

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

+ **RFA (OS)No. 48/2010**

% Reserved on: 22nd July, 2010

Decided on: 27th August, 2010

Sh. Rajinder Parshad Gupta
S/o Shri Babu Lal,
Proprietor Gupta Furniture,
R/o F-136-B,
Laxmi Nagar, Delhi.

..... Appellant

Through: Mr. V.B. Andley, Sr. Advocate with
Mr. Rajinder Mathur, Advocate.

versus

1. Shri Hari Ram Gupta,
S/o Shri P.C. Gupta,
R/o B-21, Madhuban, Delhi-110 092.
2. Shri Anil Kumar Jain,
S/o Shri J.D. Jain,
R/o A-6/7, Krishna Nagar, Delhi-110 051.
3. Shri Ram Kumar Gupta,
S/o Shri P.S. Gupta,
R/o A-39, Kamla Nagar,
Delhi-110 007.
4. Shri Kailash Chand Gupta,
S/o Sh. Jai Prakash,
R/o W/A-121, Shakarpur, Delhi-110 092.
5. Municipal Corporation of Delhi,
Through its Commissioner,
Town Hall, Chandni Chowk, Delhi-110 006. Respondents
Through: Mr. Anil Kher, Sr. Advocate with
Mr. D.R. Bhatia, Advocate

Coram:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. This is an Appeal against the order and decree dated 6th April, 2010 disposing of the Application filed by the Plaintiffs (Respondent Nos. 1 to 3 herein) under Order XII Rule 6 CPC whereby the Suit being CS (OS) No. 624/2008 is decreed to the extent of the portion marked in blue colour as indicated in the site plan appended at page 63 of the documents in the Suit file.

2. The Respondent Nos.1 to 3 filed a Suit inter alia praying for a decree of mandatory injunction, and for a vacant and peaceful possession of desealed property owned by the Respondent Nos.1, 2 and 3 shown in the green outline i.e. the blue portion and the yellow portion in the site plan except the tenanted portion situated at F-144, Main Bazar, Laxmi Nagar, Delhi. On an Application under Order XII Rule 6 filed by the Respondent Nos. 1 to 3 a decree qua the blue portion in the site plan has been passed in their favour. According to the pleadings, property bearing No.F-144, Main Bazar, Laxmi Nagar, Delhi, measuring approximately 212 sq. yards was owned by one Smt. Parbati Devi in view of the Will left by late Sumer Dass in her favour. The Respondent

Nos. 1, 2 and 5 purchased a portion of the said property on the northern side measuring 63x18 ft. i.e. 127 sq. yards from the said Smt. Parbati Devi for a valuable consideration who executed an agreement deed dated 28th May, 1992 and other documents such as Power of Attorney, Will etc. and handed over the vacant and peaceful possession of the said portion of the property which is shown in blue colour in the site plan. It is stated that the said Smt. Parbati Devi had sold the remaining portion of the said property measuring 63x12 ft. i.e. 85 sq. yards to the Appellant, out of which 63x4½ ft. was sold by the Appellant to the Respondent Nos. 1 and 2. The necessary facts relating to the issue in the present Appeal are found in the following paras of the Plaint:

1. That the property bearing No. F-144, Main Bazar, Laxmi Nagar, Delhi measuring approx 212 sq. yards, was owned by one Smt. Parbati Devi w/o Shri Bua Dutta.
2. That the plaintiff Nos. 1 and 2 alongwith Defendant No. 3 purchased a portion of the said property measuring approx 127 sq. yards. From the said Smt. Parbati Devi, for valuable consideration, and she had executed agreement deed dated 28.5.1992 and other documents, such as power of attorney, Will etc. in favour of the said purchasers. Against payment of the total sale consideration, the vacant and peaceful possession of the said portion of the property, which is shown in Blue colour in the Site Plan, was handed over to the plaintiff Nos. 1 and 2 and defendant No. 3.
3. That after the death of the said Smt. Parbati Devi, and on the basis of Will dated 28.5.1992 left behind her in respect of the above said property, the Court of Shri K.P. Verma, District Judge, Delhi granted

Letters of Administration in respect of the said portion of the property in favour of the plaintiff Nos. 1 and 2 and defendant No. 3.

4. That the said Smt. Parbati Devi, during her life time, sold the remaining portion of the said property, measuring approx 85 sq. yards, situated at F-144, Main Bazar, Laxmi Nagar, Delhi-110092, to the defendant No. 2 herein on 28.5.1992.
5. That the defendant No. 2 sold a portion of the said approx 85 sq. yards of the said property i.e. approx 31.5 sq. yds (i.e. 1.5 ft x 63 ft), shown in Yellow colour in the site plan, to the plaintiffs No. 1 and 2 to the defendant No. 3 vide agreement deed dated 28.5.1992 and other documents, such as power of attorney receipt, will etc. executed by him in favour of the plaintiff No. 1 and 2 and defendant No. 3.
6. That the defendant No. 3 sold his 1/3rd undivided share in the said 127 sq. yards of land as well as in the 31.5 sq. yards of land to the plaintiff No. 3 herein for a valuable consideration on 20th July, 2006, vide agreement to sell and other documents including power of attorney.
7. That the plaintiff thus became owners of 158.5 sq. yards out of the total 212 sq. yards, of the double storeyed structure, situated at F-144, Laxmi Nagar, Delhi and remaining portion of approx 53.5 sq. yards is owned by the defendant No. 2 herein. The plaintiffs are placing on record a Site Plan showing the portion owned by them in Green Outline (i.e. portions marked in Blue and yellow colours) and the portion owned by the defendant No. 2 in Red outline in the site plan.
8. That out of the portion owned by the plaintiffs in the said property at F-144, Main Bazar, Laxmi Nagar, Delhi an earmarked portion on the ground floor, comprising of two shops, are under tenancy with one Shri Narender Kumar Jha and one Shri Satish Kumar Sapra, who have been carrying out the business of a watch shop and cement shop respectively from their respective tenanted portions. The said Shri Narender Kumar Jha and Shri Satish Kumar Sapra have acknowledged the

plaintiffs as the owners and landlords and have been paying rent in respect of their respective tenanted portions to the plaintiffs, since the time the plaintiffs became owners of the said portion of the property. The plaintiffs had been given and they remained in physical possession of the remaining portion of the property purchased by them from Smt. Parbati Devi and the defendant No. 2 ever since they purchased the same from the said persons.

9. That the portions under tenancy with the above said Shri Narender Kumar Jha and Shri Satish Kumar Sapra were subject matter of litigation and the respective Courts passed interim orders, whereby the plaintiffs were directed not to interfere with the use and occupation of the said tenanted portions by the respective tenants."

3. The stand of the Appellant in his Written Statement before the learned Single Judge was as under:

Preliminary Submissions:

"16. That in view of the above, Parbati Devi sold, conveyed and transferred the said 85 sq. yds. of land measuring 12 ft. x 63 ft. duly enclosed by a boundary wall with a shop on the southern portion thereof out of property No.F-144, situated at Laxmi Nagar Illaqa Khureji Khas, Shahdara, Delhi bounded as under and shown red in the annexed plan through GPA, Agreement to Sell, Will, Receipt etc. etc. dated 28.5.1992.

East	-	Gali
West	-	Public Road Main Bazar, Laxmi Nagar.
North	-	remaining portion of 127 sq. yds. of Plaintiff No.1.
South	-	Property of Radhey Sham No.F-144-A, now sold to Dinesh Kumar & others.

17. That in the mean time, Parbati Devi also agreed to transfer and convey the other portion of her property

No.F-144, measuring 127 sq. yds. (18'x63') alongwith a shop etc. constructed on the northern corner of the said property to the plaintiffs No.1 and 2 and Defendant No.3.

18. That simultaneously, Parbati Devi on 28.5.1992 transferred and conveyed the said other remaining portion of her property No.F-144 measuring (18'x63') to Hari Ram and Anil Kumar Plaintiff No.1 & 2 and Kailash Chand Defendant No.3 by GPA, Agreement to sell, Will, Receipt etc. etc. and delivered possession thereof to them. Plaintiff No.2,3 and Defendant No.3 are the associates of Plaintiff No.1 and they are not known to the defendant No.2.

19. That on 28.5.1992 itself at the asking of Plaintiff No.1, agreement to sell, GPA, Will, Receipt for Rs.50000/- was also executed by Defendant No.2 in respect of 31½ sq.yds. (4½ x63') out of his portion of the said property in favour of the plaintiffs No.1 and 2 and defendant No.3. The plaintiff No.1 has assured defendant No.2 that he shall also execute similar documents in favour of defendant No.2 with a view to amalgamate both the portion of the said property No.F-144 for the purposes of developing it into a market. He further assured Defendant No.2 that the said set of documents are not to be acted upon individually. The defendant No.2 had no reason to disbelieve Plaintiff No.1 and signed those set of documents at the asking of Plaintiff No.1. No consideration was passed from the plaintiff No.1 to Defendant No.2. In fact, no amount was paid to Defendant No.2 by Plaintiff No.1."

Reply on Merits

2. In reply to para 2 of the plaint, it is submitted that the plaintiffs purchased about 127 sq. yds from the said Parbati Devi vide GPA etc. on 28.5.1992. Rest of the contents of the para are denied. There has been in existence a watch merchants shop on the northern portion of the said 127 sq. yds of land. The said shop is run by Narinder Kumar who carries on business under the name of Time King in the said shop. There is a room over the said shop of Narinder Kumar. There is also a room in dilapidated condition at the back of the shop of Narinder Kumar. The plaintiff has not supplied to this

defendant, any site plan showing the alleged blue portion. It's correctness therefore, is denied.

3. ...

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7. Contents of para 7 of the plaint are wrong and false and are denied. The defendant No. 2 is and has been the owner of 85 sq. yds (12'x63') of the land and a shop on a portion of it, out of property No. F-144 aforesaid. The plans referred to in the para under reply are wrong and are denied."

4. Thus, it would be seen that the Appellant has unequivocally admitted the ownership and possession of the Respondent Nos. 1,2 and 5 herein for (18'x 63'ft.) i.e. 127 sq. yards portion of the said plot in his written statement which is marked as the blue portion in the site plan, except the tenanted portion. As is evident the Appellant has only disputed the subsequent purported sale of (4½ x 63') out of (12'x 63') land owned by the Appellant to the Respondent No. 1, which is marked as yellow portion in the site plan. The learned Single Judge, while hearing applications under Order XII Rule 6 being IA No.14809/2008, under Order 39 Rule 1 and 2 being IA No. 4187/2008 filed by the Plaintiffs/ Respondents and IA No. 5215/2009 under Section 151 CPC filed by the Appellant herein vide order dated 31st July, 2009 observed as under: -

"1. This is a plaint seeking a decree of possession and directing the Defendant No.2 to hand over the possession to the Plaintiffs, the portion of the property at

F-144, Main Bazaar, Laxmi Nagar, Delhi - 110 092 owned by the Plaintiffs as shown in blue and yellow in the enclosed site plan (except the tenanted portions). The site plan shows three distinct portions. According to the Plaintiffs the portion coloured in blue of the area 127 sq.yards is exclusively owned by them. The Plaintiffs further claim that an area admeasuring 31.5 sq.yards shaded in yellow was sold to them by the Defendant No.2 on 28th May 1992. The agreement deed and receipts issued by the Defendant No.2 in this regard on 28th May 1992 have also been placed on record. The Plaintiffs claim that they are the owners of both the yellow and blue shaded portions in the site plan. The Plaintiffs admit that the Defendant No.2 owns the portion marked in red colour in the site plan. According to the Defendant No.2 the yellow portion does not belong to the Plaintiffs but to him. It is however not disputed that the blue shaded portion does belong to the Plaintiffs. It is also not in dispute that there are two tenants in the Plaintiffs portion as shown in the site plan.

2. The property was sealed by the Municipal Corporation of Delhi ('MCD'), Defendant No.1. The Plaintiffs alleged that the Defendant Nos. 2 and 3 had illegally broken the seal, occupied by the whole property and commenced construction thereon. By an order dated 7th April 2008 this Court directed that the Defendants shall not carry out any construction in the suit property without first obtaining permission from the Defendant No.1.

3. Mr. Andley, learned Senior counsel appearing for the Defendant No.2 relies upon a document which according to him is the carbon copy of an agreement to sell dated 6th April 1992, whereby it is claimed that the yellow shaded portion would fall to the ownership and possession of Defendant No.2. This document however has been denied by the Plaintiffs for want of original. In this connection the Defendant No.2 has filed an application IA No. 5215 of 2009 for a direction to the Plaintiffs to admit this document. Reliance is placed on the decision of the Supreme Court in Prithi Chand v. State of Himachal Pradesh AIR 1989 SC 702.....

....5. Some photographs of the property have been placed on record by Defendant No.2. However, it is not clear

whether the blue shaded portion, yellow shaded portion and the red shaded portion are clearly identifiable at the site. It is also not clear whether there is access to the yellow shaded portion and to the blue shaded portion behind the shops....

....7. Accordingly, this Court appoints Mr. Syed Addul Haseeb, Advocate (Mobile No. 9811962385), as Local Commissioner to visit the suit property within a period of ten days from today to carry out the aforementioned tasks. The Local Commissioner may, if necessary, record the statements of necessary parties including the tenants who are stated to be in occupation of the shops in the blue shaded portion. The Commissioner will give advance notice of his visit to the parties through their learned counsel for the parties who may also be present at the time of his visit. He will also arrange for photographs to be taken. The Local Commissioner is free to take assistance of the concerned Police Station, if he feels so. He will take the assistance of a Draftsman of his choice to prepare an appropriate rough sketch plan by taking measurements of the different portions at the site...." (emphasis is mine)"

5. Learned counsel challenging the impugned order dated 6th April, 2010 contends that the decree in favour of the Respondent Nos.1 to 3 qua the portion marked blue in the site plan is contrary to the facts on record and law laid down by the Hon'ble Supreme Court. It is contended that the law in regard to a decree on admissions is well settled as the admission by the defendants has to be read and relied as a whole and not piecemeal. Reliance is placed on ***Hanumant Govind Nargundkar and another v. State of Madhya Pradesh, AIR 1952 SC 343, Atul Castings Ltd. v. Bawa Gurvachan Singh, (2001) 5 SCC 133, Puran Chand Packaging Industrial Pvt. Ltd. v. Sona***

Devi, 2008 (154) DLT 111 and Kishan Lal Chhabra v. Anil Arora, 156 (2009) DLT 779.

6. We have heard learned counsel for the parties at length and perused the record. The Appellant has, in his written statement, made two prima facie averments: firstly that Smt. Parbati Devi sold, conveyed and transferred 85 sq. yds of land (12ft x 63 ft) with shop on the south shown red in the annexed site plan to the Appellant and simultaneously also conveyed the other remaining portion measuring (18' x 63') i.e. 127 sq. yds of land to Respondent No. 1, 2 and 5 for a valuable consideration. It is also the case of the Appellant that it was agreed between the parties to amalgamate the two portions of the said property for the purpose of developing it into a market and thus the Appellant also entered into an agreement (MOU) with Respondent No.1 whereby 4½ft. x 63ft. area owned by the Appellant was also shown to be transferred to him though no consideration had passed thereon. Thus, in the pleadings there is a clear admission by the Appellant that 18'x 63' that is 127 sq. yds. of the plot on the northern side was purchased by the Respondent Nos. 1, 2 and 5 for a valuable consideration and is in their possession. The dispute, if any, is of the 4½ ft. x 63 ft. which is the portion marked yellow in the site plan. Merely because the MOU whereby the portions were to be amalgamated and a market constructed thereon did not fructify does not mean that there is no admission of the ownership and possession of

the Respondent Nos.1, 2 and 5 with regard to 127 sq. yds. portion of the said plot on the northern side. The Appellant in para 2 of the written statement though denies correctness of the site plan at page 63 of the documents in the suit file, the same being not supplied to him, however, in para 16 of the preliminary submissions admits being the owner and in possession of the portion marked red in the site plan. It is for this reason when the Application under Order XII Rule 6 was filed by the Respondents, the learned Single Judge vide Order dated 31st July, 2009 appointed the Local Commissioner to ascertain whether the blue, yellow and the red shaded portions are clearly identifiable at the site and also whether there is access to the yellow shaded portion and to the blue shaded portion behind the shops.

7. Indubitably admissions can be inferred from the Written Statement reading the statements as an integrated whole and not truncated and distorted parts. Conscious of the fact that the admission by the Defendant has to be unequivocal and unambiguous, we are required to find out whether the preliminary objections raised by the Appellant/Defendant, go to the very root of the suit and are likely to non suit the Respondents/Plaintiffs if these were found against the Plaintiffs, resulting in a decree under Order XII Rule 6 CPC not being passed in their favour. In our view the averment that the two portions were to be amalgamated for the purpose of constructing a market do not go to the root of the matter disentitling the Respondent Nos. 1 and

2 to the ownership and possession of (18'x 63') i.e.127 sq. yds. portion marked as blue. The learned Single Judge has passed no decree qua the yellow portion and rightly so as the Appellant does not admit the ownership and possession thereof in favour of Respondent Nos. 1. In the present case as per the admission of the Appellant the MOU has not fructified. No claim has been made by the Appellant to enforce the MOU. Thus, the only option for the parties is to deal with their portions of the property independently.

8. Great emphasis has been laid by the learned counsel for the Appellant on the reliance of the learned Single Judge in the impugned Order on its earlier Order dated 31st July, 2009 recording the admission of the Appellant. We find no infirmity in the same. In fact, the Order dated 31st July, 2009 was passed appointing a Local Commissioner on the Application of the Respondent Nos. 1 to 3 under Order XII Rule 6 CPC. In our opinion, the judgments relied upon by the learned counsel for the Appellant have no relevance as in the present case there is a clear admission of the Appellant with regard to the ownership and possession of 127 sq. yds. portion of the plot being with the Respondent Nos. 1, 2 and 5 and the dispute if any is to the portion marked yellow (4½' x 63') and the purpose for which the property was purchased that is to amalgamate the two portions and construct a market thereon by sharing in equal proportions. All these three averments are clearly severable and independent of each other.

9. We find no infirmity in the impugned Order. The Appeal is dismissed with cost of ₹10,000/- to be paid to the Advocates' Welfare Fund within two weeks.

(MUKTA GUPTA)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

AUGUST 27, 2010
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