

was a lease in favour of Daljeet Singh; defendant no.3) was dismissed.

2. Plaintiff had allegedly purchased the aforementioned suit property from defendant no.3 for a consideration of Rs.3,45,000/- vide General Power of Attorney, Agreement to sell, Special power of Attorney, Receipt, Affidavit, all dated 14.8.1995. Her contention was that physical and vacant possession of the suit property had been delivered to her on 12.3.1996. Admittedly on the date when the said documents were executed i.e. on 14.8.1995 possession of the suit property had not been given to the plaintiff.

3. Defendant no.3 had been proceeded ex parte. Defence of defendants no.1 and 2 was that the plaintiff has no right or title to the suit property; lease/allotment had been executed by the DDA in favour of defendant no.3; there was no privity of contract with the plaintiff.

4. Admittedly the allotment Ex.DW-1/1 issued by the DDA in favour of defendant no.3 is dated 01.11.1992; this was for the allotment of the alternate plot. The possession of this suit land had been handed over to defendant no.3 vide Ex.DW-1/3 dated 28.2.1996. On the date when the aforementioned documents i.e. the documents dated 14.8.1995 had been executed by the defendant no.3 in favour of the plaintiff, defendant no.3 himself was not in possession of the suit land; he had received possession of the suit land only on 28.2.1996. Even in the plaint it has categorically been contended that the documents dated 14.8.1995 by virtue of which defendant no.3 had transferred title of the suit land to the plaintiff

were not coupled with the delivery of the vacant possession of the suit land; possession had been given to him on 12.3.1996.

5. The judgment relied upon by the learned counsel for the appellant reported in 1999 RLR 20 Kuldip Singh Suri Vs. Surinder Singh; no doubt recognizes mode of sales of immovable property through power of attorney but it has to be coupled with a delivery of actual physical possession. The ratio of the said judgment is inapplicable to this factual scenario as admittedly the date when the documents i.e. power of attorney, receipt, will and affidavit were executed by the defendant no.3 in favour of the plaintiff i.e. on 14.8.1995; they had not been accompanied by the delivery of physical possession of the suit land. This has been correctly appreciated in the impugned judgment.

6. This is a second appeal Court. It is only when a substantial question of law arises can this Court interfere; and on no other count. Both the facts finding Courts below have delved into the arguments now urged before this court. It was rightly held that the plaintiff is not entitled to the equitable relief of injunction or declaration as the aforementioned documents did not transfer title in favour of the plaintiff. The lease deed Ex.DW-1/1 dated 21.6.1996 executed by the DDA in favour of Daljeet Singh also contained an express bar of transfer of property for the next 10 years and thereafter also only with the permission of the DDA. Admittedly as is evident from the record no such permission had been taken. The transfer of the land by Daljeet Singh in favour of the plaintiff was not a valid transfer and was rightly so as held both the Courts below.

7. The arguments of the learned counsel for the appellant that a sale in future is recognized under Section 6 of the Transfer of Property Act, 1882 is a misconceived argument and reliance for this proposition upon the judgment reported in AIR(32) 1945 Cal 355 Prem Sukh Gulgulia Vs. Habib Ullah is misplaced. This was a case where the agreement had embodied that if N was successful in purchasing the properties at the execution sale which was to take place on the next date, he would convey 1/3rd share to S and if he fails to do so he would refund the said money to S; thereafter he would execute the conveyance after confirmation of the sale. This was a contingent agreement which was to be fulfilled on the happening or a non-happening of an event. Reliance by the learned counsel for the appellant on AIR 1976 Madras 321 The Chief Controlling Revenue Authority Vs. Jagadambal is also misplaced. This was a case under Section 57(1) of the Indian Stamp Act and the bequeath of properties in terms of a will was under question. This Court is unable to understand how this judgment is applicable.

8. Substantial questions of law have been formulated on page 3 of the memo of appeal; they reads as follows:

a)What is the meaning of bonafide purchaser and ostensible purchaser under Section 41 of Transfer of Property Act and whether in the given facts and circumstances the findings of Hon'ble Appellate Court and Trial court are perverse by holding the appellant being not the bonafide purchaser/ostensible owner of the property in question specially in view of Section 41 of Transfer of property Act?

b)Whether under Section 5 & 6 of Transfer of Property Act, 1882, the interest in the immovable property having been allotted by Delhi Development Authority to one person with full consideration amount paid and the number the property being given can be

transferred as handing over the possession of the same only remained a mere formality which can be given in future?

c)Whether the finding of Appellate court and Trial Court are perverse is not granting the decree of declaration as the Hon'ble Courts below has held that there is no property transferred on 14.8.1995 by respondent no.3 to the appellant and accordingly since there is no violation of terms and conditions of the allotment letter and perpetual lease deed, there was no occasion for DDA (respondent no.1 and 2) to cancel allotment letter and perpetual lease deed on the ground of the transfer of the same.

d)Whether the DDA can unilaterally incorporate, modify, change the terms and conditions of allotment by incorporating additional condition in the lease deed which was absent in the allotment letter?

e)Whether the DDA can be allowed to deviate from its rules, regulations, notifications, circulars, scheme with regard to the transfer of leasehold rights into freehold rights of the properties purchased/sold by way of power of attorney, agreement to sell, WILL, special power of attorney etc.?"

9. No such substantial question of law has arisen. Accordingly, the appeal as also pending application is dismissed in limine.

INDERMEET KAUR, J.

FEBRUARY 02, 2011
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