

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

% Date of reserve : 7.3.2008
Date of decision : 18.3.2008

+ **RSA No.37/2007**

Mrs. Rama Devi Appellant

Versus

Mr.Punam Chand Aggarwal Respondent

Advocates who appeared in this case :

For the appellant : Mr.Pramod Kr.Sharma with Ms.Anju
Dhingra, Advocates

For the respondent : Mr.B.B.Gupta, Advocate

HON'BLE MR. JUSTICE J.M. MALIK

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

J.M. MALIK, J.

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1. The plaintiff/respondent filed an application under Order 12 Rule 6 CPC before the trial judge. The said application was allowed to the extent that the decree for possession of the suit property in favour of

the plaintiff/respondent and against the defendant/appellant was passed. It was further ordered that the suit shall continue with respect to the recovery of rent and the quantum of mense profits towards use and occupational charges of the said property by the defendant/appellant. Aggrieved by that order, the appeal was preferred before the First Appellate Court which, too, was dismissed vide order dated 22nd December, 2006, hence this second appeal. Let us now turn to the facts of this case.

2. Lekh Raj was the owner/landlord of house No. RZ-20Q Palam Road, East Sagar Pur, New Delhi. Punam Chand Aggarwal, the respondent/plaintiff in this case claimed that he become the owner of the above-said property by virtue of GPA dated 23rd July, 1996. The appellant, Smt. Rama Devi is a tenant in the said house. The respondent claimed that the rate of rent of the disputed property is Rs. 2250/- per month. The respondent filed an Eviction Petition under Section 14(1)(a) of the Delhi Rent Control Act against the appellant Smt. Rama Devi on 6th November, 1997. The ex parte eviction order was passed by the learned Additional Rent Controller. The appellant moved an application for setting aside the ex parte eviction order under Order 9 Rule 13 CPC. The said application was dismissed. Thereafter, an appeal was preferred before the Rent Control Tribunal. The Rent Control Tribunal ordered that the rent be paid to the

respondent under Section 15 (1) of the DRC Act. Thereafter, it remanded back the case before the learned Rent Controller. In the meantime, the Apex Court held that the Delhi Rent Control Act does not extend to the locality of Sagarpur area in which the suit property is situated. Consequently, the respondent withdrew the above-said eviction petition. The respondent gave notice under Section 106 of the T.P. Act to the appellant on 25th January, 2001. Ultimately, he filed the instant suit for recovery of possession, arrears of rent, and for damages and occupational charges.

3. The appellant contested the instant suit. The appellant claimed that the monthly rate of rent is Rs.120/- per month. He alleged that the respondent has manipulated two fake rent receipts in the sum of Rs.4500/- by forging the signatures of the appellant thereon. Again, the case of the respondent was based on the above-said two receipts in writing and handwriting examiner has also affirmed this fact. The factum of transfer of above-said property in favour of the respondent was categorically denied. It was explained that the respondent had filed a civil suit bearing No. 197/1996 titled as Smt.Rama Devi Vs. Lekh Raj on 25th April, 1996 against the same tenanted property for permanent injunction and mandatory direction against Lekh Raj. The Court decreed the suit in favour of the appellant and against Lekh Raj restraining him from creating any hindrance, interference in the

peaceful enjoyment and possession of the property in question by the appellant. The crucial fact is that appellant admitted that during the course of the said civil suit Lekh Raj had filed an application under Section 151 CPC on 26th August, 1996, wherein he stated that he had already sold the tenanted property to the respondent. In his above-said eviction petition the respondent/plaintiff had stated that he had purchased the above-said property from Lekh Raj on 29th February, 1996. On 23rd July, 1997 the respondent/plaintiff had sent a legal notice for demand of arrears of rent to the appellant/defendant. The appellant had responded to the respondent's/plaintiff's notice dated 23rd July, 1997, wherein he had asked him to send the documents relating to the above-said transaction and the respondent/plaintiff was further requested to ask Lekh Raj to send an attornment letter to the appellant.. However, no attornmnet letter was received.

4. I have heard the counsel for the parties. Learned counsel for the appellant made the following submissions. He argued that the eviction order can be passed against the appellant only if the admission on her part is complete, clear, unambiguous, unconditional and unequivocal. In the instant case, the appellant has categorically denied the relationship of landlord and tenant. Again, she has filed an application under Section 340 Cr.P.C. for taking appropriate action against the respondent. The respondent has never attorned to the

appellant. The case of the respondent is based on two forged receipts and on an unregistered deed of sale. He stressed that no suit can lie on the basis of unregistered deed of sale and has cited the cases reported in *Kesar Vardha Reddy Vs. Manvat Rao AIR (38) Hyderabad 63*, *Naspuri Dharmaiah and Anr. Vs. Kota Veeraiah Alias Dr.V.K. Kota AIR 1994 NOC 150 Andhra Pradesh*.

5. He further vehemently argued that admission in written statement should be taken as a whole and not in part and has cited an authority reported in *Dudh Nath Pandey (Dead) by LRs Vs. Suresh Chandra Bhattasali (Dead) by LRs AIR 1986 SC 1509*. He has also cited another case reported in *B.S. Viswanath Vs. Chandika Ben J. Mehta and Ors. AIR 1990 Karnataka 142*, wherein it was held that a partial decree under Order 12 Rule 6(1) based on admission made in the written statement can be passed only if the admission is complete and sufficient. He has also referred to the authorities reported in *R.K.Markar Vs. Rajiv Kumar Markan and Anr. 2002 (62) DRJ 241*, *Naresh Jain Vs. Krishna Rani 2002 (62) DRJ 777* and *Smt. Radha Lal Vs. M/s Jessop and Company AIR 1992 Delhi 331*.

6. Again, it was finally argued that the respondent had issued a notice dated 25th January, 2002 to the appellant wherein the respondent had claimed that the appellant had paid him with rent for four months commencing from March 1996 to June 1996. It was

stressed that above-said submission of the respondent is highly unbelievable and contrary to the record as the document shows that the respondent had acquired the title, if any, in respect of the suit property only on 23rd July, 1996 and not prior to that.

7. All these arguments have left no impression upon the Court. The facts of the above-cited cases are different from the facts of this case. The facts of this case are unique and peculiar. There is no conflictions on the question that the appellant was informed about the change of landlord in a litigation pending between the appellant and Lekh Raj. The case of the appellant itself is that Lekh Raj had moved an application under Section 151 CPC. Paras 2 and 3 quoted by the appellant himself in his appeal are reproduced as follows:

“2. That the Defendant No.1 is neither the landlord nor the owner of the property no. RZ-20Q, Palam Road, Sagarpur, New Delhi-46, and the plaintiff filed the present case only to harass the Defendant No.1 and no cause of action arose against the Defendant No.1 and in favour of the Plaintiff.

3. That the Defendant No.1 already sold the plot/property in dispute bearing No. RZ-20Q, Palam Road, Sagarpur, New Delhi-46, to Sh. Punam Chand resident of RZ-23-A, Main Sagarpur, Gali No.4, Palam Road, Delhi on 25.7.1996.”

However, in his reply the appellant denied that Lekh Raj was not the owner and landlord of the suit property. This fact clearly goes to show that the previous landlord of the appellant had himself informed

her that he had sold the property in question in favour of the respondent. The appellant had the knowledge that the respondent had stepped into the shoes of Lekh Raj, her previous landlord. This fact clinches the entire matter. It was expressly conveyed to the appellant that Lekh Raj was no more the owner of the premises in dispute and ownership rights stood transferred to the respondent. The appellant cannot now turn back to say that she was not attorned or was not aware of the fact that the aforesaid transfer of ownership had already occurred. Her mere denial in the application that Lekh Raj had not transferred the suit property is of no consequence.

8. In a case of this court in Civil Revision No. 470 of 2003 titled as *Shri Jagdish Chander Mehra Vs. Smt. Kusum Gupta* decided on 7th May, 2003, in the concluded portion it was held,

“If attornment letter is not sent by the purchaser would it mean that only on giving the information the power of attorney sale would be complete, or that the statutory authorities would assess the previous owner and not the purchaser as the owner. The answer to each is in the negative. To my mind omission to ask the tenant to attorn cannot be fatal or postpone the actual sale till that is done. The petitioner in his written submissions filed in this Court conceded that in 1993 in the petition No.9/96 titled J.C. Mehra Vs. Pushpawati filed by the petitioner, he was informed that property in question had been bought by the respondent herein.”

9. Moreover, this is another factor in this case which should not be lost sight of. This is an undisputed fact that as per Rent Control

Tribunal's order the appellant has been depositing the rent under Section 15(1) of the Delhi Rent Control Act prior to filing of this suit. The relevant portion of the order dated 25th September, 2000 passed by the learned Rent Control Tribunal in RCA no. 615/1999 titled as Smt Rama Devi Vs. Puran Chand Aggarwal reads as under :

“Though at first instance the appellant has resisted such an order as according to her the respondent is not in possession of documents to show his ownership of the premises but when confronted with the situation that in a civil suit Lekhraj had admittedly stated that he had sold the property to the respondent coupled with the fact that Lekhraj had not served any notice of demand since 1996 nor had he staked any claim of rent etc., the appellant rightly agreed to such an order.”

10. There is not even an iota of evidence that Lekh Raj had demanded rent from the appellant after July, 1996. The appellant had not tendered the rent to Lekh Raj.

11. Again it is well settled that sales in Delhi through power of attorney, coupled with payment receipt, delivery of possession and other connected documents are well recognized in this city. In *Asha M. Jain v. Canara Bank and Ors.* [94 (2001) DLT 841], it was held,

“The power of attorney sales and their effect has been considered in *Kuldip Singh v. Surinder Singh*, 76 (1998) DLT 236 : 1999 Rajdhani Law Reporter 20. The learned Single Judge of this Court has observed that power of attorney sales in Delhi is the common mode of sale of immovable property to get over the legislative restrictions of transfer of properties. The power of attorney is for consideration and the

bargain is followed by delivery of possession to complete the transaction. Further to prevent arbitrary cancellation, Will and affidavit about renouncing rights are taken. The Court repelled the contention that since sub-lease with the Government prohibited transfer, such transfer was opposed to public policy, since in the view of the Court, public policy gets modified with march of time. The Court recognised the fact that restrictions to sell made everyone dishonest and the power of attorney sale method was devised to get over the restrictions. In fact the Government has partially recognised this since even power of attorney buyers can apply for conversion into free hold on paying penalty. The learned Single Judge relied upon the judgment of the Supreme Court in S. Chattanatha Karayalar v. Central Bank of India Ltd. and Ors., AIR 1965 Supreme Court 1856 and Smt. Indira Kaur and Ors. v. Shri Sheo Lal Kapoor, AIR 1988 SC 1074; where it was held that in order to arrive at a real nature of transaction, it is open to the Court to look into the attendant and surrounding circumstances and contemporary documents. The learned Single Judge also relied upon the observations in the case of Usha Malhotra v. G.S. Uppal in 1991 Rajdhani Law Reporter 223, dealing with the issue of construction agreement which are camouflage for agreement to sell.

We have considered this aspect taking into consideration these judgments and we are in agreement with the view that the concept of power of attorney sales have been recognised as a mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied with other documents including General Power of Attorney, Special Power of Attorney and Will and affidavits and full consideration is paid. This is what also has happened in the present case. There are two General Power of Attorneys, Special Power of Attorney and the Will apart from the agreement to sell. One of the General Power of Attorney is registered. Further the Will is also registered. Thus, there are two contemporaneous

documents which are registered and they lend authenticity to the date of execution of documents. The power of attorneys are for consideration within the meaning of Section [202](#) of the Contract Act, 1872. Thus there is no doubt that interest has been created in the property in favour of the appellant. Possession is also been handed over. Thus the provisions of Section [53A](#) of the Transfer of Property Act would also come into play. The Bank is debarred from enforcing any right qua the property other than the right conferred by the agreement to sell. The agreement to sell has nowhere reserved any right on the transferor either for resuming the property or payment of any additional money. The transferor is debarred from claiming back the property from the appellant. The net result of all this is that the rights have been created in favour of the appellant which cannot be defeated by the attachment order.”

12. Similar view was taken in *Shri Jagdish Chander Mehra Vs. Smt. Kusum Gupta (supra)*, *Shikha Properties (P) Limited Vs. S. Bhagwant Singh and Ors. 1998 V AD (Delhi) 28*, *Ajit Narain Vs. Shri Arti Singh and Ors 1999 V AD Delhi 932*, *Veer Bala Gulati Vs. Municipal Corporation of Delhi and Anr. (CWP 1999/2003) decided on 7th April, 2003*, *Leela Goel Vs. Prem Sagar 2006 (91) DRJ 683* and *Shri O.P.Kohli Vs. Shri Krishan Kumar Gaur 137 (2007) DLT 414*.

13. No argument in regard to the notice under Section 106 of the Transfer of Property Act was advanced by the counsel for the appellant. The factum of notice stands admitted. There appears to be no flaw therein. Section 106 of the Transfer of Property Act clearly stipulates 15 days notice for which no dispute was picked up.

14. This is well settled that admission need not be made expressly in the pleadings, even on constructive admission the Court can proceed to pass a decree in plaintiff's favour under Order 12 Rule 6 CPC.

15. It may be mentioned here that the disputed points are yet to be adjudicated by the Trial Court. The main questions are as to what is the rate of rent and since when the rent is to be paid. Then there is a question of adjudication of application under Section 340 Cr.P.C. It is too early to speak my piece on these knotty questions. These problems must be investigated down to the ground and appropriate orders be passed. However, the second appeal has no merits and therefore, the same is dismissed.

March 18, 2008
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J.M. MALIK, J.