared forged documents like agreement to sell-cum-receipt etc. and



therefore the complaint could not have been dismissed primarily on the ground that the suit had been filed by the Respondents and a decree had been obtained.

13. As found by the Trial Court and the Revisional Court, material on record does not even remotely suggest that the Respondents were aware that the Petitioner is in possession the property. The suit has been filed after seven years after the Petitioner coming to possession on the basis of the documents which the Respondents places reliance on. No doubt, the suit has been decreed *ex parte* and the issue as to whether the Petitioner must be heard on the application or not is pending before the Apex Court. In the meantime, the proceedings are pending against the Petitioner under Section 340 CrPC contending that the Petitioner was relying on forged and fabricated documents inasmuch as the stamp papers are of a later date.

14. This Court has perused the pre-summoning evidence given by the Petitioner as CW-1 and Mohd. Aslam as CW-2. A perusal of the evidence does not in any way suggest that the Respondents were hand in glove with the vendors of the Petitioner or that they even knew about the sale of the property to the Petitioner.

15. The grievance of the Petitioner is primarily against the Dilawar Hussain Malik who sold the property to the Petitioner. As rightly pointed out by the courts below, there is no material on record even to remotely suggest the complicity of the Respondents in preparing the Advance Receipt-cum-Agreement to Sell for purchasing the same property which has been sold to the Petitioner in the other proceedings.



16. Proceedings under Section 340 Cr.P.C are pending against the Petitioner on the ground that the agreement has been prepared on stamp papers which have been purchased after the date of the agreement.

17. In the absence of any material on record, this Court is not inclined to interfere with the Order dated 07.09.2022 passed by the learned Principal District & Sessions Judge upholding the Order dated 16.12.2021 passed by the learned Metropolitan Magistrate dismissing the complaint filed by the Petitioner herein.

18. Even in this Court, the Petitioner has not produced any material which could persuade this Court to send the matter back for the purpose of trial.

19. In view of the above, this Court is of the view that there is no infirmity with the orders of the courts below.

20. With these observations, the petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 21, 2024

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