

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

+ **RFA 627/2002**

% **21th November, 2011**

KISHAN LAL Appellant
Through : Mr.Ankit Kumar Jain, Advocate.

versus

M/S R.K.ASSOCIATES & ORS. Respondents
Through : Mr.Sachin Gupta, Adv. for R Nos.-1&2

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. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 8th May, 2002. By the impugned judgment, the suit of the appellant/plaintiff for declaration and possession of the suit land being 500 sq. yds. comprising in khasra No. 321/75 village Zamrudpur, Delhi was dismissed.

2. The appellant/plaintiff laid out a case in the plaint that the forefathers of the appellant/plaintiff were the owners of 1000 sq. yds. of land, of which

two parts were carved out of 500 sq. yds.each. The plots of 500 sq. yds. were given private plot numbers being 87/3 and 87/4. It was pleaded that plot No. 87/3 of 500 sq. yds. fell to the share of appellant/plaintiff and plot No. 87/4 fell to the share of defendant No. 3, namely, Smt. Murti Devi/respondent No.3. It was claimed that Smt. Murti Devi was given possession of a land of 500 sq. yds. by the father of the appellant/plaintiff, Sh. Narain Singh because defendant No. 3/respondent No.3 was treated as a daughter. It was then claimed that a partition suit No. 21/1991 was filed by the appellant/plaintiff against the respondent No.3 and the said partition suit was decreed in favour of the appellant/plaintiff and therefore the appellant/plaintiff was the owner of the suit plot being 87/3 admeasuring 500 sq. yds.. It was pleaded that the Agreement to Sell executed by defendant No.3/respondent No. 3 in favour of respondent Nos. 1 and 2 was not binding on the appellant/plaintiff. It was also alleged that the decree for specific performance obtained by the respondent Nos.1 and 2/defendant Nos. 1 and 2 against respondent No.3/Murti Devi dated 21st January, 1993 and the consequent sale deed executed through the Court dated 8th November, 1993 does not bind the appellant/plaintiff. It was, therefore, prayed that the appellant/plaintiff be declared owner of 500 sq. yds. of land bearing No. 87/3 and possession be also granted.

3. The respondent Nos.1 and 2/defendant Nos.1 and 2 pleaded in the written statement that Smt. Murti Devi had by virtue of two Agreements to Sell, sold total land of 600 sq. yds. and 200 sq. yds. dated 4th November, 1989 and 2nd November, 1989, respectively and that plaintiff/appellant was not the owner of these lands. The suit land was 200 sq. yds. which was the

subject matter of the Agreement to Sell dated 2nd November, 1989.

4. It was stated that on the failure of Smt. Murti Devi/respondent No.3 to execute the sale deed, a suit for specific performance was filed and in which suit Smt. Murti Devi failed to appear. This suit for specific performance was decreed and thereafter through Court a sale deed dated 8th November, 1993 was executed and registered in favour of respondent Nos. 1 and 2. It was claimed that the judgment and decree passed in suit No. 21/91 instituted by the appellant/plaintiff against Smt. Murti Devi was void inasmuch as the same was a result of collusion and conspiracy because the said judgment and decree dated 6th January, 1992 in suit No. 21/91 was entered into between the appellant/plaintiff and Smt. Murti Devi after the Agreement to Sell dated 2nd November, 1989 and 4th November, 1989 were entered into by Smt. Murti Devi with respondent Nos. 1 and 2/defendant Nos. 1 and 2 for 200 sq. yds. and 600 sq. yds. of land out of the total land of 1000 sq. yds. It is pleaded that the collusive nature of the decree becomes clear from the fact that Smt. Murti Devi appeared as defendant in suit No. 21/91 filed by the appellant/plaintiff and agreed to the passing of the decree. It was pleaded that the object of the collusive decree was to nullify the Agreement to Sell dated 2nd November, 1989 and 4th November, 1989 executed in favour of respondent Nos. 1 and 2/defendant Nos. 1 and 2 by Smt. Murti Devi.

5. The defendant No. 3/respondent No.3 remained ex-parte in the trial Court. The trial Court, after the completion of pleadings, framed issues as under:-

1. Is the suit maintainable?

2. Is the decree for specific performance dated 21/1/1993 from the Court of Sh. Shiv Charan, ADJ, Delhi, is illegal and void?
3. Has the plaintiff been wrongfully dispossessed?
4. Is the plaintiff owner of the suit property?
5. Is the sale deed dated 8/11/1993 liable to be cancelled?
6. Is the plaintiff entitled to decree for possession and that of declaration and injunction?
7. Relief.”

6. The main issue which was called for decision by the Court below was issue No. 4 as to whether the appellant/plaintiff was the owner of the suit property.

7. While dealing with this issue, the trial Court has arrived at the following conclusions:-

(i) The appellant/plaintiff though claimed to be the owner of the plot of 500 sq. yds. bearing No. 87/3 forming part of khasra No. 321/75 village Zamrudpur, Delhi, there was no document whatsoever to show his title to the suit property of 500 sq. yds.

(ii) The appellant/plaintiff by virtue of the revenue record was shown to be in possession of the land which was 200 sq. yds. and not more.

(iii) The judgment and decree dated 21st January, 1993 entered into in the partition suit filed by the appellant/plaintiff against respondent No.3/ Smt. Murti Devi was a judgment which did not bind respondent Nos.1 and 2, who were not made parties to that suit, and infact the said judgment was a result

of collusion and conspiracy to avoid Agreements to Sell dated 2nd November, 1989 and 4th November, 1989 entered into by Smt. Murti Devi with respondent Nos. 1 and 2 with respect to 200 sq. yds. and 600 sq. yds. out of the total plot of 1000 sq. yds..

(iv) The appellant was the plaintiff in the suit, therefore, the onus of proof lay upon him to show that he was the owner of the said plot of 500 sq. yds. and the appellant/plaintiff failed to discharge the onus of proof and therefore the suit was liable to be dismissed.

8. The relevant paras of the impugned judgment, and necessary findings and conclusions to which I agree, read as under:-

“9. ...

After careful scrutiny of plaintiff's evidence on record it is found that plaintiff has failed to prove that he is the owner of the suit property measuring 200 sq. yards of land as admitted by him in this cross-examination, he does not have any documentary proof to prove his ownership over that portion of property. He has not proved any document on record to prove that suit land measuring 200 sq. yards is a part of the land forming part of land bearing no. 87/3. Plea of the plaintiff is that he is an owner of 500 sq. yards of land out of khasra no. 75 bearing private no. 87/3. He has not proved any khasra Girdawri to prove his title of ownership as well as possessory title over the suit land measuring 200 sq. yards. He has placed reliance on khasra Girdawri and placed on record its copy. However, he did not prove it in evidence by summoning the record from the concerned govt. department. The said khasra Girdawri filed by the

plaintiff is Mark-A. Although the said khasra Girdwari has not been proved as per Evidence Act, but it can be used against the plaintiff as it was filed and relied upon by him. Its perusal shows that plaintiff has been exclusively in possession of only 0.4 Biswa (200 yards) out of khasra in question. This is also corroborated by DW-2 Patwari of concerned area, who also produced record pertaining to Khasra No. 75. He has also deposed that as per the record maintained by his department, plaintiff herein has shown in possession of only 0.4 Biswa (200 yards) in village Zamrudpur. He further deposed that as per the records brought by him i.e., from 1995 onwards the plaintiff Kishan Lal has been in possession of 0.4 Biswa (200 sq. yards) only. He also deposed that except Khasra Girdwari dated Kharif 1999 to Rabi 2001 there is no other khasra Girdawari in the name of plaintiff Kishan Lal. He has further deposed that another 0.4 Biswa (200 sq. yards) land in the same khasra is recorded in possession in the name of Santosh wife of Kishan Lal.”

(underlining added)

9. Learned counsel for the appellant argued that since it was admitted in the written statement that the land of 1000 sq. yds. belong to the ancestors of the appellant/plaintiff, therefore the appellant /plaintiff should be held as the owner. It was also argued that the appellant/plaintiff was not a party to the suit for specific performance and therefore the decree passed in the suit for specific performance in favour of respondent Nos. 1 and 2 against respondent No.3 is not binding on the appellant/plaintiff. It was thus prayed that the appellant/plaintiff be declared owner, entitled to the possession of the suit land.

10. In my opinion the arguments as urged by the appellant have no force.

The appellant/plaintiff admitted in the plaint that his father Sh. Narain Singh gave possession of portion of the plot of 1000 sq. yds. to respondent No.3-Smt. Murti Devi. It is admitted that respondent No.3/Murti Devi was treated as a daughter by Sh.Narain Singh. Obviously, therefore, Smt. Murti Devi would be in possession for a long period of time, and would have been treated as an owner, and hence in that capacity had entered into Agreements to Sell the suit land. For the self same reason the appellant/plaintiff did not file any revenue record, whether it be a record of rights or it be a record with respect to possession of the suit land, to show that appellant/plaintiff was the owner of the suit land. The trial Court has rightly held that the appellant being the plaintiff, onus of proof was upon him, if he wanted the suit to be decreed, to show that he was the owner of the suit land admeasuring 500 sq. yds. allegedly bearing No. 87/3. The trial Court has also in my opinion rightly held that the judgment and decree passed in suit being 21/91 dated 21st January, 1991 was a result of collusion and conspiracy between the appellant/plaintiff and respondent No.3/Smt. Murti Devi inasmuch as Smt.Murti Devi consented to the decree making the appellant/plaintiff owner of 500 sq. yds. although had already also entered into Agreement to Sell of 600/200 sq. yds. out of the total land of 1000 sq. yds. vide Agreements to Sell dated 2nd November, 1989 and 4th November, 1989.

11. A civil case is decided by balance of probabilities. Third party rights have come into existence in favour of respondent Nos. 1 and 2. The appellant/plaintiff has deliberately failed to discharge the onus of proof to show that he is the owner of the suit land. Infact, the plaintiff/appellant filed revenue record but not for the land in question. The trial Court, therefore, on

preponderance of probabilities rightly held that the appellant/plaintiff was not the owner of the suit land and consequently the suit was rightly dismissed.

12. In view of the above there is no merit in the appeal and the same is accordingly dismissed leaving the parties to bear their own costs. Trial Court record be sent back.

NOVEMBER 21, 2011

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VALMIKI J. MEHTA, J.