

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

+ **R.F.A. No. 132/2007**

FIRASAT KHAN Appellant
Through: Mr. Mansoor Ali, Advocate

VERSUS

SMT. FIRDOS AND ORS. Respondents
Through: Mr. D.K.Mishra, Advocate

RESERVED ON:
12.08.2008

% DATE OF DECISION:
14.08.2008

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

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?

: **PRADEEP NANDRAJOG, J.**

1. Appellant, Firasat Khan has lost the battle before the learned Trial Judge. His suit seeking a decree of possession, damages, mesne profits, declaration and injunction, being Suit No.358/2003 has been dismissed, after trial, vide impugned judgment and decree dated 13.11.2006.

2. Respondent, Mst. Firdos, Mst. Shakila Begum, Mst. Asmat Ara, Mst. Sarvar Ara and Mohd. Nasir were impleaded as

defendants 1 to 5 in the said suit.

3. Claim of the appellant, as pleaded in the plaint, was that he purchased property No.816 in the abadi of Jafrabad gali. It was stated that the property was comprised in khasra No.30 of village Seelam Pur and was given Municipal No.816, Gali No.30/2, Jafrabad. He stated that the property was built up and was on a parcel of land ad-measuring 150 sq. yds. He claimed to have purchased 75 square yards land vide documents executed on 7.1.1999 by one Mst. Sabnam Sahar W/o Md. Bashir. He further claimed to have purchased balance 75 square yards of land from Mst. Fakhre Nasir W/o Md. Nasir vide documents executed in his favour on 6.1.1999.

4. He further alleged that Mst.Firdos approached him to purchase the property for personal use. He declined. He pleaded that Firdos filed a suit under Section 6 of the Specific Relief Act 1963 alleging that she was managing the property on behalf of Mst.Shakila Begum, Mst.Asmat Ara and Mst.Sarvar Ara and that she was illegally dispossessed, without authority of law, by him i.e. Firasat Khan. It was further pleaded that even he had filed a suit for injunction against Mst.Firdos as he feared that he may be dispossessed from the suit property. It was further stated that Mst.Firdos lodged an FIR against him alleging trespass and that proceedings were initiated against

the parties under Section 107/150 Cr.P.C. in which proceedings the police gave possession of the suit property to Mst.Firdos. He stated that since Mst.Firdos regained possession through the police she withdrew the suit seeking a decree of possession and that even he withdrew the suit for injunction.

5. Alleging wrongful dispossession through police intervention, appellant filed the suit in relation where to instant appeal has arisen.

6. The defence taken by the respondents was that the documents of title relied upon by the appellant did not confer any legal title on him. That the so called predecessor in interest of the appellant never owned the property. It was pleaded that the property was owned by Mohd.Bashir S/o Mohd.Amir, who was the brother of respondents 1 to 4 and that vide agreement to sell dated 24.3.1988 he sold half portion to Mst.Shakila Begum, Mst.Asmat Ara and Mst.Sarvar Ara. Qua the remaining half portion, it was pleaded that Md.Bashir, retained ownership but gave possession to respondents 1 to 4. It was further stated that respondent No.1 was managing the property on behalf of the other respondents.

7. On the pleadings of the parties, it is apparent to any person with minimum legal knowledge, the basic issue which arose for consideration was: whether the plaintiff was the

owner of the suit property and whether he was entitled to be put into possession thereof. Needless to state, depending upon the decision on the said issue, consequential issues of entitlement of the respondents to retain possession would have been decided.

8. The so called sale documents purportedly executed by Mst.Sabnam Sahar in favour of the appellant, pertaining to 75 square yards of land, proved at the trial were, Ex.PW-1/2, a general power of attorney dated 7.1.1999; Ex.PW-1/3, a special power of attorney of even date; Ex.PW-1/4 a will of even date; Ex.PW-1/5, an agreement to sell of even date; Ex.PW-1/6 an affidavit of even date and Ex.PW-1/D-1, an indemnity bond of even date. All these documents are purportedly executed by Mst.Sabnam Sahar in favour of the appellant.

9. Pertaining to the remaining half share purportedly acquired by the appellant from Mst.Fakhre Nasir, an agreement to sell dated 6.1.99 was proved as Ex.PW-1/8.

10. The respondents proved an agreement to sell dated 24.3.1988 executed by Md.Bashir in favour of respondents 2 to 4 as Ex.DW-1/1. A general power of attorney executed by Mohd.Bashir of even date was proved as Ex.DW-1/5.

11. It may be noted that photocopy of a sale deed executed by one Krishan Lal in favour of Anees Ahmed

pertaining to the suit property was marked as a document 'Mark A' and a general power of attorney purportedly executed by Anees Ahmed in favour of Mohd.Bashir was marked as 'Mark B'.

12. Appellant examined himself as PW-1, Abdul Basti as PW-2, Prem Lata a clerk from the Sub-Registrar's office as PW-3, Dilshad Khan as PW-4, Mubarak Ali as PW-5 and Sabnam Sahar as PW-6. Respondents examined respondent No.1 as DW-1 and respondent No.5 as DW-2.

13. Noting that the so called title documents, Ex.PW-1/2 to Ex.PW-1/6 and Ex.PW-1/8 did not record as to how the sellers acquired title to the property in question and that no document of title of the previous seller was produced, the learned Trial Judge opined that since the appellant could not prove title of his predecessor in interest, additionally keeping in view the nature of the documents: being agreement to sell and power of attorney etc., it was held that the appellant has failed to prove title to the suit property. It has additionally been noted by the learned Trial Judge that Ex.PW-1/8 the purported agreement to sell dated 6.1.1999 executed by Mst.Fakhre Nasir records that the sale consideration pertaining to 75 square yards of land was Rs.4 lacs and that only Rs.50,000/- was received. Learned Trial Judge has held that

there is no evidence to prove that the appellant paid balance Rs.3.5 lacs to Mst.Fakhre Nasir and this was an additional reason to doubt appellant acquiring possession of 75 sq. yds. land from Mst.Fakhre Nasir.

14. Further reasons recorded by the learned Trial Judge are that Ex.PW-1/8 itself records that on completion of the transaction the appellant would be entitled to get vacated the subject property from the tenant and that the special power of attorney, Ex.PW-1/3 purportedly executed by Mst.Sabnam Sahar also records that the appellant would be entitled to get vacated the subject property. Conclusion drawn is that these two documents belie the claim of the appellant that when he acquired title to the suit property under the said documents he was put in actual physical possession thereof.

15. The testimony of the witnesses of the appellant has been noted by the learned Trial Judge to the effect that save and except PW-5 and PW-6 none could depose on the appellant acquiring physical possession of the suit property. PW-5, Mubarak Ali was discredited by the learned Trial Judge for the reason he stated in his examination-in-chief that when Ex.PW-1/8 was executed physical possession of the subject property was handed over by Mst.Fakhre Nasir to the appellant, but in cross examination stated to the contrary, that possession had

to be handed over when balance sale consideration was paid by the appellant to Mst.Fakhre Nasir. Pertaining to the testimony of PW-6, Mst.Sabnam Sahar, the learned Trial Judge noted that her claim of handing over possession of 75 sq. yds. of land with built upon structures to the appellant was belied by her admission in cross examination where she admitted that she never came into physical possession of 75 sq. yds. of land and built upon structures thereon.

16. Lastly, the learned Trial Judge has held that title in immovable property can only be conveyed by registered sale deeds and that no title can be created by executing agreement to sell, general power of attorney etc.

17. At the hearing held on 12.8.2008, the learned counsel for the appellant urged that there are various judgments recognizing creation of interest in immovable property through irrevocable power of attorney where the interest created is on account of consideration passing between the grantee and the grantor. Counsel further urged that the respondents had failed to establish title as pleaded by them. Counsel urged that the document Mark 'A' and Mark 'B' could not be considered. Lastly, counsel urged that the effect of registration of the FIR, proceedings under Section 107/150 Cr.P.C. and restoration of possession by the police as also the

suit for possession filed by respondent No.1 were not considered by the learned Trial Judge. Learned counsel urged that admittedly appellant was in possession of the suit property, a fact evidenced from the suit filed by respondent No.1 under Section 6 of the Specific Relief Act 1963.

18. Per contra, learned counsel for the respondents urged that the proceedings initiated by respondent No.1 under Section 6 of the Specific Relief Act 1963 and the suit for injunction filed by the appellant were around the same time when an FIR for trespass was registered against the appellant and proceedings initiated under Section 107/150 Cr.P.C. Counsel urged that admittedly, in the proceedings under Section 107/150 Cr.P.C. it was held that the respondents were in possession of the property and that the appellant had trespassed into the same resulting in possession being restored to the respondents.

19. Thus, counsel urged that nothing turns on the earlier litigation between the parties.

20. Ex.PW-1/D-2 is the FIR dated 26.11.2002; being FIR No.414, PS: Seelam Pur registered against the appellant for the alleged offence of trespass. The proceedings under Section 107/150 Cr.P.C. commenced pursuant to DD No.21-A dated 6.11.2002. The suit for injunction was filed by the appellant on

15.11.2002. The date on which respondent No.1 filed the suit for possession is not on record, but as pleaded in the plaint resulting in the instant proceedings, the said suit was filed in the month of November 2002.

21. It is thus obvious that the month of November 2002 was an eventful month in the life of the parties when they went into dispute on the question of title. In the month of November 2002 there was inchoate evidence as to who was in possession of the property. Ultimately, in the proceedings initiated under Section 107/150 Cr.P.C. a prima facie view was taken by the authorities that the respondents were in possession of the property. Possession of the appellant was found to be prima facie unlawful. Possession was restored to the respondents.

22. Thus, the issue between the parties has to be decided not with reference to the nebulous events which took place in the month of November 2002, but on the basis of concrete evidence. Thus, no infirmity has entered into the impugned judgment by non consideration of the previous litigation and the criminal proceedings for offence of trespass and breach of peace.

23. Appellant, being the plaintiff, has to succeed on his own strength. Appellant has asserted title to the suit property and must succeed on the basis of the evidence led by him.

24. As noted above, appellant claims half title to the suit property under Mst.Sabnam Sahar and half title under Mst.Fakhre Nasir.

25. Ex.PW-1/2 to Ex.PW-1/6 are the documents purportedly executed on 7.2.1999 by Mst.Sabnam Sahar in favour of the appellant.

26. Indeed, as noted by the learned Trial Judge neither document refers to the title of the executant, namely Mst.Sabnam Sahar. How did Mst.Sabnam Sahar acquire title to the 75 sq. yds. land sold by her has not been disclosed in any document. We note that no document of title of the previous owner has been proved on record.

27. The only reference to a semblance of title are the recitals in Ex.PW-1/2, being the general power of attorney purportedly executed by Mst.Sabnam Sahar in favour of the appellant. The recital reads as under:-

“This deed of general power of attorney is executed at Delhi on this 7th day of January, 1999, by Shrimati Shabnam Sahar wife of Shri Haji Mohd. Bashir resident of 1299, Pahari Imli, Jama Masjid, Delhi-6, as one of the general attorney of Shri Sayed Nazir Ali son of Late Shri Sayed Mohd. Ali vide deed of GPA, executed on dated 29.10.1993, at Delhi, who is also the general attorney of Shri Mohd. Bashir son of Late Shri Mohd. Ameer and Shri Mohd. Naseer son of Late Mohd. Ameer vide deed of GPA, executed on dated 8.10.1993, at Delhi, who are also the general attorneys of Shri Anis Ahmed son of Shri Sultan Ahmed vide deed of GPA, executed on dated

19.10.1981, at Delhi, hereinafter called the Executant, (Indian), in favour of Shri Firasat Khan son of Shri Aziz Khan resident of 948, Gali No.30/9, Jafrabad, Shahdra, Delhi, hereinafter called the general attorney, (Indian).”

28. Indeed, the purported general power of attorney executed by Sayed Nazir in favour of Mst.Sabnam Sahar has not seen the light of the day.

29. Qua the remaining 75 sq. yds. land title whereto is claimed by the appellant under Mst.Fakhre Nasir i.e. Ex.PW-1/8, we note that there are no recitals as to how Mst.Fakhre Nasir acquired title to 75 sq. yds. of land. Indeed, no document has been proved or other evidence led by the appellant to prove Mst.Fakhre Nasir's title to 75 sq. yds. of land.

30. Thus, the view taken by the learned Trial Judge that the appellant has failed to prove that Mst.Sabnam Sahar owned 75 sq. yds. of land and that Mst.Fakhre Nasir owned the remaining 75 sq. yds. of land cannot be faulted with.

31. The inevitable consequence of said view would be that the appellant has failed to prove any title to the suit property.

32. This is not the end of the matter.

33. As noted hereinabove, the learned Trial Judge has noted that in the special power of attorney purportedly

executed by Mst.Sabnam Sahar in favour of the appellant i.e. Ex.PW-1/3, it has been clearly recorded that pursuant to the power vested in the appellant under the power of attorney he was authorized to get vacated the 75 sq. yds. land with built upon structures thereon. Learned Trial Judge has correctly noted that the recital in Ex.PW-1/3 ran contrary to the covenant recorded in the agreement to sell, Ex.PW-1/5, that vacant physical possession was handed over by Mst.Sabnam Sahar to the appellant on 7.1.1999.

34. Further, as noted by the learned Trial Judge, Mst.Sabnam Sahar who appeared as PW-6 admitted in cross examination that she never was in physical possession of the suit property.

35. We may only add that on being cross examined, Mst.Sabnam Sahar stated : *"it is correct that I never stayed in the suit premises sister of my husband namely Firdos is living there. I do not know since when Firdos is staying in the house in dispute. Vol. She is there before my marriage. I got married in 1991."* She further admitted in cross examination: *"I did not hand over actual physical possession. Ownership was transferred."*

36. It is apparent that Mst.Sabnam Sahar never transferred possession to the appellant.

37. It would be interesting to note that the lady 'Firdos' referred to in the statement of Mst.Sabnam Sahar is none else except Mst.Firdos the first respondent.

38. It would further be relevant to note that neither Mst.Sabnam Sahar nor Mst.Fakhre Nasir got their names mutated in the municipal records as persons liable to pay property tax for the property in question. No electricity bill or for that matter any document linking possession of Mst.Sabnam Sahar and Mst.Fakhre Nasir to the suit property has been brought on record.

39. Looked at from any angle, on the evidence on record, view taken by the learned Trial Judge cannot be faulted with. The evidence probablizes the view taken by the learned Trial Judge.

40. Though insignificant, but it lends assurance and credibility to the view taken by the learned Trial Judge is the fact that the documents marked 'A' and marked 'B' tend to prima facie establish that Anees Ahmed purchased the entire suit property ad-measuring 150 sq. yds. from Kishan Lal and in turn, appointed Md.Bashir as his general attorney. Ex.DW-1/1, being the agreement to sell relating to 75 sq. yds. of land in favour of respondents No.2 to 4 has been executed by Mohd. Bashir. The recital in Ex.PW-1/2, the general power of attorney

relied upon by the appellant assumes significance because the same records that Anees Ahmed had executed a power of attorney in favour of Md.Bashir.

41. It appears to be a case where the appellant had some vague knowledge of prior title and has made inchoate recitals in the general power of attorney Ex.PW-1/2.

41. We find no merit in the appeal.

42. The appeal is dismissed with costs.

PRADEEP NANDRAJOG, J.

SUNIL GAUR, J.

AUGUST 14, 2008
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