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* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 45/2007**

Date of decision : 15th September, 2009

SANJAY Appellant

Through : Mr. K.S. Rana, Advocate

Versus

JAGDISH PRASAD & ORS. Respondents

Through : Nemo.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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

ARUNA SURESH, J. (Oral)

RSA 45/2007 and CM APPL.2441/2007 (stay)

1. Smt. Phoolwati was allotted 25 yards of land bearing No.B-4/65, Pooth Kalan, Sector-20, by the Department of Land Protection, DDA vide allotment

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slip No.4621 dated 8.9.1988. She resided in the said house during her life time. On 26.7.1999 she sold away the suit property to respondent No.5 Smt. Shakuntala, her sister vide General Power of Attorney, Agreement to Sell, Affidavit, Receipt, Will, Possession Letter, etc. Respondent No.5 sold this property to the appellant Sanjay by executing a GPA, Agreement to Sell, Affidavit, Receipt, Will, Possession Letter, all dated 11.10.1999. Respondent No.1 Jagdish Prasad filed a suit for permanent injunction against the appellant being Civil suit No.916/2000. The said suit was dismissed by the trial court vide judgment and decree dated 12.4.2005. Aggrieved by the said judgment and decree, respondent No.1 filed an appeal being RCA No.49/2006 (18/2005). The appellate court allowed the appeal and set aside the judgment and decree of the trial court. Hence, this second appeal under Section 100 of the Code of Civil Procedure (hereinafter referred to as CPC).

2. Appellant has not formulated any substantial question of law in the appeal, though mandatory.

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The appeal was filed on 19.2.2007 and since thereafter the appellant failed to take any steps to frame any substantial question of law. On 28.9.2007, this court granted an opportunity to the appellant to make an application incorporating substantial question of law. However, over a period of one year, the appellant did not move any application incorporating substantial question of law. However, substantial questions of law required to be formulated were filed by the appellant on 20th March, 2008.

3. The appellate court in para 6 of the appeal analysed the documentary as well as oral evidence of the parties placed on the record, in the following manner:-

“6. I have gone through the entire record including the trial court record carefully and heard Id. Counsel for parties at length. In view of the grounds of appeal the main controversy is whether the documents Ex.PW1/1 to Ex.PW1/5 were required compulsory registration U/s. 17 of Indian Registration Act. If the same is answered the appeal can be dispose off on this point. I have gone through the provisions of section 17 and 49 of Indian Registration Act and the

documents in question. The impugned judgment and decree cannot be sustained because out of the issues framed for the trial, two of them i.e. issue No.2 and 3 are already decided in favour of appellant and against the respondents, trial court being convinced with the documents of appellant Ex.PW1/1 to Ex.PW1/5. Therefore, the same cannot be sustained. The defendant took plea that the documents of plaintiff Ex.PW1/1 to Ex.PW1/5 are forged and fabricated but defendants did not lead any evidence to support this plea. No hand writing and finger print expert was examined to support this plea in the defence evidence. Smt. Phoolwati has neither appeared to dispute the documents Ex.PW1/1 to Ex.PW1/5 nor the defendants examined her to disprove these documents. The addresses of both witnesses to the documents were given on the documents itself and same could be summoned by the defendant or the court to disprove these documents. But defendants have not taken any steps. It was not at all necessary to examine attesting witnesses till the execution of documents is disputed by the alleged executant. The defendants have totally failed to establish their claim with respect to the suit property. So the issue no.2 & 3 have been answered against them. PW1 has categorically denied that he got fabricated false documents of the suit property. He claimed that his goods are still lying in the suit property. This version of PW1 has gone unrebutted. The photographs of goods of the plaintiff/appellant lying on the suit

property are sufficient proof of the possession of the plaintiff/appellant on the suit property. Ld. Civil Judge erroneously arrived to hold that Ex.PW1/1 to Ex.PW1/5 are compulsory registerable because the documents have been excluded from compulsory registration by Clause V of sub section 2 read with explanation under sub section 2 of Section 17 of the Registration Act. These documents are of nature creating right to have executed another document of title creating, declaring, assigning, limiting extinguishing such right, title or interest in the immoveable property. Accordingly the finding of Id. Trial court with respect to issue no.1 are hereby reversed and the issue no.1 is answered in favour of the appellant and against the defendants."

4. The substantial question sought to be formulated in this appeal is, "whether the documents like GPA, Agreement to Sell, Will etc. required compulsory registration under Section 17 & 49 of the Registration Act and in the absence of the registration, the said documents could not have been looked into by the appellate court while reversing the finding of the trial court?" Under the circumstances, following substantial question of law is hereby formulated:-

"Whether the documents which are the basis of the claim of respondent No.1 in the suit are compulsory registerable and being un-registered could not have been looked into by the appellate court while decreeing the suit of respondent No.1?"

5. I have heard Mr. K.S. Rana, learned counsel for the appellant and have carefully perused the record. Appellant has placed on record the original documents in this appeal during its pendency. Admittedly, these documents were not placed either before the trial court or before the first appellate court. There is no application under Order 41 Rule 27 CPC seeking permission to produce additional evidence by way of these documents on record. Therefore, these documents were not before the trial court or the first appellate court at the time when the suit and the consequent appeal were finally decided.
6. These documents cannot be looked into by this court in the absence of any application under Order 41 Rule 27 CPC. Besides, appellant cannot be allowed to fill up the weakness of his case by filing

these additional documents in this appeal in utter violation of principles of law incorporated under Order 41 Rule 27 CPC.

7. Section 17 of the Registration Act regulates the registration of documents as detailed therein. The documents which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property and other non-testamentary instruments needs compulsory registration.
8. Section 49 of the Registration Act speaks of effect of non-registration of documents which are compulsory registrable. As per this section no document, required by Section 17 or by any other provision of Transfer of Property Act to be registered, shall affect any immovable property comprised therein. By virtue of proviso to the Section, an un-registered document affecting immoveable property, required to be registered, can

be received as evidence of a contract in a suit for specific performance; or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act; or as evidence or any collateral transaction not required to be effected by registered instrument.

9. In this case, the documents which are the basis of the suit and have been considered and accepted by the Appellate Court are General Power of Attorney, Agreement to Sell, Receipt, Will, Affidavit, Possession Letter etc. and they are all unregistered documents. Since none of these documents create any title of the property in favour of respondent No.1, they are not compulsorily registrable.
10. Agreement to Sell does not require compulsory registration as it is only a document creating a right to obtain another document i.e. Sale Deed. It is only the Sale Deed when executed, would create a right in the property in suit. Other documents executed inter se the respondent and the allottee of the property do not create any title in the

immoveable property in favour of the appellant and, therefore, need no registration.

11. In '**M.L. Aggarwal vs. Oriental Bank of Commerce and Ors., 128 (2006) DLT 407**', it was observed that '*An immovable property cannot be purchased by a mere Power of Attorney or Agreement to Sell.*'
12. In '**Bhaskaran vs. George Joseph, AIR 1988 Ker 255**', it was observed that '*an agreement for sale of immovable property is a non-testamentary instrument which does not create, declare, assign, limit or extinguish, any right, title or interest, whether vested or contingent in immoveable property.*'
13. Thus, it is not in dispute that any document creating interest in the property is compulsory registrable. However, the test to determine whether the documents create interest or not is, that it should devolve upon the present right of ownership in whose favour the interest is allowed to be created.

14. There is a concurrent fact findings of the courts below that the property in suit was in actual possession of respondent No.1. By virtue of Section 53-A of the Transfer of Property Act possession of respondent No.1 in the suit property is therefore, protected. Under these circumstances, these documents have been rightly received in evidence and relied upon by the Appellate Court.
15. Hence, in view of the settled proposition of law, the fact findings by the courts below and the circumstances of this case, I do not find any infirmity or illegality in the order of the Appellate Court. Since I find no merits in the appeal, the same is accordingly dismissed. There are no orders as to costs.
16. CM APPL.2441/2007 for stay also stands disposed of.


(ARUNA SURESH)
JUDGE

SEPTEMBER 15, 2009
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