Sarita Parwanda Vs State

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Court : Delhi

Decided On : Aug-09-2010

Judge : Mr. Shiv Narayan Dhingra, J.

Appeal No. : Bail Appln. 1191 of 2010 ; Bail Appln. 1196 of 2010

Appellant : Sarita Parwanda

Respondent : State

Advocate for Def. : Mr. Sunil Sharma, SI B. Prakash , Advs.

Advocate for Pet/Ap. : Mr. Pramod Kumar Dubey , Mr. Madhur Jain, Advs.

Judgement :

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?

ORDER

1. By this order, I shall dispose of the above two bail applications, one preferred by husband under Section 438 Cr.P.C for grant of anticipatory bail and the other preferred by wife under Section 439 Cr.P.C for regular bail. Both are involved in a case under Sections 420/468/448 read with Section 34 IPC.

2. The focal point of entire alleged crime is a property bearing number A-8, Pocket Bail Appln. 1191 and 1196 of 2010 Page 1 Of 6 139, Kalkaji Extension, New Delhi-110019, which has a basement and three floors. According to complainant vide sale agreement dated 1st April 1994 executed by husband and wife along with a possession letter, payment of consideration receipt, Will, GPA, SPA, affidavits and indemnity bonds the second floor of the said property was sold to him and payment was received by applicants by cheques of equal value in favour of both the owners. Subsequently, basement, ground floor and terrace of second floor were also sold to complainant by executing similar documents on 1st July, 1994 and payment was received in lieu thereof by both husband and wife through cheques. Despite having sold the property to complainant, both the accused persons pledged the entire property to Jammu & Kashmir Bank, Connaught Place Branch, New Delhi for taking loan. This loan amount was not paid and Jammu and Kashmir Bank filed a recovery suit against both of them. Subsequent to that, both husband and wife sold the first floor of the said property to Rajesh Bindra i.e. brother-in-law of wife and got the sale deed registered with the Office of Sub-Registrar on 26th August 2007. This was done despite the fact the whole of the property was mortgaged with Jammu and Kashmir Bank. Mr. Rajesh Bindra, brother in law of the husband to whom the first floor was sold, again mortgaged this first floor of the property to DBS Cholamanglam Bank and took a loan of Rs.1,53,00,000/- on 30th May, 2009. When he mortgaged the first floor, the entire property was already lying mortgaged with Jammu and Kashmir Bank. Mr. Rajesh Bindra had mortgaged this property to DBS Cholamanglam Bank on the ground that he was the owner of the said property. He, however, executed an affidavit dated 5th December 2009 that the property was not his property and stated that the sale deed dated 26th September 2009 with respect to first floor of the said property was a private arrangement between him and the two accused persons/ petitioners herein and this document had no value and it stood cancelled immediately on execution. Neither he nor anyone through him had any claim, right, title in the said property and the said property belonged to two accused persons who were competent to deal with it and free to sell, mortgage or create any third party interest in whole of the said property. This affidavit of Mr. Rajesh Bindra is part of the bail application. The said property was again sold to the complainants.

3. A complaint was filed by Mr. Ashish Uppal, Mr. Manoj Kumar and Mr. Surender Kumar as well in December 2009 at Police Station Kalkaji against both husband and wife on account of receiving hefty consideration from them for sale of the aforesaid property at Kalkaji to them. It was alleged that they learnt that Mr. Rajesh Bindra was the owner of the first floor of the said property. It was also discovered that both the accused persons had sold the second floor of the property for consideration to their daughter Ms. Sonia Grover and a fresh sale deed of ownership was created and a loan would be obtained from the bank. The said property was sold to them despite the fact the property was not even owned by them and was already lying mortgaged with Jammu and Kashmir Bank. Ms. Sonia Grover also gave an affidavit in favour of her parents, accused herein, stating that the sale deed executed in her favour was a sham sale deed. Both husband and wife had executed an agreement to sell in favour of Mr. Ashish Uppal, Mr. Manoj Kumar and Mr. Surender Kumar on 25th October 2009 and received consideration of Rs.25 lac from them through various cheques, details of which are available on record.

4. The complainant herein alleged that he was in possession of the said property and both husband and wife broke open the locks of second floor and handed over physical possession to Mr. Ashish Uppal, Mr. Manoj Kumar and Mr. Surender Kumar. The police on the basis of complaint registered a case of criminal trespass, defrauding of banks, forgery of documents, fraud (being played upon the banks), dishonest inducement on the basis of forged documents of the said property.

5. It is submitted by counsel for the petitioners/accused that the wife was in judicial custody since 19th June, 2010. The entire story given by the complainant was a concocted one in order to grab the property in question. The fact was that the applicant wife and her husband were living in the said property from the very beginning and the complainant's father was a former business partner of husband in a business. During duration of partnership, some unlawful documents were created and forged by the complainant's father and various documents were misused. Now the complainant wants to grab the said property. The property in question was neither sold nor the possession thereof was ever handed over to complainant. The property was mortgaged to Jammu and Kashmir Bank for

obtaining business loan with full knowledge of complainant's father. The complainant's allegation that mortgaged was done subsequent to sale and illegally, was a farce. It is submitted that father of complainant was one of the respondents in an action brought by the bank for recovery of its dues before Debt Recovery Tribunal. It is also submitted that the complainant had filed a civil suit number 1541 of 2009 on 25th November 2009 before the Senior Civil Judge, New Delhi against the applicants praying that the disputes between the parties be referred to arbitration under Section 8 of Arbitration & Conciliation Act, 1996 since the applicants and her husband had failed to execute sale deed pursuant to the agreement to sell. The objections to this suit were filed and it was told to the Court that the documents relied upon by the complainant were forged. Otherwise there was no reason for the complainant to wake up after 15 years of execution of documents and to lay claim over the property.

6. Grant of bail by the Court has to be considered on its own merits. During arguments, the position regarding various documents executed by the applicant and her husband were sought to be clarified. It was not denied by the counsel for the applicants that the various documents, as stated in para 2 above were executed by the applicants. What was argued by the counsels for the applicants was that these documents though executed, were not to be acted upon. They were executed under some mutual understanding between the parties. He argued that in case the agreement dated 1st April, 1994, possession letter, Will GPA, affidavit etc were executed to be acted upon, the complainant would have filed a case of specific performance and would have asked the accused persons to execute the sale deed. It was argued that the ownership of the entire property and possession thereof continued to vest with the applicants/accused despite execution of the sale documents. The property was mortgaged to the bank by the applicant within the knowledge of complainant. Regarding execution of sale deeds in favour of daughter and brother in law, the same stand was taken that these sale deeds were sham sale deeds, executed for different purposes. Obtaining of loan from different banks on the basis of so-called sham sale deeds was not denied. The sale of the property to the latest purchasers from whom Rs.20 lac was received by virtue of an agreement to sell, was not denied. The applicant had filed rent agreement with third parties to show that the constructive possession was

with the accused persons. The police made inquiries from those third parties and the third parties categorically stated that they had never been the tenants in the aforesaid property.

7. It is settled law that where a contract between the parties is entered into in writing and documents of contract are prepared, no amount of oral evidence contrary to the documented version is to be believed by the courts and the courts have to consider the state of affairs as stated in the documents or as was apparent from the documents. Looking at the multiple sale deeds executed by the accused persons in respect of the same property again and again despite the fact that the property was lying mortgaged with the bank so that on the basis of new fake sale deeds, the said property could be mortgaged afresh and loan in lieu thereof be obtained (and loan was actually obtained) and looking that the property was again sold on 25th October 2009 despite the fact that the said property was already sold and was also lying mortgaged with the bank, I consider that it is a case involving serious fraud and huge amount of cheating forgery, creation of false documents in order to obtain loan from the banks. I, therefore, consider that the applications of both the accused persons deserve dismissal and are hereby dismissed.