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IN THE HIGH COURT OF DELHI AT NEW DELHI

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10th August, 2011

1. RFA No.281/2002

SH. RAJESH AGGARWAL Appellant
Through: Mr. B.S.Maan, Advocate. and Ms. Smita
Maan, Advocate.

VERSUS

SH. JASBIR & ANR. Respondents
Through: None.

2. RFA No.282/2002

SH. RAJESH AGGARWAL Appellant
Through: Mr. B.S.Maan, Advocate. and Ms. Smita
Maan, Advocate.

VERSUS

SH. JASBIR & ANR. Respondents
Through: None.

3. RFA No.284/2002

SH. RAJESH AGGARWAL Appellant
Through: Mr. B.S.Maan, Advocate. and Ms. Smita
Maan, Advocate.

VERSUS

SH. JASBIR & ANR. Respondents
Through: None.

4. RFA No.269/2002

SH. RAJESH AGGARWAL Appellant
Through: Mr. B.S.Maan, Advocate. and Ms. Smita
Maan, Advocate.

VERSUS

SH. JASBIR & ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. All these appeals arise from four identical judgments of the trial court whereby the suits of the plaintiff/appellant for declaration that the subject sale deed of the land of the plaintiff/appellant executed by defendant no.1 allegedly as attorney of plaintiff in favour of defendant no.2 are null and void were dismissed on the ground that the appellant/plaintiff failed to prove his case including that the defendant no.2 was not a bonafide purchaser of the suit property. The plaintiff also was declined the relief of intimation to the sub-Registrar to cancel the fabricated sale deed executed by defendant no.1 in favour of defendant

no.2. All other issues have been decided in favour of the appellant/plaintiff. For the sake of convenience, reference is made to the facts of RFA No.281/2002.

2. The appellant/plaintiff filed the subject suit for declaration seeking that the sale deed executed by defendant no.1 in favour of defendant no.2 is null and void because the sale deed was executed on the basis of power of attorney, and which power of attorney was in fact never executed by the plaintiff in favour of defendant no.1. The case of the plaintiff/appellant was that the defendant no.1 was a land grabber and he used to regularly indulge in these actions. It was further the case of the appellant/plaintiff that the appellant/plaintiff always continued to be in actual physical possession of the suit property and there was no question of the defendant no.2 being in possession of the suit property.

3. Though the defendants originally appeared and filed their written statements, subsequently, however, they failed to appear and hence were proceeded ex parte.

4. The trial court framed the following issues:-

“6. On the pleadings of the parties, following issues were framed on 23.1.92:-

- (1) Whether the pltf. is entitled to a decree of declaration, as prayed for? OPP
- (2) Whether the pltf. is entitled to decree of mandatory injunction, as prayed for? OPP
- (3) Whether the suit is not maintainable in view of preliminary objection No.1 of W.S. by deft. No.1? OPD

- (4) Whether the suit is bad for non-joinder of necessary party? OPD
- (5) Whether the plaint has not been valued properly for the purpose of Court fee and jurisdiction? OPD
- (6) Whether the plaint does not disclose any cause of action against deft. No.1 as claimed in preliminary objection No.5?OPD
- (7) Whether deft. No.2 is bonafide purchaser for consideration in respect of land in dispute? If so, to what effect? OPP”

5. Except issue nos. 1, 2 and 7, the findings of the other issues were in favour of the plaintiff. I have, therefore, only to consider the validity of findings with respect to issue nos. 1, 2 and 7.

6. In my opinion, the judgment of the trial court is clearly erroneous and is bound to be set aside. Firstly, even assuming that there is a power of attorney by the plaintiff in favour of defendant no.1, the same cannot entitle the defendant no.1 to execute a sale deed of an immovable property in favour of any person including the defendant no.2, inasmuch as the alleged power of attorney is not a registered document. A power of attorney which authorizes transfer of an immovable property has necessarily to be registered by virtue of Sections 32 and 33 (1) (a) of the Registration Act, 1908. A reference to the impugned sale deed which has been exhibited as Ex.PW2/1 shows that there is no reference to the fact of a power of attorney in favour of defendant no.1 was a registered power of attorney. Secondly, once the appellant/plaintiff led evidence to

prove that he did not execute any power of attorney, it was incumbent upon the defendants to lead evidence to rebut the case, however, the defendants/respondents admittedly failed to appear in the case and led no evidence. The plaintiff/appellant, therefore, has discharged the onus of proof that the power of attorney was forged and fabricated document, and in any case, the same would have no effect in view of the Sections 32 and 33(1)(a) of the Registration Act, 1908. If the power of attorney falls, then, so will fall the alleged sale deed Ex.PW2/1. The appellant/plaintiff is therefore entitled to the relief of declaration declaring that the sale deed Ex.PW2/1 executed by defendant no.1 in favour of defendant no.2 is null and void. The appellant/plaintiff is also entitled to the consequential relief of a direction being issued to the sub-Registrar for directing cancellation of the four sale deeds (Ex.PW2/1 in all the suits) all dated 24.10.1988 executed by defendant no.1 as a power of attorney holder of the plaintiff and in favour of Smt. Hemlata Malhotra, Sh. Yashpal Ahuja, Sh. Hansraj and Sh. Ashok Kumar.

7. In my opinion, the trial court has also wrongly erred in holding that the appellant/plaintiff failed to prove that the defendant no.2 is not a bonafide purchaser of the property for two reasons. Firstly, onus of proof has been wrongly placed upon the plaintiff/appellant because if a person alleges that he is a bonafide purchaser of the property for value, onus of proof has to be on him. Secondly, onus of proof is discharged by leading of evidence, and admittedly, the defendant no.2 failed to appear in the case and lead any evidence. The statement of the plaintiff/appellant has

therefore to be believed and consequently, it must be held that the defendant no.2 is not a bonafide purchaser for value. In my opinion, in fact, this issue does not arise at all because once there was no valid power of attorney of the plaintiff/appellant in favour of defendant no.1, the doctrine of defence of bonafide purchaser for the value will not in any manner assist the defendant no.2 because *nemo dat quod non habet* i.e., no one can give what he does not have. Defendant no.1 was never the power of attorney holder of the plaintiff and therefore there was no question of defendant no.2 becoming the owner of the property of the plaintiff on the basis of the said power of attorney.

8. The possession of the suit property is also with the plaintiff/appellant becomes clear from the fact that the appellant/plaintiff filed on record and proved as Ex. P-2 the Khasra Girdawari of the relevant period i.e. 1988-1989 to show that the appellant/plaintiff was in possession of the suit property at the relevant point of time. The suit land is an agricultural land and therefore the best method of proof of possession has necessarily to be the Khasra Girdawari. (*By an administrative mistake the exhibit number has not been put on the Khasra Girdawari and therefore the same has been put today*). In any case, possession follows title and once the defendant no.2 has no title, it can be safely concluded that the possession was therefore never transferred by plaintiff/appellant to defendant no.2 through the defendant no.1.

9. The appeals are therefore allowed. The plaintiff/appellant is entitled to a declaration that the sale deeds executed by defendant no.1

in favour of Smt. Hemlata Malhotra, Sh. Yashpal Ahuja, Sh. Hansraj and Sh. Ashok Kumar are null and void. The appellant/plaintiff is also entitled to declaration of cancellation of these sale deeds dated 24.10.1988 executed in favour of Smt. Hemlata Malhotra, Sh. Yashpal Ahuja, Sh. Hansraj and Sh. Ashok Kumar. The sub-Registrar is directed to make necessary endorsements on the aforesaid sale deeds. Appeals are allowed accordingly. Decree sheet be prepared. Trial court records be sent back.

AUGUST 10, 2011
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VALMIKI J. MEHTA, J.