

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

% *Judgment Reserved on: 02.11.2010*
Judgment Delivered on: 11.11.2010

+ **RSA No.240-241/2006 & C.M.8875/2006**

SHRI SURJEET SINGH & ANR. Appellants
Through: Mr.P.K.Jha, Advocate

Versus

SHRI PARAMJEET SINGH Respondent
Through: Mr.Rajat Aneja, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. The present appeal has impugned the judgment and decree dated 23.3.2006 which had reversed the finding of the Trial Judge dated 4.3.2005. Vide judgment and decree dated 4.3.2005 the suit of the plaintiff Paramjeet Singh was dismissed. The impugned judgment had decreed the suit for possession and permanent injunction.

2. Briefly stated the facts of the case are as follows:

- i. Plaintiff was stated to the owner of property i.e. house no.8 B, Gali no.5, Kundan Nagar, Bank Enclave Sharkarpur, Delhi. He has purchased it on 01.1.1990 from defendant no.3 namely Mahender Kumar. Pursuant to this purchase the plaintiff started living in the first floor of the said house and the defendants

started living on the ground floor. The plaintiff had cordial relations with defendant no.3. Plaintiff was assured that after the defendants had constructed their own house they would shift therein and hand over the possession of the ground floor.

- ii. Father of the plaintiff was living in house No.V-162, Gali No.5, Dispensary Wali Gali, Arvind Mohalla, Ghonda, Delhi. In 1996 his father became unwell; there was no one to look after him. Plaintiff is his only son ; his mother had already died; his sister is married. Plaintiff along with his family shifted to the house of his father to look after him. He left behind his cousin Smt.Balvinder Kaur who started living in the house. Balvinder Kaur got married on 20.10.2001; she left for her matrimonial home. Plaintiff and his wife used to visit the house to clean it periodically.
- iii. In May and June 2002, plaintiff on reaching his house saw that defendants no.1 and 2 had unauthorisedly broken the locks of the first floor and had entered into the property. On query he was informed that defendant no.3 had executed documents of sale in favour of defendants no.1 and 2. Defendants no.1 and 2 staked their claim over the suit property. In the first instance plaintiff did not approach the police; he thought better sense would prevail; both the parties tried to settle the matter with the intervention of the

relatives. Defendants no.1 and 2, however, did not pay any heed.

- iv. Plaintiff had purchased this property for a sum of Rs.50,000/- from the defendant no.3; at the time of the purchase of the suit property on 1.10.1990, the defendant no.3 had besides executing an agreement to sell, general power of attorney and a will in favour of the plaintiff had also handed over the earlier title documents of the suit property to the plaintiff.
- v. On 08.8.2002, a police complaint was lodged by the plaintiff but no action was taken. Thereafter on 23.8.2002 the plaintiff filed a complaint under Section 448/380/420/34 of the IPC read with Section 120B of the IPC against the defendants which is stated to be pending in the court of concerned M.M.
- vi. The intention of the defendant had become dishonest; he failed to vacate the suit property. Suit was accordingly filed.
- vii. In the joint written statement filed by defendants no.1 and 2, it was stated that they had purchased this property from defendant no.3 vide General Power of Attorney, Agreement to Sell, Receipt and Will dated 01.12.2001 which were duly registered with the Registrar. Defendant no.3 had handed over peaceful and vacant possession of the property to defendants no.1 and 2.

- viii. Defendant no.3 was the sister of defendant no.1. She had thereafter been dropped from the array of the parties.
- ix. Trial Judge framed five issues. Four witnesses had been examined on behalf of the plaintiff. Eight witnesses were examined on behalf of the defendants.
- x. The oral and the documentary evidence was examined. The Agreement to sell, General Power of Attorney, Receipt and Will dated 1.10.1990 Ex.PW-1/B to Ex.PW-1/E were not disputed by the defendants. However, the defendants plea that the subsequent documents executed by defendant no.3 in their favour and vide which the earlier will of Mahender Kaur executed in favour of the plaintiff stood cancelled was accepted. Suit of the plaintiff was dismissed.
- xi. Impugned judgment had reversed this finding. It was held that the suit property had first been sold in 1990 to the plaintiff, the subsequent cancellation vide Ex.DW-6/A was not valid; the subsequent documents are nonest. In addition to the documentary evidence the suit property had also been handed over to the plaintiff, the possession of which was with the plaintiff. It was only thereafter that he had been dispossessed. No plea of adverse possession had been set up by the respondent. The sibling relationship of defendants no.1 and 3 was also noted. Status of defendants no.1 and 2

was that of a trespasser; suit of the plaintiff was accordingly decreed.

3. This is a second appeal. On 16.3.2007, the following substantial question of law was framed which inter alia reads as follows:

“Whether the unregistered power of attorney and agreement to sell convey any title in favour of the respondent ?

4. On behalf of the appellant, it has been vehemently argued that the impugned judgment calls for an interference as the documents dated 1.10.1990 i.e. an agreement to Sell, General Power of Attorney, Receipt and the Will are not by themselves documents of title. Even as per the case of the plaintiff/respondent, he was not in possession of the suit property; his prayer sought a decree for possession/injunction. In these circumstances, the impugned judgment holding that the plaintiff is entitled to a decree of possession on the aforementioned documents was an illegal and a perverse finding which calls for an interference by this Court. Learned counsel for the appellant in support of his arguments has placed reliance upon III (2008) SLT 264 Corporation of City of Bangalore vs. Zulekha Bi & Ors. to support his argument that it is for the plaintiff to prove his title by production of documents. It is submitted that in AIR 2003 Delhi 120 G.Ram vs. Delhi Development Authority the Division Bench of this court has held that the transfer of immovable property can be effected only by executing a registered document. The mere making of an agreement to sell or execution of a power of attorney would not transfer right, title or interest in the immovable

property. In 128 (2006) DLT 407 (DB) M.L.Aggarwal vs. Oriental Bank of Commerce & Ors. it has been held that a sale of immovable property can be effected only by a registered deed. It cannot be purchased by mere a power of attorney or an agreement to sell. This legal position had been affirmed by the Supreme Court as way back as in 1966 in a judgment reported in AIR 1966 SC 1438 Ram Gopal Reddy vs. Additional Custodian Evacuee Property, Hyderabad. In this view of the matter the documents relied upon by the plaintiff/respondent do not confer any title upon him. It is submitted that in fact the subsequent documents cancelling the said will dated 1.12.2001 executed by Smt. Mahender Kaur in favour of the appellant/defendant have not been properly taken note of; the subsequent documents of 1.12.2001 had revoked the earlier documents of 1.10.2001. Thereafter on the strength of the subsequent document of 1.12.2001 appellant no.2 had become owner by virtue of a sale deed dated 16.8.2002 executed by her husband in her favour. This was a registered document. Findings in the impugned judgment are clearly perverse and call for an interference.

5. Arguments have been countered by learned counsel for the respondent. It is submitted that the appellant is also relying upon a same set of documents i.e. agreement to sell, power of attorney, a receipt and will on the basis of which he has set up his claim to the suit property. It is pointed out that the document of the appellant are dated 1.12.2001 which are subsequent in time to the document executed in favour of the plaintiff/respondent which are dated 1.10.1990. There is no dispute about this date. It is pointed out that the impugned judgment has correctly appreciated the legal

position that an agreement to sell, power of attorney, receipt and will coupled with possession creates interest in immovable property and this is on the strength of the law as discussed in the impugned judgment. The impugned judgment had also correctly appreciated that apart from the contemporaneous documents dated 1.10.1990 executed by Mahender Kaur in favour of the respondent; it were also coupled with delivery of possession of the suit property; the plaintiff was in possession of the suit property right up to May, 2002 when he visited the site to note that his locks have illegally been broken and his possession stood interrupted. His suit has been correctly decreed in his favour.

6. This is a second appellate court. It is only on the substantial questions of law that interference is called for. The substantial question of law was formulated on 16.3.2007 and reproduced hereinabove. It borders on the fact as to whether an unregistered power of attorney, an agreement to sell could convey title in favour of the plaintiff/respondent.

7. It is not in dispute that Mahender Kaur the erstwhile owner of the suit property had executed certain documents on 1.10.1990 in favour of the plaintiff. There were an agreement to sell (Ex.PW1/B), a general power of attorney (Ex.PW1/C) and receipt (Ex.PW1/D) and will (Ex.PW1/E). Of these four documents i.e. the receipt and the will were registered. It is also not in dispute that the documents of title by virtue of which Mahender Kaur had acquired title to the suit property had also been handed over to the plaintiff. These documents were of the year 1985 and were marked before the trial court as Marks A to D. The contention of the

plaintiff is that on 1.10.1990 after the aforementioned documents had been executed in his favour, Mahender Kaur had delivered possession of the suit property to him. The witnesses of the defendant i.e. DW3 had in fact stated that the plaintiff had vacated the suit property in October, 1990, meaning thereby that on 1.10.1990 he had been delivered possession of the property. DW8 had also admitted that the plaintiff was in occupation of the suit property in 1990. Their testimony had been correctly noted in the impugned judgment. Plaintiff had also proved before the trial court telephone bills produced from the MTNL Ex.PW1/G, H, I & J for the intervening period of 18.9.2001 up to 18.2.2002. The election card of the plaintiff and his wife Ex.PW1/L & Ex.PW1/M dated 1.4.1996 also evidence that the plaintiff was a resident of the suit property. A complaint had been lodged in the police station on 8.8.2002 by the plaintiff wherein it had been averred that the defendants no.1 & 2 have illegally usurped a portion of his property. When no action was taken on this complaint, a criminal complaint Ex.PW1/K was lodged before the magistrate on 23.8.2002. The impugned judgment had noted that PW-4 had proved Ex.PW4/A which was a document dated 5.11.2001 by virtue of which Mahender Kaur had sought to cancel the will dated 1.10.1990 executed in favour of the plaintiff. This document had deliberately been withheld by the defendant. The subsequent documents of 1.12.2001 i.e. agreement to sell, power of attorney, receipt and will cancelling the earlier will of 1.10.1990 were valueless as this was a clear clandestine attempt on the part of Mahender Kaur to resell her properties which she has already sold on 1.10.1990. Her first attempt to cancel the will of 1.10.1990 on

5.11.2001 was intentionally withheld; thereafter her subsequent attempt to cancel it vide a subsequent document dated 1.12.2001 was rightly discarded as once the documents i.e Ex.PW1/B to Ex.PW1/E had been effected for consideration in favour of the plaintiff coupled with the delivery of possession, no subsequent documents could have been executed by her qua the same property. Provisions of Section 53A of the Transfer of Property Act read with Section 202 of the Indian Contract Act stood attracted.

8. The impugned judgment has correctly appreciated both the factual and the legal position in the correct perspective. The relevant extract of which reads as follows:

“18. Section 53-A and Section 54 of Transfer of Property Act deals with sale of immovable property. Section 202 of the Contract Act deals with the appointment of an attorney. The joint effect of Section 53-A of Transfer of Property Act and Section 202 of the Contract Act has been discussed by our High Court in Civil Revision No. 470 of 2003, the case titled J.C. Mehra Vs. Kusum Gupta, wherein Hon’ble Justices Shri C.K. Mahajan have held:-

“There are two separate concept of ownership in England namely legal owner and equitable owner. Legal owner is a person with whom the title vests in the immovable property by virtue of title deeds. Equitable owner is an owner in equity on account of various reasons including of having paid money but not having a specific registered titled deed in his name. In India there is only one concept and is that of legal owner. There was no concept of equitable owner apart from a legal owner. The sale of immovable property is dealt with under Section 54 of the Transfer of Property Act. Section 53-A of Transfer of Property Act was introduced in 1929 by way of an amending Act. Once necessary ingredients of Section 53-A are complied with and possession of the property is delivered to the proposed transferee then neither the actual owner nor his successor in interest had any right to enforce against the proposed transferee any right in respect of the immovable property except those specified by the agreement to sell itself. Added to the protection given to an incomplete owner under Section 53-A, who is not having a registered sale deed but only has an agreement to sell with possession, protection was given by virtue of provision of section 202 of the Contract Act and in terms whereof a person, who executed power of attorney for consideration, the same could not be revoked. Thus, on a conjoint reading of Section 53A of Transfer of Property Act and Section 202 of the Contract,

the effect is that transferor of a property, who was executed an agreement to sell and a power of attorney, though continued to be the legal owner of the property as per little deed yet all his powers were taken away and vested were vested in the person whose favour the agreement to sell and power of attorney was executed.

The issue is as to whether a person who purchases a property by means of an agreement to sell for consideration alongwith possession (or the right to recover rents) and power of attorney can seek to evict the person after 5 years of his having got the agreement to sell and power of attorney in his favour. The issue no long is res-integra.

19. Against this order of the High Court in J.C. Mehra (Supra) case a petition for special leave to appeal (Civil) No. 14088/2003 was preferred before the Supreme Court of India. This Special Leave Petition was dismissed on 18.08.2003.

20. The concept of power of attorney sales was discussed at length in 2002 II AD Delhi 7343, the case titled Asha M. Jain Vs. The Canara Bank and Others. The D.B. of our High Court held as under:-

“ We are in agreement with the view that the concept of power of attorney sales have been recognized 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 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 with 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 appellant. Possession is also been handed over. Thus the provisions of Section 53-A 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 now here reserved any right on the transfer either for resuming the property or payment of any additional money. The transferor is debarred from claiming back the property from the appellee. The net result of all this is that the rights have been created in favour of the appellant which can not be defeated by attachment order.”

21. In the present case respondent no.3 executed agreement to sell Ex. PW1/B, General Power of Attorney Ex. PW1/C, receipt for sum of Rs. 50,000/- Ex. PW1/D and Deed of Will Ex. PW1/F in favour of appellant regarding suit property. The receipt Ex. PW1/D and deed of Will Ex. PW1/F were got duly registered. DW3 Shri Jasbir Singh, the witness examined by R1 and R2 has

admitted that appellant vacated the suit property in October'90. Even respondent No. 1 while deposing as DW-8 has stated during his cross examination that appellant vacated the premises in the year 1990. DW-8 has stated that appellant has resided in the suit property from 1988 till 1990. At least from the statements of DW3 and DW8 (respondent No.1), it stands established that when R-3 executed documents Ex.PW1/B to PW1/F regarding the suit property in favour of the appellant, appellant was already in possession of the suit property. Accordingly, in view of the law laid down by our High Court in Jagdish Chandra Mehra's case (Supra), the effect of transfer of property to appellant by R-3 was complete in all respects. Thereafter even if R-3 executed cancellation of Will deed Ex.DW6/1 regarding the suit property cancelling will deed in favour of appellant dated 8.10.90, it has no value in the eyes of law and title of the appellant over the suit property does not get effected in any way.

22. Once as per law the suit property get transferred in favour of the appellant and possession was handed over to appellant, the subsequent agreement to sell Ex.DW8/1, Affidavit and undertaking and receipt executed by R-3 on 14.12.01 in favour of respondent no.1 confers no title over the suit property in favour of respondent no.1. Similarly sale deed executed by respondent no.1 in favour of R-2 Smt.Charanjeet Kaur, his wife confers no better title to R-2 than R-1.

23. A person, who assumes the tile over a property, remains owner for the time to come except if he transfers the title to some one else or some one attains the possession over the said property adverse to the said person. In this case appellant has claimed that he left the possession of the suit property in 1996 whereas plea of the respondents is that appellant vacated the suit premises in 1990. Appellant has filed the telephone bills issued by MTNL for the period 1.12.01 till 11.10.02 on his name as Ex.PW1/G to J. Appellant has also filed his and his wife's I Card issued by election Commission of India in April 1996 mentioning address of the suit premises as address of the appellant. From these documents brought on record by appellant, it stands established that till April 1996 Appellant remained in possession of the ground floor of the suit property. The present suit was filed by appellant on 28.5.03 for the sake of arguments even if the contentions raised by respondents asa accepted that appellant vacated the suit property in 1990, in my opinion, it does not effect the title of the appellant over the suit property in any manner. Even if it is assumed that after vacating the premises in 1990 as pleaded by respondents, appellant filed this suit after 13 years, since there is no plea of adverse possession raised by respondent, merely on this ground the title documents executed by R-3 in favour of the appellant can not be considered to have lost its effect.

24. It is also important to mention here that R-3 Smt.Mahender Kaur is the real sister of R-1 as admitted by R-1 during his cross examination while deposing as DW8. The testimony of R-3 could have been very important to throw light on the transfer of the suit property i.e. first set of transfer documents in favour of appellant on 1990 and second set of transfer documents for the same property in favour of R-1 in 2001. But to the reasons best known to R-1 and R-2, they have not called R-3 as their witnesses.

25. Admittedly, possession of the entire suit property is with the R-1 and R-2. The possession of the suit property with the R-1 and R-2 is neither as a tenant nor in any other capacity. Status of R-1 and R-2 in holding possession of the suit property is not better than of an unauthorized occupant.

26. In view of the aforesaid reasons I set aside the judgment and decree of the Ld.Trial court dated 4.3.05. The appellant is entitled to possession of the suit property. R-1 and R-2 are thereby directed to hand over vacant possession of suit property No.8-B, Kundan Nagar, Bank Enclave, Shakarpur, Delhi to the appellate. R-1 and R-2 are further restrained from creating 3rd party interest in any manner in the suit property. Accordingly suit of the appellant for possession and permanent injunction is decreed in his favour. “

9. These findings are in no manner perverse. They do not call for any interference. There is no doubt to the proposition that under Section 17 of the Indian Registration Act the transfer of the immovable property of the value of more than Rs.100/- can be effected only by executing a registered document; the said provision however does not aid the appellant as he himself is seeking title on the same set of documents which he is condemning qua the plaintiff.

10. The concept of a legal owner and equitable owner has been recognized by this court in the case of J.C.Mehra (supra as discussed in the impugned judgment). In the judgment of Asha Jain (supra as discussed in the impugned judgment) the execution of a general power of attorney, special power of attorney, will coupled with actual delivery of possession has been held to create interest in immovable property. In such a case the original transferor is debarred from claiming back his property; rights have been created in favour of such a party. The judgments relied upon by the learned counsel for the appellant are inapplicable in this scenario.

11. The substantial question of law has been answered accordingly. There is no merit in the appeal. Appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

NOVEMBER 11, 2010.
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