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IN THE HIGH COURT OF DELHI AT NEW DELHI

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I.A. Nos.9471 of 2009 & 141 of 2009 in C.S. (OS) No.631 of 2005

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23.12.2009

SATISH VERMA

.....Plaintiff

Through: Mr. Shekhar & Ms. Anchal Dhingra,
Advocates.

Versus

JEETINDRA CHURAMANI & ANR.

.....Defendants

Through: Mr. Rohit Kumar, Adv. for defendants.
Mr. Harsh Raghuvanshi, Advocate for the
applicant.

Date of Reserve: 17th November, 2009

Date of Order: 23rd December, 2009

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. In this suit, I.A. No.9471 of 2009 under Order 39 Rule 2A CPC has been made by the plaintiff against the defendants after an application being I.A. No.141 of 2009 was made by one Mr. Gurmeet Singh Wadalia under Order 39 Rule 2A CPC.

2. The plaintiff herein, Mr. Satish Verma, had filed a suit for specific performance against defendants in respect of property No.17, Central Drive, DLF, Chattarpur Farms, New Delhi. The property is a farm house and the plaintiff has alleged that the defendants had entered into an Agreement to Sell in respect of this property with the plaintiff and later on refused to honour the Agreement. He, therefore, filed a suit for specific performance.

3. This court on 10th May, 2005 passed an interim injunction against the defendants restraining defendants from transferring, selling, encumbering, creating third party rights or parting with possession of the suit property. Notice of this was sent to the defendants, who initially refused to receive the service. However, the defendants put appearance on 29th July, 2005. The order passed by this court on 10th May, 2005 was confirmed and made absolute on 23rd July, 2008 and issues were framed. During the period when evidence was going on, the defendants made an application to the court being I.A. No.10810 of 2008 under Order 39 Rule 4 CPC with a prayer that the court should modify the order and allow defendants to lease out the property to one Mr. Gurmeet Singh Wadalia. This application was made on 25th August, 2008. This court issued a notice of the application and after considering the reply of the plaintiff, vide order dated 24th November, 2008, permitted the defendants to allow the use and occupation of the property to Mr. Gurmeet Singh Wadalia, subject to the condition that Mr. Gurmeet Singh Wadalia would not claim to be a tenant or in possession of the said property and further subject to Mr. Gurmeet Singh Wadalia filing an undertaking in the form of an affidavit before this court setting out the terms and conditions of the settlement between him and the defendants and further with an undertaking that on the expiry of one year from the date of commencement of use and occupation, he shall remove himself from the property, not claiming any right therein and would not correspond with any authorities whatsoever adversely to the interest of the defendants. It was also directed that an advance copy of the affidavit of Mr. Gurmeet Singh Wadalia be supplied to counsel for the plaintiff.

4. An affidavit of Mr. Gurmeet Singh Wadalia dated 8th December, 2008 was filed in the court wherein Mr. Gurmeet Singh Wadalia deposed that he was apprised by the defendants of the civil suit filed by Mr. Satish Verma with regard to property in question

and if he was permitted by the court to use the said property for his residence and residence of his family members for a period of one year, he would be paying a sum of Rs.40,000/- to both the defendants (Rs.20,000/- each) for use and occupation of the property. He shall bear all other expenses for up keeping and maintenance of the suit property including major repair works. He shall be engaging servants, gardeners of his own for up keep of the property. He shall pay electricity charges, etc. He shall deposit a sum of Rs.2 lac as interest free security with defendants to be refunded to him on vacation of the premises. He shall not carry out any additions or alterations and he shall not part with possession to any other person. He shall give 90 days' notice in writing to owners before vacation of the premises and he shall handover peaceful vacant possession to the defendants on expiry of period of one year and give intimation to the court. However, Mr. Gurmeet Singh Wadalia did not counter sign the order of the court as required and did not file a separate undertaking rather he filed an application being I.A. No.141 of 2009 before the court under Order 39 Rule 2A CPC wherein he alleged that he was duped by the defendants, who claimed themselves to be the absolute owners in possession of the said farm house and they negotiated with him to sell the farm house for a total consideration of Rs.5.40 crores. The deal was struck in presence of Mr. Raj Bahadur Gupta, a property dealer, Mr. Neeraj Singh Rathi, another property dealer and Mr. Rajeev Khanna, a friend of the applicant. On the deal being struck, he paid a sum of Rs.81 lac to the defendants on 25th August, 2008. Out of this Rs.67.40 lac was paid in cash. Two pay orders for Rs.1.80 lac each dated 25th August, 2008 drawn on ICICI Bank, New Friends Colony, New Delhi were handed over to defendants and two post-dated cheques of Rs.5 lac each dated 1st December, 2008 on HSBC Bank, Sector 9, Chandigarh, were also handed over to the defendants. The balance amount was to be paid subsequently.

5. The possession of the premises was handed over to the applicant on 31st August, 2008. The applicant was assured that a formal sale agreement would be executed with the applicant on an auspicious day. After taking possession, the applicant spent about Rs.27 lac on the property by way of installation of a deep tube well, laying of pipelines and sprinkler system, repair and plastering of complete boundary wall, repair of roof of servant quarters and making a bathroom therein, landscaping, grass laying, upbringing of front area, plants, walk way and construction of a swimming pool and reservoir and installation of 12 ACs, paint and polish of the entire house, changing of old electric wiring, obtaining gas connection and TATA Sky connections with Televisions. The applicant also purchased a non-judicial stamp paper of Rs.100/- for executing Agreement to Sell, however, defendants insisted that they believed in astrology and they would be executing Agreement to Sell some time in October, 2008. However, the applicant was approached on 27th November, 2008 at his residence, that is, farm house by the defendants and the applicant was informed about pendency of the present case. At that time the defendants impressed upon the applicant that the suit against them had no merits and was liable to be dismissed. The defendants assured him that they would take permission from the court to hand over the possession of farm house to the applicant so as to legalize the possession as there was a stay order issued by the court. The applicant was informed that they had already sought permission from the court and made an application.

6. On 8th December, 2008 defendants again came to applicant and requested him to execute an affidavit showing him as a tenant in the farm house assuring that this would be required and filed in the court only if the plaintiff raises any objection in the court. The applicant executed an affidavit under influence of the defendants as the applicant had already spent huge amount on the property. The defendants also took four post-dated

cheques from the applicant of Rs.2,40,000/- each telling him that these cheques would be shown as rent to the court and would not be presented for encashment. The defendants agreed to extend the time for performing and completion of sale transaction. To gain the confidence of the applicant, the defendants also took two post-dated cheques of Rs.30 lac each dated 1st September, 2009 drawn on HSBC Bank, Sector 9, Chandigarh in favour of the defendants. On the morning of 18th December, 2008, the defendants came to the applicant and wanted him to accompany with them to the High Court. The applicant reached High Court and met Mr. Rohit Kumar, counsel for the defendants and there he was shocked to know that the affidavit of the applicant had already been filed before the court and the defendants wanted applicant to depose in their favour before the court as per the assertions made in affidavit. On hearing this, the applicant left the chamber of the counsel and went back. On the evening of 18th December, 2008 defendants again visited the residence of the applicant and asked him to visit the court the next day and sign some court proceedings. The applicant raised objection and refused to sign the court proceedings or any document for court proceedings. The applicant stated that the defendants played fraud upon him. The defendants were involved in various court cases and were habitual litigants and he has been deputed by the defendants and despite there being stay order granted by the court, the defendants negotiated with him for sale of the house and received considerable money from him and handed over possession to him. He, therefore, wanted that defendants be punished under Order 39 Rule 2A CPC.

7. The defendants in reply denied the allegations made by Mr. Gurmeet Singh Wadalia and stated that he was inducted only as a tenant for one year. No amount was received from him in cash. Whatever amount was received that was received only against rent and repair charges, etc. It was further submitted that the affidavit was executed by Mr. Gurmeet Singh Wadalia voluntarily. No misrepresentation was made to him. He

after taking possession became dishonest and colluded with the plaintiff and made false allegations against the defendants. The defendants were law abiding citizens and were harassed by the applicant.

8. The defendants also moved a contempt petition being C.C.P. (O) No.60 of 2009 making similar allegations against the applicant, Mr. Gurmeet Singh Wadalia, with application that the affidavit of applicant Mr. Gurmeet Singh Wadalia was taken on record by the court on 18th December, 2008. This affidavit was executed by the applicant Mr. Gurmeet Singh Wadalia of his own and the defendants also prayed that Mr. Gurmeet Singh Wadalia be directed by the court to give an undertaking and sign the order sheet. It is also submitted that possession of the premises was with the defendants till end of December, 2008. The defendants started shifting from the premises only after Mr. Gurmeet Singh Wadalia had executed affidavit in accordance with the court order. The possession of the premises was not handed over to Mr. Gurmeet Singh Wadalia at any time prior to the order of the court and the allegations made by the applicant Mr. Gurmeet Singh Wadalia about being in possession of premises prior to the order of the court was *malafide*. A prayer is made that the court should proceed against Mr. Gurmeet Singh Wadalia for contempt of court and punish him.

9. The applicant, Mr. Gurmeet Singh Wadalia, has not placed on record any receipt showing cash payment of Rs.67.40 lac. It does not sound to reason that a person who had not even executed the Agreement to Sell would part with such a huge cash without a receipt. However, I consider that in order to adjudicate upon the issue whether the defendants violated the orders of the court, it would be necessary to record evidence on this issue. Mr. Gurmeet Singh Wadalia had filed an affidavit in the court about occupying the premises in accordance with the court orders. His plea that he executed the

affidavit on some assurance of the defendants cannot be taken on the face value unless he is subject to cross-examination by the plaintiff and the defendants. His plea that he had entered into premises in part performance of the sale agreement in August itself is also to be decided by way of evidence. I, therefore, consider that the applications and the contempt petition filed in the suit can be decided only after evidence on this issue is recorded. Thus, following issues are framed :-

1. If the defendants were guilty of violating the interim injunction order granted by the court on 10th May, 2005 and confirmed on 23rd July, 2008?
2. Whether the applicant, Mr. Gurmeet Singh Wadalia was guilty of contempt?

10. The evidence on these issues be recorded along with the evidence in the main case. However, in view of the peculiar circumstances, it is directed that the applicant, Mr. Gurmeet Singh Wadalia, who had filed affidavit before the court shall be bound by the order passed by the court in the suit of the plaintiff and also in view of Section 52 of the Transfer of Properties Act. He would be at liberty to sue the defendants for his rights viz-a-viz defendants. The applicant, Mr. Gurmeet Singh Wadalia, shall file his affidavit by way of evidence within four weeks from today.

11. List before Joint Registrar for fixing dates of cross-examination and for evidence in the main case on 25th February, 2010.

SHIV NARAYAN DHINGRA J.

DECEMBER 23, 2009
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