

* HIGH COURT OF DELHI : NEW DELHI

FAO. No.361/2009 & CM No. 16694/2009

% Judgment reserved on: 20th November, 2009

Judgment delivered on: 25th November, 2009

1. Smt. Ranjana Sabharwal,
W/o Sh. Sandeep Sabharwal,
R/o DDA MIG Flat No. 31 C, Pkt-VI, Site II,
Phase-I, Nasirpur, Dwarka
New Delhi-110045.
2. Sh. Arun Vaish,
S/o Sh. Om Parkash Vaish,
R/o RZ51/A, Gali No. 4, Mahavir Enclave,
Palam Road,
New Delhi- 110045.
3. Sh. Tarun Vaish,
S/o Om Prakash Vaish,
R/o DDA MIG Flat No. 31 C, Pkt-VI, Site II,
Phase-I, Nasirpur, Dwarka
New Delhi-110045.

....Appellants

Through: Mr. Sunil Kumar Bharti, Adv.

Versus

1. Smt. Rama Devi,
R/o RZ51/A, Gali No. 4, Mahavir Enclave,
Palam Road,
New Delhi- 110045.
2. Ms. Purvashi Vaish,
D/o Sh. Om Parkash Vaish,
R/o RZ51/A, Gali No. 4, Mahavir Enclave,
Palam Road,
New Delhi- 110045.

....Respondents.

Through: Nemo

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

Present appeal has been filed against order dated 3rd November, 2009 passed by Additional District Judge, New Delhi, vide which application under Order 39 Rule 1 and 2 Code of Civil Procedure, filed by the appellants was dismissed with cost of Rs.5,000/- (Rupees Five Thousand Only).

2. Brief facts are that appellants filed suit for possession of property no. RZF-51 A, situated at Village Palam, New Delhi. Appellants' case is that this property was sold by one Sh. Ram Chander on 1st May, 1979 and he executed various documents namely, General Power of Attorney in favour of Sh. O. P. Vaish S/o Sh. Harnam Dass who is father of appellants. Agreement to Sell, Will and receipt in favour of respondent no. 1, Smt. Rama Devi W/o Sh. O.P. Vaish.

3. Sh. O. P. Vaish died on 6th January, 1999 and as such irrevocable General Power of Attorney executed in favour of Sh. O. P. Vaish, devolved in favour of the legal heirs namely, present appellants and respondent no. 2. Thus, property in question as on date belongs to legal heirs of Sh. O. P. Vaish.

4. The case of respondent no. 1 is that she is the absolute owner of the suit property and this is her-self acquired property. No cause of action lies in favour of appellants.

5. It is contended by learned counsel for appellants that property in question belongs to appellants. Respondent no. 1 has no right in the said property and agreement to sell does not confer a title on the purchaser i.e. respondent no. 1. Moreover, payment was made by Sh. O. P. Vaish, father of the appellants.

6. Principles for grant of temporary injunction are well settled;

- (i) That there has to be a prima facie case in favour of the party who is seeking relief of injunction;
- (ii) Balance of convenience lies in his/her favour and;
- (iii) Lastly, they will suffer irreparable loss if injunction is not granted.

7. Appellants have not placed on record even a single document on the basis of which they claim title to the property in question.

8. On the other hand, as per appellants own case agreement to sell was executed in favour of respondent no. 1 and vendor received entire sale consideration from respondent no. 1. Under these circumstances, prima facie, appellants have no legal title in the property in question.

9. Trial court rightly dealt with this issue and there is no reason to disagree with the findings of the trial court, which are reproduced as under:

“The position which emerges from the discussion noted above is that it is an admitted fact that the vendor of suit property executed a GPA in favour of father of Plaintiffs and husband of defendant no. 1. The Agreement to sell, Registered Receipt, Registered Will and Affidavit are executed in favour of defendant No. 1. As per said documents, sale consideration passed from defendant no.1 to vendor. The GPA Holder, Shri O. P. Vaish has died. The plaintiffs admit that the GPA has come to

an end after his death. Therefore, the LRs of Shri O. P. Vaish will not become owners of suit property after the death of GPA holder who himself was not the owner of Suit property during his lifetime. After his death, his LRs cannot have a title better than him. The objection to the defect in the title of Defendant no. 1 cannot be taken by her own children, being also the children of GPA holder, their father.

10. Thus, no ambiguity can be found with the impugned order passed by the trial court. The present appeal is thus not maintainable and same is dismissed with costs of Rs.5000/- (Rupees Five Thousand Only).

11. Costs be deposited with “Delhi High Court Legal Services Committee” within four weeks from today and receipt of the same be placed on record.

12. List on 5th January, 2010, for compliance.

+CM No.16694/2009

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Dismissed, being infructuous.

25th November , 2009
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V.B.Gupta, J.