

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.07.2010

CS(OS) No. 1262/2002

SMT. DHARAMWATI

..... PLAINTIFF

Vs

SHRI SATBIR & ORS.

..... DEFENDANTS

AND

CS(OS) No. 1263/2002

SMT. MANOHRI DEVI

..... PLAINTIFF

Vs

SHRI SATBIR & ORS.

..... DEFENDANTS

Advocates who appeared in this case:

For the Plaintiffs :	Mr S.S. Panwar & Mr Sunil Dutt Baloni, Advocates
For the Defendant:	Mr B.S. Mann, Mr Jai Prakash & Mr Hardeep Singh, Advocates

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment ? | No |
| 2. | To be referred to Reporters or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

RAJIV SHAKDHER, J

1. The captioned suits have been filed for seeking a decree of possession, permanent injunction and damages against the defendants. The facts as well as the evidence in both the suits being common, I propose to dispose of the captioned two suits by a common judgment.

2. In order to dispose of these suits the following facts, which have arisen in the two cases require to be noticed.

2.1 Before I proceed further I may only indicate that for the sake of convenience I will be referring to the plaintiffs, in the captioned suits collectively as plaintiffs.

2.2 The plaintiffs in the two suits are sisters. They trace their lineage in the recent past to one Sh. Rai Singh, the paternal grandfather of the plaintiffs herein. The said Sh. Rai Singh had two sons, by the name of Chandgi Ram and Akhey Ram. Chandgi Ram from his marriage with Gopali had four sons and five daughters. The fifth daughter, one Smt. Khazani passed away in 1965. Chandgi Ram and Akhey Ram were joint owners and in possession of properties bearing municipal no. 84, khasra no. 164 (3-19) and municipal no. 43 admeasuring 153 sq. yds. situate in revenue estate of village Adhchini, New Delhi – 17. On the death of Chandgi Ram in 1958 half share in the aforementioned properties was inherited by Chandgi Ram's widow Smt. Gopali and his four sons namely S/Sh. Hardwari, Sardar Singh, Raghubir Singh and Kartar Singh; along with her four daughters namely, Smt. Risali, Smt. Manohari (plaintiff in Suit No. 1263/2002), Smt. Kalawati and Smt. Dharamwati (plaintiff in Suit No. 1262/2002). Since the mother, i.e., Gopali, has also expired, her share was inherited by above named children of late Gopali and Chandgi Ram.

3. In 1980, the sons of Chandgi Ram, i.e., Sardar Singh and others applied for partition of Khasra No. 164. The said case was registered as case no. 37/RA/1980. The Tehsildar, Asstt. Collector, Mehrauli, New Delhi vide order dated 19.09.1980 allowed the partition. The shares of each of the co-owners were specified by virtue of this partition. Pursuant to the Tehsildar's order dated 19.09.1980, Dharamwati acquired 4 biswas of land in Khasra No. 164, being equivalent to 200 sq. yds., out of the total area of 3 bighas and 19 biswas. The other half in Khasra No. 164, equivalent to approximately 2000 sq. yds., fell to the share of Sh. Akhey Ram.

4. It is not disputed that the widow of one of the co-owner, i.e., Hardwari (one of the sons of Chandgi Ram) challenged the order of the Teshildar partitioning the property falling in Khasra No. 164, amongst the co-owners, by way of a civil suit being No. 781/1980, entitled Smt. Sumitra Devi & Ors. vs Sardar Singh & Ors. It is not disputed that Akhey Ram along with his children was also impleaded as a party to the said suit.

Akhey Ram died on 31.05.1981. Consequently, the plaintiffs and the defendants being his only legal heirs inherited a share of Akhey Ram's share in the suit property.

4.1 By an interim order dated 22.10.1980 the defendants were directed to maintain status quo, and restrained from implementing the order of the Tehsildar dated 19.09.1980. This interim order was confirmed by an order dated 14.01.1981.

4.2 It so happened that on 16.08.1983, the suit was dismissed in default; consequently, the plaintiffs herein along with their brothers Sardar Singh, Kartar Singh and Raghubir Singh executed an agreement to sell dated 02.09.1983 with defendant nos. 1 and 2 in the two suits along with their brothers one Sh. Dharam Pal and Chandra Pal (Husband of defendant no. 3). Only to be noted defendant no. 4 is the son of defendant no. 3 and late Sh. Chandra Pal.

4.3 Plaintiffs, in the two suits herein, however, alleged that they had executed the agreement to sell dated 02.09.1983 along with attendant documents such as General Power of Attorney (in short 'GPA'), Will and Receipt; under undue influence of their brothers. The plaintiffs were paid a sum of Rs 33,225/- each for their entire share admeasuring 200 sq. yds., which was allocated to them in accordance with Tehsildar's order dated 19.09.1980. The agreement to sell, receipt and Will of even date, i.e., 02.09.1983 were executed by the plaintiffs in favour of defendant no. 2, while GPA was executed in favour of another person. It is not disputed by the defendants that the Will and the receipt were registered with the Sub-Registrar, New Delhi. What is, however, disputed is that neither defendant no. 2, i.e., Ashok Kumar, nor the intended purchaser came to physically possess the portion of the property allocated to the plaintiffs. It transpires that suit no. 781/1980, which was dismissed in default on 16.08.1983, was restored on 01.09.1983.

4.4 At this stage, it would also be pertinent to note that during the pendency of the suit no. 781/1980 instituted by Sumitra Devi and others, against Sardar Singh and others, Sardar Singh and his sisters, which included the plaintiffs; filed as a counter blast, a civil suit for partition of the very same properties, i.e., Khasra No. 164 and property bearing CS(OS) 1262&63/2002

municipal no. 43 situated in village Adhchini, New Delhi in this court. The said suit was registered as suit no. 754/1985 entitled as Sardar Singh & Ors vs Sumitra Devi & ors. The two suits 781/1980 and 754/1985 were tried together.

4.5 To complete the narrative Sardar Singh passed away on 31.10.1988, while Kartar Singh, the other brother, died on 21.10.1992. Finally, in both suits a compromise has been arrived at. Pursuant to the compromise suit no. 781/1980 was decreed on 16.09.1997 whereby, the order of the Tehsildar dated 19.09.1980 was set aside. Similarly, suit no. 745/1985, based on a compromise, was decreed on 22.09.1997.

5. It is the case of the plaintiffs that the co-owners of Khasra No. 164 acquired actual physical possession pursuant to the compromise and decree dated 22.09.1997. In accordance with the decree dated 22.09.1997 property bearing municipal no. 43 fell exclusively to the share of Kishan Singh, son of Sardar Singh. It may only be noted, that the Will, that the plaintiff, had executed in favour of defendant no. 2 on 02.09.1983, was allegedly cancelled and revoked vide a deed of revocation dated 22.09.1985. Pursuant to the aforementioned compromise, the plaintiffs were allocated land admeasuring 300 sq. yds. falling in khasra no. 164. The plaintiffs have averred that soon after the compromise defendant no. 1 along with his late brother Chandra Pal (husband of defendant no. 3) approached the plaintiffs for sale of additional 100 sq. yds. which fell to the share of the plaintiffs herein. In this respect the plaintiffs executed a Will, GPA and sale deed of even date i.e., 27.03.1998(Ex. P-1). The consideration provided for in the sale deed was a sum of Rs 30,000/-. The plaintiffs alleged that this figure was fraudulently inserted contrary to the understanding that the total consideration payable, and agreed between the parties was Rs 10 lacs; and therefore, the defendants were in breach of their obligation of paying the balance sum of Rs 9.70 lacs. It is also alleged that the true market value of the land at that point in time was Rs 15000 per sq. yds., which was also the price allegedly paid to the other co-owners. It is further averred that it was only on account of influence of defendants that they had agreed to a much lower price of Rs 10 lacs, as against, the true market value of Rs 15 lacs.

6. The plaintiffs allege that the defendants have illegally and forcefully encroached upon the remaining 200 sq. yds. out of the 300 sq. yds. which was allocated to them pursuant to the decree of compromise of 22.09.1997; in the garb of the defendants, purchasing from them 100 sq yds each pursuant to sale deeds dated 27.03.1998(Ex. P-1). The plaintiff allege that, in view of the fact that, the order of partition passed by the Tehsildar, Mehrauli dated 19.09.1980 having been set aside by this court vide its order dated 16.09.1997, the defendants could not claim the right over 200 sq. yds. In any event, it is the case of the plaintiffs, that the 200 sq. yds., which fell to their share, pursuant to the order of the Tehsildar dated 19.09.1980, is on ground located at a different place (albeit within Khasra No. 164) than that piece of land also admeasuring 200 sq yds, which fell to their share pursuant to the decree dated 27.09.1997 passed in Suit No. 754/1985. Therefore, the sale deed dated 19.11.1997 (Ex. DW1/1) with respect to the 200 sq. yds.; which was a self serving document executed by the defendants, by exercising the powers under the GPA executed on 02.09.1983 (at the time of the execution of the agreement to sell of even date) had no legal sanctity in the eyes of law. It is submitted that the plaintiffs not being parties to the sale deed of 19.11.1997 (Ex DW1/1), the defendants acquired no rights in respect of even the said 200 sq. yds. The plaintiffs claim that the defendants are encroachers in so far as 200 sq. yds of the property is concerned, while in respect of 100 sq. yds.; the sale deed dated 27.03.1998 (Ex. P-1), has been fraudulently executed.

7. On the other hand the defendants have set up a case that defendant no. 2 is in possession of 200 sq. yds. out of property bearing no. 84 in Khasra No. 164 situate in revenue estate of village Adhchini, New Delhi. The title, right and interest in the property is claimed by virtue of aforementioned sale deed of 19.11.1997 (ExDW1/1). As indicated hereinabove, it is admitted that the aforementioned sale deed was executed in favour of the defendant by exercising the power conferred in the GPA. The said sale deed, as stated, stands registered in the office of Sub-Registrar, Delhi. It is also averred that there has been no challenge to the sale deed dated 19.11.1997 (Ex DW1/1). The

defendants submitted that after the plaintiffs had sold 200 sq. yds. out of 300 sq. yds. allocated to them, they offered to sell the remaining 100 sq. yds of the said property in view of its odd measurements. The remaining 100 sq. yds., according to the defendants, had a width of half ft., with a length of 204 ft. Consequently, the plaintiffs approached Chandra Pal (husband of defendant no. 3) as the other portion, i.e., 200 sq. yd. had been sold to his brother, i.e., Ashok Kumar. The transaction was consummated vide sale deed dated 27.03.1998 (Ex. P-1); and a full and final consideration of Rs 30000/-, was paid by late Sh. Chandra Pal to each of the plaintiffs. The said sale deed was submitted in the office of Sub-Registrar for registration. The sale deed dated 27.03.1998 (Ex. P-1) could not be registered as the plaintiffs did not furnish a no objection certificate. The possession of the property admeasuring 100 sq. yds. each was, however, handed over by the plaintiffs to Chandra Pal at the spot. After the death of Chandra Pal the legal heirs of Chandra Pal, i.e., defendant no. 3 and 4 have acquired rights over the said 100 sq. yds. property. It is submitted that Late Sh. Chandra Pal having already performed his part of the obligations undertaken in the contract on payment of full and final sale consideration; and having come into possession in respect of 100 sq. yds. each allocated to the plaintiffs: they are entitled to protection in terms of Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as 'Transfer of Property Act'). In sum and substance, it is the stand of the defendants herein, that defendant nos. 2, 3 and 4 are bonafide purchasers of the suit property which, they have purchased for a valuable consideration; whereupon they have acquired possession of their respective shares of the suit property. Defendant no. 2 claims right, title and interest in the 200 sq. yds. by virtue of a registered sale deed dated 19.11.1997 (Ex. DW1/2), whereas defendant no. 3 and 4 claim a right in the property by virtue of an unregistered sale deed contract dated 27.03.1998 (Ex. P-1).

Submission of Counsels

8. In support of their respective cases the parties have been represented by Mr Panwar, Advocate who appeared for the plaintiff, and Mr Maan, Advocate who appeared for the defendant.

8.1 In his submissions Mr Panwar briefly stated as follows: The order of the Tehsildar dated 19.09.1980 vide which plaintiffs were allotted four biswas, i.e., 200 sq. yds. in Khasra No. 164, which was evidently agreed to be sold vide agreement to sale dated 02.09.1983, was set aside by a compromise decree dated 16.09.1997, passed in suit no. 781/1980. The plaintiffs acquired 300 sq. yds. pursuant to a compromise decree dated 22.09.1997, which is located at a place altogether different from that place at which the 200 sq. yds., which fell to the plaintiffs share following the order of the Tehsildar. The defendant no. 2 has executed a sale deed dated 19.11.1997 (Ex. DW1/2) by making use of GPA dated 02.09.1983 executed in favour of late Chandra Pal. The said sale deed of 19.11.1997 (Ex. DW1/2) has been executed after nearly 15 years, at the same price of Rs 33,225/- which was agreed to be paid in 1983. It was submitted that the defendants have not produced either the agreement to sell or the GPA of even date i.e., 02.09.1983; and what has made it worse for the defendants is the fact that the plaintiffs neither appeared before the Sub-Registrar on 19.01.1997, nor did they apply for a no-objection certificate, which is, necessary for registration of the sale deed. The learned counsel submitted that the agreement to sell and the GPA of even date i.e., 02.09.1983 lost their validity after the expiry of three years. He further submitted that clause 12 of the sale deed would show that the “no objection certificate” was obtained on 30.02.1998 after the registration of the sale deed on 19.11.1997(Ex. DW1/2). The learned counsel argued that the sale deed dated 19.11.1997(Ex. DW1/2) was not proved. No official of the Sub-Registrar’s Office was called to prove the said sale deed.

8.2 As regards the sale deed dated 27.03.1998 (Ex. P-1), concerning the remaining 100 sq. yds., it was contended that the document was invalid in law, and fraudulently executed, in as much as the total consideration as agreed to between the plaintiffs and Chandra Pal (husband of defendant no. 3) was a sum of Rs 10 lacs, whereas the amount paid was only Rs 30,000/-. It is contended that if, in 1983, the plaintiffs had evidently agreed to transfer of 200 sq. yds. for a consideration of Rs 33,225/- then how could they, in 1998, have agreed to sale of land admeasuring 100 sq. yds. each for a total sum of Rs

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30000/- each. The purported sale deed being unregistered, it was bereft of any legal force and hence, was not binding on the plaintiffs, as the entire consideration has not been paid.

8.3 Mr Panwar, instead, pressed his claim for damages, which he quantified at the rate of Rs 50,000/- per month. The quantification of damages was based on the testimony of DW1; who evidently claimed that the property fetched a sum of Rs 50,000/- per month. It was further contended that the defendants deliberately chose not to become party to the suit nos. 781/1980 and 754/1985 even though they were aware of their pendency. It was thus contended, that the defendants could not seek benefit of the provisions of Section 53A of the Transfer of Property Act.

9. Mr Maan, on the other hand, argued that the case of the plaintiffs that a fraud has been played upon them by the defendants is not supported by any evidence. Allegations in regard to fraud are vague and general in nature, lacking material particulars. In so far as, the dispute with regard to 200 sq. yds. is concerned, it was contended that the defendants had purchased along with the share of plaintiffs a share of all the co-owners falling in Khasra No. 164 municipal no. 84. According to Mr Maan, the real controversy was that there was an apprehension in the mind of the plaintiffs that the other co-owners had been paid more money for their share as compared to the plaintiffs herein. It was contended by the learned counsel that, in this particular case, the evidence of Smt. Dharamwati (PW1), plaintiff in suit no. 1262/2002, would show that the sale of both 200 sq. yds., as well as 100 sq. yds., has been accepted by them. It was submitted that the entire case of the defendants is premised, [in respect of the execution of sale deed dated 19.11.1997(Ex. DW1/2) (which relates to 200 sq. yds.)] on a singular argument that the powers conferred in the GPA of 02.09.1983 could not have been invoked; and moreover had not been invoked by the defendants, till at late as November, 1997. This submission of the plaintiffs, according to Mr Maan, was fallacious. It was thus contended that the sale deed executed on 19.11.1997 (Ex. DW1/2) was a valid document in the eyes of law. It was further submitted that there was, as a matter of fact, no dispute qua the allocation

of 200 sq. yds., as sought to be contended by the plaintiffs; that as a matter of fact none of the other co-owners had raised any issue over the years in that regard. As regards the non-payment of the balance consideration of Rs 9.70 lacs, in respect of 100 sq. yds., Mr Maan drew my attention to the averments made in paragraph 21 of the plaint. He pointed out that it was averred therein, that the balance sum of Rs 9.70 lacs was agreed to be paid in instalments. He submitted that there are no details given in the plaint, with regard to the date, time or, the sums of money which, the defendants were required to pay. The learned counsel also submitted that a super-structure had been built on the said 200 sq. yds. of which the plaintiffs are seeking possession, and that if the plaintiffs were genuinely alive to their rights in property they ought to have objected at a point in time when the super-structure was built thereon.

9.1 Mr Maan further contended that in respect of the dispute with regard to 100 sq. yds. sold to the defendants vide sale deed dated 27.03.1998 (Ex. P-1) the only issue raised was inadequacy of consideration. It was Mr Maan's contention that inadequacy of consideration could not be a ground for setting aside the sale deed dated 27.03.1998 (Ex. P-1). On the other hand, he submitted that the defendants were entitled to protection as they had not only discharged their obligations undertaken in the sale deed dated 27.03.1998 (Ex. P-1) but also taken possession pursuant to the execution of the sale deed. It was Mr Mann's contention that protection of possession under Section 53A of the Transfer of Property Act is available to a defendant/transferee even though his right to bring a suit for specific performance is barred by limitation.

9.2 Mr Maan next contended that oral evidence could not be considered by this court on the aspect of inadequacy of consideration which was in contradiction with or in variance with the explicit terms of the sale deed dated 27.03.1998 (Ex. P-1). Reliance in this regard was placed on the provisions of Section 91 and 92 of the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'). In support of his submissions the learned counsel relied upon the following judgments: *K.S. Narasimhachari vs The Indo*

Commercial Bank Ltd AIR 1965 Mad. 147 (V. 52 C 48); Shrimant Shamrao

Suryavanshi & Anr. vs Pralhad Bhairoba Suryavanshi (Dead) by LRs. & Ors. AIR 2002 SC 960; and Smt. Suniti Rani Nath vs Pabitra Kr. Nath (deceased by LRs) AIR 2007 Gauhati 128.

REASONS

10. I have heard the learned counsel for the parties, considered the pleadings as well as the evidence on record. What has come through after considering the same, is as follows: There appears to be no dispute with regard to the fact that pursuant to the order of the Tehsildar dated 19.09.1980 a partition took place amongst the progeny of late Sh. Chandgi Ram and Gopali. It is not in dispute that the widow of Hardwari, i.e., Sumitra Devi challenged the partition by way of suit no. 781/1980. It is also not in dispute that Sardar Singh and his brothers along with the plaintiffs also filed a civil suit bearing no. 754/1985 for partition, in respect of Khasra No. 164 (3-19) and property bearing no. 43, in which Sumitra Devi and others were a party. It is also admitted that both suit no. 781/1980 and 754/1985 were compromised. In suit no. 781/1980 a decree was passed on 16.09.1997 setting aside the order of partition passed by the Tehsildar on 19.09.1980. Similarly, by an order of 22.09.1997 passed in suit no. 754/1985, a fresh partition was effected amongst the parties. What is also not disputed by the plaintiffs is that in the interregnum suit no. 781/1980 was dismissed in default on 16.08.1983, at which point in time Sardar Singh along with his brothers and sisters, which included the plaintiffs, agreed to execute, and did go on to execute an agreement to sell, GPA and Will of even date i.e., 02.09.1983 in favour of defendant no. 2 in respect of four Biswas (i.e., 200 sq. yds.) falling in Khasra No. 164, for a total consideration of Rs 33,225/-. The plaintiffs, both in their examination-in-chief, as well as, in the cross examination have accepted the execution of the agreement to sell dated 02.09.1983, as well as, the GPA of even date, i.e., 02.09.1983. The plaintiffs have also accepted the receipt of total consideration of Rs 33,225/-. The resultant sale deed dated 19.11.1997 (Ex. DW-1/2), executed in favour of defendant no. 2 (i.e., Ashok Kumar), by late Sh. Chandra Pal by exercising his power

under the GPA dated 02.09.1983, has been challenged by the plaintiffs on several grounds. I shall deal with each of them shortly.

11. What is required to be noticed, is that while the plaintiffs claim that the 200 sq. yds., now in possession of the defendant no. 2, is not that portion of land which was subject matter of the agreement to sell; the said position is contested by the defendants. The plaintiffs while impugning the action of the defendants in encroaching upon the 200 sq. yds., which fell to their share vide decree dated 22.09.1997, have contended that the defendants could not have taken resort to a GPA which was executed more than 15 years ago. The plaintiffs buttressed their arguments with the submission that the defendants have not filed a suit for specific performance to enforce their right, if any, under the agreement to sell dated 02.09.1983. In the evidence of DW1 what has come through, is that, apart from Sumitra Devi and Risali Devi, they had acquired the land of all co-owners, including that of the plaintiffs, on execution of agreement to sell dated 02.09.1983. Because there was, in the first instance, a dismissal in default of suit no. 781/1980 and, thereafter, its restoration by an order dated 01.09.1983, and finally its culmination, on execution of the compromise deed dated 16.09.1997; which was followed by a compromise arrived in suit no. 754/1985 as reflected in the decree dated 22.09.1997; the plaintiffs asked the defendants to go ahead and execute the sale deed dated 19.11.1997(Ex. DW1/2) by resorting to the powers granted under the GPA of 02.09.1983. The deposition of Ashok Kumar (DW1), on this aspect, has not altered, and remains consistent even in the cross-examination. The sale deed dated 19.11.1997 (Ex.DW-1/2), which is a registered document, has been proved by Ashok Kumar (DW1). What has also come through in the evidence of DW1 is that simultaneously there had been purchase of the shares of other six co-owners (as noticed hereinabove) except Sumitra Devi and Risali Devi. The submissions of Mr Panwar with regard to location of that parcel of land which admeasures 200 sq. yds., which evidently formed subject matter of the agreement to sell and GPA of even date, i.e., 02.09.1983, and is now, admittedly in possession of defendant no. 2, are untenable. The reason being that: firstly, plaintiffs

have not been able to show, with cogent material on record, that the location of the 200 sq. yds., which was the subject matter of the agreement dated 02.09.1983, was different from that which was in possession of defendant no. 2 presently; secondly, DW1 has categorically stated in his testimony that they acquired possession immediately on execution of the agreement to sell dated 02.09.1983; thirdly, PW1 in her cross-examination has clearly admitted as follows: that she had sold 200 sq. yds. out of the land in dispute in the year 1983; that her other three brothers and two sisters have also sold 200 sq. yds., separately, to each of the defendants in the year 1983 itself; that she, along with her brothers and sisters, had received full and final consideration of their share in the land sold by them to the defendants; and that the documents executed in 1983 had not been put in issue by filing action in any court of law. In these circumstances, I find it difficult to accept the submissions made on behalf of the plaintiffs that the properties, which were the subject matter of the agreement to sell dated 02.09.1983, were not the same which is in occupation of the plaintiffs. If this were to be true, then surely on forceful occupation of 200 sq. yds., by the defendant no. 2, the plaintiffs would have raised objection with respect to the same. In the cross-examination of Ashok Kumar (DW1) a suggestion had been made to him that the land admeasuring 200 sq. yds., which was subject matter of the sale deed dated 19.11.1997 (Ex. DW1/2), had been forcefully occupied after 27.03.1998. In response, DW1 answered as follows: ***“it is wrong to suggest that we had forcefully occupied the land of 200 sq. yds. of the plaintiff after 27.03.1998”***. If, as suggested, this position obtained on the ground, I would find it difficult to believe that the plaintiffs would have waited till 2002 to rectify the position. The onus of proof, according to me, with regard to the possession of 200 sq. yds. land by defendant no. 2 since 1983, has been discharged by the defendants. As against this the plaintiffs have not been able to prove that the location of the land was different. Therefore, what attains importance is the fact that the plaintiffs have to date, for reasons best known to them, not challenged the sale deed dated 19.11.1997 (Ex. DW1/2). I agree with the submissions of Mr Maan that if the GPA dated 02.09.1983 was valid then the

sale deed could have been executed by the power of attorney (POA) holder in favour of defendant no. 2.

12. It is not disputed by the plaintiffs that they received the consideration of Rs 33,225/- each from the defendants. If the case set up by them was genuine surely after the decree dated 16.09.1997 was passed they would have made attempts to return the consideration received in 1983 from defendant no. 2. The submission of Mr Panwar that, the sale deed dated 19.11.1997 (Ex. DW1/2), in respect of 200 sq. yds., could not have been executed after nearly 14 years at the same price, that is, Rs 33,255/- is misconceived for the reason that, it is not the case of the plaintiffs that they had not received the entire sale consideration as agreed to between the parties and as provided for in the agreement to sell. The sale deed dated 19.11.1997 (Ex. DW1/2) relates back to the agreement to sell dated 02.09.1983. Therefore, in my view, the allegation of the plaintiffs that the defendants have illegally encroached upon 200 sq. yds., falling in Khasra No. 164 of municipal property no. 84, is not made out. I may also note the fact that even though Dharamwati claimed in her examination-in-chief that, the Will dated 02.09.1983 was revoked by revocation deed dated 23.09.1985 (Ex. PW1/3); no attempt whatsoever was made to revoke the GPA dated 02.09.1983; based on which the sale deed dated 19.11.1997 was executed in favour of Ashok Kumar, defendant no. 2, by the POA holder, i.e., late Sh. Chandra Pal.

13. This brings me to the other issue as to the validity of the unregistered sale deed dated 27.03.1998 (Ex.P-1). In this regard the evidence of Dharamwati (Plaintiff in suit no. 1262/2002) shows that: the sale deed dated 27.03.1998 (Ex.P-1) pertaining to 100 sq. yds. had been executed by her in favour of Chandra Pal; that she had gone to the office of Sub-Registrar for the said purpose; that she had been asked by the Sub-Registrar pointedly as to whether she had received the payment, and in response thereto, she had informed him about receipt of payment by her. (To be noted that she had volunteered while giving her testimony that the, Sub-Registrar had not asked her as to the sum which

had been received by her); and lastly, she had handed over possession of 100 sq. yds. of land to Chandra Pal after execution of sale deed.

13.1 It is also pertinent to note at this stage that, it has come in the deposition of Dharamwati, that she studied upto class 10th and that, she had been in government employment, as a teacher. It has also come in her cross-examination that she retired from service in the year 2001.

13.2 Based on the aforesaid, what is to be ascertained is whether the document dated 27.03.1998 (Ex. P-1) has been voluntarily executed by the plaintiffs, without employment of any fraud or misrepresentation, as contended. The plaintiffs contend that the consideration agreed to between them and Chandra Pal (husband of defendant no. 3) was a sum of Rs. 10 lacs, and that only a sum of Rs 30,000/- against the agreed consideration had been paid. In my view, as has been rightly contended by Mr Maan, this submission cannot be countenanced in view of the fact that, there is a written document on record; the execution of which has been admitted by the plaintiffs. The consideration of Rs. 30,000/- is also mentioned in the said document. Dharamwati, on her own admission, has studied upto class 10th and had been in government employment as teacher. The contention raised on her behalf that she is not conversant with the English language, cannot carry the case of the plaintiffs further, since it is accepted by her that she appeared before the Sub-Registrar, and on being asked whether she had received the consideration she had replied in the affirmative. In these circumstances, any evidence, which contradicts or seeks to vary what is provided in the written document, is inadmissible. As to whether the consideration is inadequate or not or, whether it was a bad bargain on behalf of the plaintiffs is a matter on which court cannot comment on, since it is not the case of the plaintiffs, that the contract, was unfair. On the other hand, the case set up by the plaintiffs is that, contrary to the consideration provided in the document, it had been agreed by Chandra Pal that they would be paid a sum of Rs 9.70 lacs over and above the sum already paid, that is, Rs. 30,000/-. What were the reasons for providing such a consideration in the document is something which is known only to the executants of the

documents. The plaintiffs must suffer the consequences of what is provided in the documents. In these circumstances, in view of the evidence which has come through, the allegations to the contrary of the plaintiffs, are untenable and hence, rejected. There is no evidence on record which would have me believe that fraud or misrepresentation was employed by the defendants. A bare allegation without material evidence is not good enough.

14. I am also in agreement with the submissions of Mr Maan that, in so far as the defendants' rights to the 100 sq. yds. is concerned, the same is protected by the provisions of Section 53A of the Transfer of Property Act. It is well settled that a defendant/transferee can take recourse to Section 53A of the Transfer of Property Act as a shield, notwithstanding the fact that the instrument of transfer has not been completed in the manner, prescribed by law, for the time being, in force. In the present case there is no doubt that the sale deed dated 27.03.1998 (Ex. P-1) is an unregistered document of a value of more than Rs. 100, and thus the document would otherwise, require registration, under the Registration Act, 1908. It has come through in the evidence placed on record that the failure to obtain registration was attributable to the plaintiffs, in as much as, they did not obtain the requisite no-objection certificate. The predecessor-in-interest of defendant nos. 3 and 4, i.e., Late Sh. Chandra Pal, on the other hand, had fulfilled his obligations under the unregistered sale deed dated 27.03.1998 (Ex. P-1) which, included payment of the entire consideration of Rs 30,000/- provided in the document; and presently his successors-in-interest are ready and willing to do everything that is required to complete the transfer, in the manner, prescribed by law. It has also come through in the evidence of the plaintiffs that possession of 100 sq. yds. was handed over to late Sh. Chandra Pal on the execution of the sale deed dated 27.03.1998 (Ex. P-1). In these circumstances, in my view, the conditions prescribed under Section 53A of the Transfer of Property Act for seeking protection of possession stand fulfilled. Therefore, the argument that the defendants have not sought enforcement of their right or the limitation has expired, is untenable. [see observation of the Supreme Court in the cases of CS(OS) 1262&63/2002

Shrimant Shamrao Suryavanshi and anr. vs Pralhad Bhairoba Suryavanshi (dead) by LRS. and Ors. (2002) 3 SCC 676, paragraphs 16-18 at pages 682-683 and Mahadeva and Ors. vs Tanabai (2004) 5 SCC 88 paragraphs 5 & 8 at pages 89 & 90]. In these circumstances, in my opinion, the plaintiffs' prayer for possession, even in respect of the 100 sq. yds. of the land falling in Khasra No. 164 in municipal property no. 84, will have to be rejected.

15. In view of the above, my answers the issues cast in the suit are as follows:

Issue No. 1: In so far as issue no. 1 is concerned, in view of the discussion above, the plaintiffs are not entitled to a decree of possession, damages or injunction.

Issue no. 2: In view of the answer to issue no. 1 being against the plaintiffs, issue no. 2 is also decided against the plaintiffs. Accordingly, plaintiffs will not be entitled to any interest and/or damages as claimed by them.

Issue no. 3: This issue is also decided against the plaintiffs. The plaintiffs have been unable to prove that the defendants have committed any fraud in either executing the sale deed dated 19.11.1997 (Ex. DW1/2) or 27.03.1998 (Ex. P-1). The issue is, accordingly, decided against the plaintiffs.

Issue no. 4: The agreement to sell and GPA of even date, i.e., 02.09.1983 bound the plaintiffs in respect of 200 sq. yds. Khasra No. 164 (3-19) situate in village Adhchini, New Delhi; in as much as the defendants were not a party to either suit no. 781/1980 or suit no. 754/1985 which were decreed on 16.09.1997 and 22.09.1997 respectively based on a compromise arrived at between the parties to the said suits. The agreement to sell and the GPA of even date, i.e., 02.09.1983 were valid and subsisting, in so far as, the defendants were concerned, since the plaintiffs, did not file any proceedings for being relieved of the obligations contained in agreement to sell dated 02.09.1983 and GPA of even date, i.e., 02.09.1983. Accordingly, this issue is decided against the plaintiffs.

Issue No. 5: This issue is also found against the plaintiffs. The sale deed dated 27.03.1998 (Ex. P-1), even though unregistered, is a valid contract which binds the

plaintiffs to the obligations undertaken by them under the said agreement. This issue is also decided against the plaintiffs.

Issue no. 6: The sale deed dated 19.11.1997 (Ex. DW1/2) is also a valid agreement, which is binding on the plaintiffs, in view of the fact that they had executed a GPA dated 02.09.1983 based on which the sale deed dated 19.11.1997 (Ex. DW1/2) was executed. The defendants have been able to discharge their onus with regard to this issue. The issue is found in favour of the defendants.

Issue no. 7: This issue is also found in favour of the defendants. Based on the evidence, it is clear that defendant no. 2 came in possession of the land, which was subject matter of the agreement to sell and GPA of even date, i.e., 02.09.1983, as also the sale deed dated 19.11.1997 (Ex. DW1/2). Similarly, late Sh. Chandra Pal, the predecessor-in-interest of defendant nos. 3 and 4, came to possess the 100 sq. yds. of land, which was subject matter of the sale deed dated 27.03.1998 (Ex. P-1). The defendants have been able to discharge their onus in regard to the said issue.

Issue no. 8: This issue is consequently found in favour of defendant nos. 3 and 4. They are, in my opinion, entitled to shield their possession of 100 sq. yds. of the suit property falling in khasra no. 164 of municipal property no. 84, by taking recourse to the provisions of Section 53A of the Transfer of Property Act; having fulfilled their obligations under the unregistered sale deed dated 27.03.1998 (Ex. P-1). The failure, if any, in the completion of the transfer, was that of the plaintiffs.

16. In view of my answers to the issues above, I am of the opinion that the suits will have to be dismissed with cost. It is ordered accordingly. The suits are consigned to the record.

RAJIV SHAKDHER, J

JULY 01, 2010

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