

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

+ RFA (OS) 31 OF 2008

Reserved on : 5th May, 2008

Date of decision: 26th May 2008

SHYAM DASS CHAWLA Appellant
Through : Mr.Subramanyam Prasad,
Advocate.

Versus

AVTAR SINGH & OTHERS Respondents
Through : None

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE V.K.SHALI

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

J U D G M E N T

%

V.K.SHALI, J

1. This is a Regular First Appeal filed by the appellant Shyam Dass Chawla against the judgment and decree dated 22nd January, 2002 passed by the learned Single Judge of the High Court in Suit No. 668/1991 titled as Avtar Singh Vs. Jatander Singh Bhatia & Anr.

2. Briefly stated, the case of the appellant is that there is a shop bearing No.RU-22 situated at C.S.C. Pitam Pura, Delhi. Originally this shop was purchased by Jatander Singh Bhatia, respondent No. 2 in an

auction from the Delhi Development Authority on 25th September, 1989. Jatander Singh Bhatia had allegedly sold this shop by an agreement to sell to one Avtar Singh, respondent No.1 herein vide agreement to sell dated 23rd November, 1990 and handed over the peaceful and vacant possession of the said shop to Avtar Singh. It is further stated by the appellant that Harvinder Singh Bhatia, respondent No. 3 who happened to be the real brother of Jatander Singh Bhatia, respondent No. 2 had executed a receipt for a sum of Rs.10,000/- for and on behalf of respondent no.2 Jatander Singh Bhatia in favour of Avtar Singh in token of having received the said amount as a part of the sale consideration in lieu of the shop in question. Since respondent Nos. 2 and 3 did not perfect the title of Avtar Singh, respondent No.1, in respect of the shop in question, the latter was constrained to file a suit for specific performance and permanent injunction against Jatander Singh Bhatia as defendant Nos.1 and 2 and respondent Nos. 2 & 3 respectively herein in the High Court of Delhi on 19th February, 1991. The said suit was titled as Avtar Singh vs. Jatander Singh Bhatia & Anr. bearing Suit No.668/1991. It is in this suit that Jatander Singh Bhatia respondent No.2 herein filed his written statement disowning the agreement to sell executed in favour of his brother and after filing the same neither Jatander Singh Bhatia nor Harvinder Singh Bhatia appeared in the said suit. As a consequence of this they were proceeded ex parate and an ex parte decree of specific performance and permanent injunction was passed in favour of Avtar Singh respondent No.1 herein in the Suit No.668/1991 on 22nd January, 2002 by the learned Single Judge of the High Court.

3. So far as the present appellant is concerned, his case is that he actually purchased this very shop from two brothers, namely, Rajiv Kumar Arora and Deepak Kumar Arora, both son of K.C.Arora, resident of ED-52/B, MIG Flats, Pitampura, Delhi-34 for a total consideration of Rs.1,55,000/- on 05.7.2002. It is further alleged by him that Rajiv Kumar Arora and Deepak Kumar Arora had executed in favour of the present appellant the documents like General Power of Attorney, Agreement to sell, Will, receipt, affidavit etc. So far as the title of Rajiv Kumar Arora and Deepak Kumar Arora is concerned, they are stated to have purchased this very shop from respondent No.2 vide an Agreement to Sell, receipt, Power of Attorney, Affidavit etc. on 18th January, 2002 from respondent No.2 who is the original owner. It is also stated by the appellant that Avtar Singh had obtained the decree for specific performance on 22nd January, 2002 in a Suit filed against Jatander Singh Bhatia and Harvinder Singh Bhatia without making them as a party or even his predecessor-in-interest Rajiv Kumar Arora and Deepak Kumar Arora as a party. The appellant has also contended that all along he has been in possession and, therefore, he has a better title to the property in as much as he was a genuine and bonafide purchaser of the property in question and has a lawful title to the property. It is stated by him that he became aware of the aforesaid judgment and decree having been passed by the learned Single Judge in favour of the respondent No.1 only on 20th July, 2004 by one Rakesh Suri S/o D.N.Suri R/o AP-115 B, Pitampura, Delhi, who happened to be a property dealer.

The appellant took various steps to protect his interest by filing objections under Order 21 Rule 98 to 101, appeal against the said rejection of the application for setting aside the ex parte decree in which he has not been successful and, therefore, he has now been constrained to file the present appeal against the judgment and decree dated 22nd January, 2002 passed by the learned Single Judge in as much as the said judgment and decree is casting clouds on his right, title and interest in respect of the property in question.

4. We have heard the learned counsel for the appellant in *ex tenso* and feel that the present appeal is liable to be dismissed *in limni* for the reasons mentioned hereinafter.

5. It is not in dispute that the question involved in this appeal is as to who is the owner and entitled to possession of the shop No. RU-22 situated at C.S.C. Pitam Pura, Delhi. Avtar Singh respondent No.1 is purported to have purchased the said shop for consideration from Jatander Singh Bhatia and his brother Harvinder Singh Bhatia. There is a seal of judicial approval in as much as a decree for specific performance and permanent injunction has been passed in favour of Avtar Singh in a suit bearing No.668/1999 titled Avtar Singh vs. Jatander Singh Bhatia & Anr. on 22nd January, 2002. On that very date a permanent injunction has also been passed in favour of respondent No.1 Avtar Singh restraining the respondent No.2 and 3, who were the defendants in the said suit, from creating any third party interest in

respect of the shop in question. Therefore, the date of 22nd January, 2002 is important.

6. The case which has been sought to be made by the appellant is that his title is derived from one Rajiv Kumar Arora and Deepak Kumar Arora who are purported to have purchased this very shop from respondent No.2 Jatander Singh Bhatia by an Agreement to Sell, Power of Attorney, Will, Receipt and affidavit dated 18th February, 2002. All these documents except the General Power of Attorney are registered. So far as the General Power of Attorney is concerned, it is also registered after 22nd January, 2002. Therefore, this clearly shows that the moment there was a judgment and a decree against the respondent No.2 he wanted to wriggle out the said judgment and by apparently pre-dating documents to create a fresh transaction in favour of Rajiv Kumar Arora and Deepak Kumar Arora. This is evident from the fact that the only document which is registered is the General Power of Attorney purported to have been executed on 18th February, 1991 but registered on 25th of February, 1991. Even this power of attorney document is actually purchased on 22.1.2002 and is pre-dated. Therefore, the document becomes suspect.

7. The appellant in the instant case after learning about the said judgment and decree had also chosen to file objections in the execution application bearing No.34/6/2003 titled Avtar Singh vs. Jatander Singh

Bhatia & Anr. emanating from the Suit No.668/1991 which was heard
RFA(OS) 31/2008

and dismissed by a detailed and speaking order of the learned Civil Judge. The learned Civil Judge has done a meticulous examination of the objections raised by the appellant. The learned Civil Judge has come to a considered finding that the appellant is purported to have got his title by predating the validity of the document. Even the registration which has been done is later in point of time and the stamp paper which has been purchased on 22nd February, 1991 and the General Power of Attorney is pre-dated to have been drawn on 18th February, 1991. The question of the appellant being a bonafide purchaser has been completely rejected in observations of the learned Civil Judge, and on the contrary the learned Civil Judge has observed that Rule 102 of the Order XXI clearly makes the judgment and decree binding on the transferee. Therefore, this detailed examination of the rights of the appellant by the learned Civil Judge adjudicates the claim of the appellant threadbare and accordingly the finding has rightly gone against him. The same cannot be permitted to be raised again in the present appeal. However, the appellant did not rest there.

8. He, after the rejection of his objections by the learned Civil Judge, in Execution Application 34/06/03 on 28th January, 2008 choose to file an application under Order 1 Rule 10, Order IX Rule 7 and Rule 13 and an application under Section 151 C.P.C. for stay of the operation of the judgment in the Court of Ms. Kiran Gupta, Civil Judge, Delhi against the judgment dated 22nd January, 2002 in as much as the pecuniary jurisdiction of the District Court having been enhanced, the record of the

who became the successor court of the court which could have passed the judgment and decree of 22nd January, 2002 in Suit No.668/1991. Ms. Kiran Gupta, learned Civil Judge, Delhi also dismissed all the three applications of the appellant vide a speaking order dated 22nd February, 2008. Against the said order of 22nd February, 2008 the appellant preferred an appeal which was also rejected on the ground of limitation by Shri Manoj Jain, learned Addl. District Judge, Delhi. Thereafter, the appellant filed an appeal against the said order dated 18th January, 2008 by an R.F.A. which was also dismissed by Shri A.K. Pathak, learned A.D.J., Delhi vide order dated 23rd March, 2008 holding to the effect that since the judgment which has been passed by the learned Single Judge of the High Court on 22nd January, 2002 was a judgment of the Single Judge of the High Court and, therefore, an appeal on this would lie in the High Court itself by way of an LPA or any other remedy which will be available to the appellant. Accordingly, the said appeal was also dismissed. Thus, the issue raised by the appellant in the present appeal has already been established and the appellant is bound by the same finding. Looking from the another angle also, it is felt that since the appellant himself was not a party to the Suit No.668/1998, therefore, it was not open to him to challenge the said judgment and decree by way the present R.F.A.

9. In the light of the aforesaid facts and circumstances, we feel that there is absolutely no merit in the appeal of the appellant and, therefore,

the same is dismissed. The respondent No.1 can continue with his execution proceedings in accordance with law. No order as to the costs.

V.K.SHALI, J

MUKUL MUDGAL,J

May 26, 2008
RS