

* **HIGH COURT OF DELHI : NEW DELHI**

CM (M) No.839/2010

% Judgment reserved on: 2nd July, 2010

Judgment delivered on: 6th July, 2010

Rajesh Kumar Gupta,
S/o Sh. Ramesh Gupta,
R/o House No. 30, Gali No. 1A,
Durga Puri Ext. Shahdara,
Delhi.

...Petitioner.

Through: Mr. Virendra Singh, Adv.

Versus

Smt. Premlata
W/o Sh. Hari Prashad Sharma,
R/o 32/52, Gali No. 11,
Vishwas Nagar, Shahdara,
Delhi.

...Respondent.

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

This petition under Article 227 of the Constitution of India has been filed against order dated 10th February, 2010, passed by Additional District Judge,

Delhi, vide which application of the petitioner filed under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure for short as “Code” was dismissed.

2. Brief facts of this case are that petitioner herein, filed a suit for Specific Performance and Injunction on the basis of Agreement to Sell entered into by respondent with him, on 21st May, 2002. On 24th May, 2007, petitioner came to know that respondent herein, is trying to sell the suit property.

3. On 25th September, 2007, in the presence of respondent, trial court passed restrain order against him.

4. In the written statement filed by the respondent, she disclosed that she has disposed of the property in favour of Mr. Pradeep Sharma on 3rd May, 2007.

5. Under these circumstances, petitioner moved an application under Order 1 Rule 10 CPC for impleading Mr. Pradeep Sharma in the array of respondent.

6. It is contended by learned counsel for petitioner that Mr. Pradeep Sharma, being a subsequent purchaser, is a necessary party and as such impugned order is liable to be set aside. In support of its contentions, Learned counsel cited a decision reported as *Azhar Sultana Vs. B. Rajamani & Ors., II (2009) SLT 418, Supreme Court of India.*

7. Present petition has been filed under article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this article is limited.

8. In *Mohammed Yusuf Vs. Faij Mohammad and Ors., 2009 (1)SCALE71,*

Supreme Court held;

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

9. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives, JT1995(7)SC400, Apex Court observed;*

“The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

10. As per findings of the trial court, suit property had already been sold on 3rd May, 2007, whereas the suit was filed by the petitioner on 30th May, 2007. In this regard, impugned order read as under:

“The record reveals that the suit has been filed by the Plaintiff on 30.5.2007. The defendant in her written statement has submitted that the suit property has been sold on 03.05.2007 itself to Shri Pradeep Sharma. The Plaintiff concealed this material fact which resulted in passing a direction by this court on 25.05.2007. Since the suit itself had become infructuous as the Defendant was no more the owner of the suit property, the impleadment of buyer, namely, Shri Pradeep Sharma is not at all necessary particularly when the suit itself is infructuous. The application is, therefore, liable to be dismissed”.

11. As per above findings, the petitioner had concealed the material facts, that property in question was already sold on 3rd May, 2007. Thus, it resulted in passing of directions by the trial court on 25th May, 2007.

12. Under these circumstances, the case cited by learned counsel for the petitioner is not applicable to the facts of the present case.

13. Hence, I do not find any illegality or ambiguity in the impugned order passed by the trial court. Since, petitioner has concealed the material facts before the trial court, the present petition is hereby dismissed with costs of Rs.5,000/-

14. Petitioner is directed to deposit the costs with Registrar General of this court, within four weeks from today.

15. List for compliance on 9th August, 2010.

6th July, 2010
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V.B.GUPTA, J.