

(1988) 11 AHC CK 0061
In the Allahabad High Court
Case No : Civil Misc Transfer No. 94 of 1986

Smt. Prem Lata

APPELLANT

Vs

Chatur Sen Gupta and Others

RESPONDENT

Date of Decision : 05-11-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 151, 23, 24, 47

Citation : (1989) 1 AWC 39

Hon'ble Judges : A.N. Dikshita, J

Bench : Single Bench

Advocate : J.P. Pandey and S.N. Misra, for the Appellant; A.K. Sharma and S.S. Bhatnagar, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Dikshita, J.—The Petitioner Smt. Prem Lata has filed this application u/s 24 CPC praying that the following cases be transferred outside the district of Meerut or may be called for disposal by this Court:

1. Execution No. 42 of 1982, Chatut Sen Gupta and Ors. v. Smt. Prem Lata, pending in the Court of Shri B.D. Kandpal, 1st Civil Judge, Meerut.
 2. Misc. Case No. 54 of 1983, Smt. Prem Lata v. Chatur Sen Gupta, pending in the Court of Shri B.D. Kandpal, 1st Civil Judge, Meerut.
 3. Original Suit No. 322 of 1986, Smt. Prem Lata v. Chatur Sen Gupta, pending in the Court of Shri B.D. Kandpal, 1st Civil Judge, Meerut.
 4. Misc. Civil Appeal No. 256 of 1986, Smt. Prem Lata v. Chatur Sen Gupta and Ors. pending in the Court of IVth A.D.J., Meerut.
2. It has further been prayed that further proceedings in all the above mentioned cases which arise out of and in respect of the same property and the same transaction be stayed which were accordingly stayed-vide order dated 26-9-1986.

3. The case of the Petitioner is that her husband Sri Prem Manohar was the Chief Town Planner in Uttar Pradesh who expired on 15-5-1988 leaving behind much property. On the death of her husband Sri Prem Manohar the Petitioner had to fall back upon protection, care and assistance of somebody and as such chose Sri Moti Manohar, brother of the deceased.

4. The property left by late Sri Prem Manohar comprised of a mango grove measuring 17 Bighas 19 Biswas and 4 Biswansis in (sic) at Meerut and this mango grove had two farm-houses. One of the farm-house known as old farm-house was situated in Khasra No. 230 area about 1 Bigha and the other farm-house known as new farm-house was situated in Khasra Nos. 229 and 231 measuring 1 Bigha 4 Biswas.

5. With the passage of time, sensing that Sri Moti Manohar is trying to usurp the property much to the detriment of the Petitioner, the services and assistance of one Chatur Sen Gupta a leading civil practitioner was sought by the Petitioner.

6. Henceforth the dispute and litigation has started between the Petitioner and Chatursen Gupta and others.

7. It is alleged by the Petitioner that due to indocuments and ingenious move of Sri Chatur Sen Gupta she agreed to make an agreement for sale in favour of Sri Chatur Sen Gupta of the entire property for a total sum of Rs. 4,82,000/- on 18-12-1981. It is admitted by the Petitioner that if the agreement for sale does not fructify, then Rs. 2,41,000/- given to the Petitioner would be refunded back to Sri Chatursen Gupta. This agreement of sale was made in favour of Sri Chatursen Gupta and 11 persons. However, coming to know about the agreement of transfer and in order to save the property Ravi Kumar and Anil Kumar filed Suit No. 395 of 1982 in the Court of I Civil Judge, Meerut. The Petitioner contested the suit and in para 16 contended that the deponent (Petitioner) being the lawful owner was competent to enter into a valid agreement of sale and put prospective transferee in possession for the performance of the contract.

8. Later on 19-10-1982 Sri Chatur Sen Gupta and others filed Suit No. 608 of 1982 for specific performance of the contract. Sri Narendra Pal Singh Advocate, who was earlier Counsel for the Petitioner filed this suit on behalf of Chatur Sen Gupta. On 22-10-82 a compromise was filed though it is alleged by the Petitioner that the signatures of the Petitioner on this compromise are forged. On behalf of Chatursen Gupta and others a compromise was signed by Sri Narendra-pal Singh, Advocate. The 1st Civil Judge, Meerut Smt. Saroj Bala accepted the compromise and a decree dated 8-11-82 was prepared. On 26-12-82 an execution application was filed by Chatursen Gupta and the case was registered as Execution Case No. 42 of 1982. On 20-12-1982 Sri Chatur Sen Gupta filed an application that the draft-sale-deed which has been submitted be approved and which was accordingly approved on 23-12-82, On 1-1-83 in view of the draft-sale-deed having been approved and considering the urgency for the registration

it was submitted on behalf of Sri Chatur Sea Gupta that as Meerut Registration Office takes six months in the return of the documents after registration the same to be registered at Delhi. This application was also allowed by the learned I Civil Judge Smt. Saroj Bala on 3-1-83.

9. It is contended on behalf of the Petitioner that the learned Civil Judge acted illegally and without jurisdiction has intact succumbed to the machination of Sri Chatur Sen Gupta.

10. The Petitioner on coming to know that a Parwana for dispossession has been issued on 25-1-83 filed an application on 4-4-83 for setting aside the decree. Objections were filed u/s 47, CPC in the execution proceedings and the case was registered as Misc. Case No. 54 of 1983. The Restoration application (Misc. Case No. 55 of 1983) was rejected on 10-8-84 by Smt. Saroj Bala, I Civil Judge, Meerut. It is then alleged by the Petitioner that Smt. Saroj Bala on knowing of her legal, actions and orders approached the judicial officers in order to save herself from grave and serious consequences.

11. The Petitioner apprehending that her dispossession is imminent filed a write Petition in this Court, Stay order granted earlier was recalled in this writ Petition. Later on one Smt Saguna Sharma the adopted daughter of late Prem Manohar on the basis of a Will executed in her favour filed a suit on 13-2-1985 which was registered as Original Suit No. 157 of 1985. Sri Chatur Sen Gupta is impleaded as a Defendant in this suit. This suit was apparently filed to frustrate the fruits of the decree of Suit No. 608 of 1982. In this suit old farm-house situate in Khasra No. 230 was not involved. It is further alleged that injunction orders were passed in Suit No. 395 of 1982 Anil Kumar and Ors. v. Smt. Prem Lata and ors. and Suit No. 157 of 1985, Smt. Sugna Sharma v. Smt. Prem Lata and Ors. but in spite of the orders Sri Chatur Sen Gupta is trying to take possession of the property.

12. It has then been alleged that on account of the special interest created in view of the involvement of 1st Civil Judge, Smt Saroj Bala and Sri Chatur Sen Gupta, a leading civil lawyer and District Government Counsel, the Petitioner could not avail the services of eminent civil lawyers at Meerut to defend herself.

13. It is then alleged that the Petitioner filed an application for the search of a copy of the letter of the Court in regard to the registration of sale-deed at Delhi. This was not shown. Later the Petitioner filed an application for the summoning of the original authority letter from the Registrar, Delhi but this application was rejected by Sri. B.D. Kandpal, Civil Judge, Meerut.

14. It may be mentioned here that Smt. Saroj Bala is no more Civil Judge, at Meerut and is now posted as Addl. District Judge, Kanpur.

15. The Petitioner finding her application being rejected filed another application on 15-4-1986 for the investigation of the entire sordid drama of registration at Delhi and for taking appropriate action against, Sri Chatur Sen Gupta, This application was rejected by Sri B.D. Kandpal. The Petitioner then filed Civil

Revision No. 324 of 1986 in this Court against the order dated 30-4-1986. The revision was disposed of with the direction to the lower Court to summon the letter after considering the totality of the circumstances and evidence on record.

16. The Petitioner then filed a suit numbered as 324 of 1986 on March 25, 1986 for a declaration to set aside the compromise decree dated 8 - 11-1962 which was obtained by fraud and also to declare the sale-deed to be ineoperative, null and void. An application for ad-interim injunction was also filed in this suit. No interim injunction was granted and the application was rejected on 11-9-1986 holding that the suit was barred u/s 11 of the Code of Civil Procedure. The learned Civil Judge, B.D. Kandpal also held that the registration of sale-deed at Delhi was valid and no irregularity was committed by the Court. It is alleged that the object of this decision was to save set only Sri Chatur Sen Gupta but also the then learned Civil Judge Smt Saroj Bala. It is further stated that the Petitioner filed an application for the transfer of the case from the district but it was rejected by the learned District Judge on 23-9-1986.

17. The Petitioner however, preferred an appeal against the order dated 11-9-1986 to the Court of District Judge. No interim orders were passed in this appeal nor was it admitted.

18. After the narration of the fact the Petitioner has claimed a prayer as stated above on the ground that Smt. Saroj Bala who, passed illegal orders is being protected by other judicial officers. It has been alleged that since sealer civil lawyers are involved in the fraudulent transaction none of the senior advocates of Meerut are ready to take up the case against Sri Chatur Sen Gupta and others. It has also been alleged that senior Counsel of experience are not available to the Petitioner. It is also submitted that Sri Chatursen Gupta is represented by a galaxy of top lawyers and that other judicial officers are acting in concert to protect Smt. Saroj Bala. It has lastly been submitted that Sri B.D. Kandpal, Civil Judge, Meerut is in haste to dispose of the cases so as to deliver possession to Sri Chatursen Gupta.

19. A detailed counter affidavit has been filed on behalf of Sri Chatursen Gupta repudiating the allegations contained in the application for transfer of the cases. It is significant to mention as has been shown in the counter-affidavit that an amount of Rs. 2,41,000/- was paid to the Petitioner by a bank draft on 18-12-1981 being a part of the sale consideration of Rs. 4,82,000/- . The Petitioner was later on paid on 5-4-1982 an amount of Rs. 1,18,000/- in cash and in view of such receipt of the amount the Petitioner executed a receipt. The balance amount of sale consideration of Rs. 1,23,000/- was deposited by the opposite party in the Court of I Civil Judge, Meerut after the suit was decreed. In spite of the amount having been received either by the bank-draft or by cash, the Petitioner did not participate in the execution of the sale deed and as such Suit No. 608 of 1982 for specific performance of the agreement to sell was filed which was decreed on 8-11-1982. It has been alleged in the counter affidavit that in the proceedings in Mac. Case No. 55 of 1983 necessary evidence was adduced

on behalf of the parties. The Petitioner examined herself and categorically stated that she had executed an agreement for sale and had received the amount of Rs. 2,41,000/- by bank draft at the time of such execution. In the counter affidavit it has also been stated that the Petitioner at no stage in her statement denied the receipt of Rs. 1,18,000/- a cash for which she executed a receipt on 5-4-1982. Misc. Case No. 55 of 1983 which was an application u/s 151 read with Section 23 Rule 3 CPC for setting aside the compromise decree was rejected by the learned Civil Judge by the judgment and order dated 10-8-1984. Against this order a Civil Misc. Writ Petition 11599 of 1984 was filed by the Petitioner and the stay order which was granted earlier was vacated on 10-1-1985. As regards Civil Revision. No. 324 of 1986 filed in this Court it is stated on behalf of the opposite parties that the same was dismissed On 28-8-1986. The pendency of the other cases is not disputed. It has however, been alleged on behalf of the opposite parties that the Petitioner is trying to stall or delay the proceedings of the execution and the delivery of possession although the opposite parties have paid Rs. 4,82,000/-. The application for the transfer of the cases is based on wholly false allegation.

20. A rejoinder affidavit reiterating the allegations in the application has been filed.

21. In view of the allegations in the application for transfer of the cases filed by the Petitioner it was necessary to obtain comments of Smt. Saroj Bala, the then Civil Judge, Meerut and Sri B.D. Kandpal presently Civil Judge Meerut in regard to the allegations attributed to them in the transfer application. Necessary comments have been submitted by these judicial officers.

22. Learned Counsel for the parties have been heard. The comments submitted by Smt. Saroj Bala the then Civil Judge, Meerut and Sri B.D. Kandpal presently Civil Judge, Meerut have been perused.

23. The premise on which the application for transfer of the cases mentioned above has been filed indicates: (i) that Sri Chatursen Gupta, a senior lawyer who was also DGC (Civil), Meerut has fraudulently manipulated the entire transaction for usurping the property of the Petitioner; (ii) that Sri Chatursen Gupta and other senior civil lawyers are involved in the fraudulent transaction and as such the services of senior advocates at Meerut is not readily available against Sri Chatursen Gupta and other lawyers" and none is willing to appear for the Petitioner; (iii) that Smt. Saroj Bala at the behest of senior lawyers has passed illegal orders in contravention of the mandatory provisions of law to help Sri Chatursen Gupta and other lawyers; (iv) that successor in the office of Smt. Saroj Bala and the present Civil Judge, Sri B.D. Kandpal is in haste to secure the dispossession of the Petitioner; and lastly (v) that all the judicial officers of the district have combined together to save the skin of Smt Saroj Bala.

24. The Petitioner is apprehensive that she would not get justice at Meerut either from the Court where the cases are pending and also that she has failed in her

effort to utilise the services of an eminent senior advocate practising on civil side.

25. It is very unfortunate that scurrilous allegations have been levelled against the members of the Bar only to satisfy her designs to manoeuvre and delay the proceedings. The extent to which abuses have been hurled in the Petition against Sri Chatursen Gupta and other senior advocates only deserve to be spurned. Such a tendency to malign members of the Bar has to be deprecated. The dignity of the Bar has to be maintained and a litigant can not be permitted to hold such a lever in his or her hand so as to tarnish the image of the members of this profession. Evidently the Petitioner had disposed her property and it may be that in view of escalation in the prices of the land attempts are being made to frustrate the decree passed against the Petitioner. The allegations against Sri Gupta as well as other senior lawyers though not named are wholly unfounded, baseless and false. The allegations only reflect the mind of the Petitioner who, it seems, has lost faith in the institution as she could not succeed in her efforts to get the decree set aside. The Petitioner has shown scant respect to the nobility of the profession and this effort to decry the high traditions of the members of the Bar only deserve to be discarded. Time and again Courts in the country have disapproved scandalous allegations against the members of the Bar or even the opposite parties. It has not been disclosed in the application as to which of the senior members of the Bar practising on the civil side had declined to accept the brief of the Petitioner. It is well known that members of the Bar are also officers of the Court and they have a duty towards the litigant public. If such a duty was not performed, it would have been appropriate for the Petitioner to have named such a lawyer. It is also clear that the Bar which has glorious traditions does not show personal interestedness. The Bar is possessed with the Courtesy, civility, and manners besides legal acumen. Can it be said that these qualities are no more be jewelling the lawyers robe. The scandalous manner in which allegations though general in nature have been made against the members of the Bar who are part of the sacred institution deserves condemnation. The very idea that the profession has lost its legal credibility is abhorrent. The member of the Bar while dwarfing the case of the adversary have always kept in mind the rich and noble tradition of the professions. Similarly because Sri Chatursen Gupta happens to be a lawyer having obtained decree would not invite such mischievous and scandalous allegations. Even, as adversary has to be charged with grace. If such tributes are believed against the members of the Bar it would only subscribe to an idea that a perilous situation has arisen encompassing members of this noble profession being ordained as an ordinary passenger. For self aggrandisement, the Petitioner has attacked the lofty heritage, glorious tradition and rich conventions of the profession. Courts anywhere in the country can not be pushed into obscurantism. The allegations against Sri Chatursen Gupta and other senior members of the Bar are wholly incredible and deserve to be rejected. The records of the case would show that at every stage the Petitioner has failed in her attempts to frustrate the fruits of the decree.

26. The Petitioner has already availed the services, of one Sri N.K. Jain and if

need be may utilise the services of other local eminent lawyers or from the adjoining districts.

27. The other aspect of the case is that Smt. Saroj Bala passed an illegal order to satisfy the ulterior design of Sri Chatursen Gupta too deserves to be discredited. It is significant that the Petitioner had challenged such orders but in vain. It would be a sad day for the judicial institution where such allegations that because Smt. Saroj Bala passed certain orders which are alleged to be illegal though not found as such by, higher Courts would invite the assistance of the entire judiciary. It is expected of a litigant to maintain and preserve the dignity of the Court, It has also to be seen while making allegations that the faith of the common man in this institution is not wreaked much to the detriment to the judicial system and the rich heritage which descended to this institution. Officers of judiciary have shown utmost fearlessness and least interestedness. The judicial officers have administered law independently and firmly without fear or favour. It is expected of each and everyone that the Courts are given the opportunity width they are enjoying to exercise their functions with independence. Instead of showing respect to the Court, the Petitioner who has continuously failed to set at naught the fruits of the decree has adopted militant attitude inasmuch as neither the members of the Bar have been spared nor the Presiding Officers of the Court, the explanation of Smt, Saroj Bala and Sri B.D. Kandpal are indicative of the fact that inspite of such pressure tactics on the part of the Petitioner on them they had discharged their functions without fear and infact free of interestedness. Both Sat Saroj Bala the then Civil Judge as well as the present Civil Judge Sri B.D. Kandpal have categorically denied the allegations pertaining to them. Their explanation are satisfactory and they have very specifically denied that any pressure or any consideration was shown to anyone as alleged by the Petitioner. The application is the outcome of a plagued mind to decry the officers of the Judiciary posted at Meerut.

28. I am constrained to observe that this would have been a fit case for drawing proceedings of contempt against the Petitioner but am mindful of the fact that die Petitioner being a lady is ill-advised and has not shown the balance required of a litigant The Petitioner has accepted the money and is enjoying the fruits of such amount but with certain ulterior motives is ordaining her contribution to the institution by wrackness, scarions allegations which only deserve denunciation.

29. The Petitioner has already succeeded in delaying the proceedings of the cases mentioned above for more than 2 years.

30. The application is wholly ill-merited and is accordingly dismissed with costs which are assessed at Rs. 1000/-. The cases for which transfer is prayed shall be expeditiously disposed of by the Courts before whom they are pending.