

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

+ **RSA No.34/2011 & CM No. 2846/2011**

% **9th August, 2011**
DINESH CHANDRA DAS Appellant

Through: Mr. H. Banerjee, Advocate
VERSUS

JAGDISH CHANDRA CHANANA (DECEASED)
THROUGH LRS. Respondents
Through: Mr. Sanjiv Bahl and Mr. Vikram
Arora, Advocates.

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 second appeal is to the impugned judgment dated 23.11.2010 passed by the Appellate Court, and by which judgment, the Appellate Court set aside the judgment of the trial court which had dismissed the suit for possession of the plaintiff(now deceased and represented by his legal

heirs/respondents) and decreed the suit for possession and mesne profits.

2. The facts of the case as stated in the plaint were that the appellant herein had sold the subject property to the original plaintiff by means of the usual documents being the Agreement to Sell, Power of Attorney, Receipt etc., dated 9.4.1999. By means of these documents, after the interest in the property was transferred to the plaintiff, the appellant had entered into a rent agreement with the plaintiff. It was also stated that subsequently another rent agreement was executed between the parties on 7.3.2000. It was further the case in the plaint that rent was paid by means of cheques till execution of the second rent agreement, however, thereafter the rent was not paid. The appellant laid out a defence in the written statement that the documents in question were fabricated documents as the signatures of the appellant/defendant were obtained on certain blank and typed papers under the influence of liquor and a representation had been made to him that he was only signing as a witness to a money transaction between the original plaintiff and the brother of the defendant. The appellant stated that he was a habitual drunkard and the documents have been signed under coercion and

the influence of liquor. It was stated that the cheques which were signed by him were blank and taken from him on the pretext of paying installments of repayment of the loan given by the plaintiff to his brother. It was argued that there was no question of selling of the property because the value of the same was Rs.8,00,000/- whereas the sale consideration was only Rs.80,000/-.

3. By the impugned judgment dated 23.11.2010, the Appellate Court has referred to the proved documents being the Agreement to Sell and Purchase (Ex.PW1/1), registered General Power of Attorney (Ex.PW1/2), Receipt of Rs.80,000/- (Ex.PW1/3), the Rent Agreements dated 9.4.1999 and 7.3.2000 (Ex.PW1/4 and Ex.PW1/5) and other documents being the legal notices and the postal receipts to come to a conclusion that actually the property was sold to the original plaintiff and the appellant was thereafter inducted as a tenant for which rent was paid by means of cheques. An issue had come up as to whether the original documents by which interest was transferred in the suit property were in the possession of the appellant as was claimed by him or with the respondents, and to ascertain which, the Appellate Court directed production of the documents and it was found that the documents were in fact in the control and

possession of the respondents who produced the same. It was thus established that the stand taken up by the appellant/defendant that the original documents of transfer of interest in the property were with him was false. The Appellate Court has thereafter referred to various inconsistencies in the evidence on behalf of the appellant and also the fact that no suggestions were given to the witnesses of the plaintiff that the subject documents were executed under the influence of liquor. The appellant/defendant in fact went to the extent of denying his own signatures on the written statement filed by him in the suit and also denied the signatures on the vakalatnama filed. The Appellate Court has thereafter referred to the fact that by means of the subject documents, interest in the property was transferred and reference was made to ***Kuldeep Singh Suri Vs. Surinder Singh 1999 RLR 20***. The Appellate Court thereafter referred to Section 116 of the Evidence Act, 1872 to arrive at a finding that the appellant is estopped from denying the title of the respondents to the property because a tenant had no right to dispute the ownership of the landlord.

4. Learned counsel for the appellant argued that the Appellate Court fell into an error in setting aside the judgment of the

trial court because the Appellate Court has proceeded as if the suit was a suit by an owner for possession against a trespasser whereas, the suit was a suit for possession by a landlord against a tenant and since relationship of landlord and tenant has not been established, the Appellate Court has committed a perversity which raises a substantial question of law.

5. In my opinion, the contention of the counsel for the appellant is wholly misconceived. The Appellate Court besides referring to the documents of transfer of interest in the property being Agreement to Sell, Power of Attorney, Receipt etc., has referred to the Rent Agreements dated 9.4.1999 and 7.3.2000 which have been exhibited as Ex.PW1/4 and Ex.PW1/5. The facts with respect to payment of rent by cheques are also on record. I may note that in Delhi transfer of interest in an immovable property was taking place pursuant to Section 53 A of the Transfer of Property Act, 1882 which dealt with the doctrine of part performance and also irrevocability of a General Power of Attorney given for consideration by virtue of Section 202 of the Contract Act, 1872. Such transactions have been recognized by a Division Bench of this court in the judgment of ***Asha M. Jain Vs. Canara Bank & Ors 2001 (94) DLT 841***. The trial court therefore

had erred in holding that such documents did not transfer interest in the property and the Appellate Court has therefore rightly arrived at a finding that such documents in fact did transfer interest in the property. As already stated, the relationship was proved by means of exhibiting of Rent Agreements and the fact that cheques were in fact given for payment towards rent. The Appellate Court was also rightly entitled to disbelieve the appellant who stated that documents were signed from him under coercion and the influence of liquor, because in my opinion, the plea of coercion and signing under influence of liquor are clearly irreconcilable because if the person is under influence of liquor, he cannot be said to have signed the documents under coercion and at best it would amount to lack of necessary state of mind to enter into valid documentation. Further, if really the appellant was allegedly under the influence of liquor and had accordingly signed the documents, there was no question of thereafter signing a subsequent rent agreement and also making payments of rent by cheques. It is unbelievable that appellant would make payment of monies on the ground that the appellant was allegedly repaying the loan which was given to his own brother. The entire case as set up was unbelievable especially as the appellant denied his own

signatures on the written statement as also on the vakalatnama filed in favour of his counsel.

The argument that the property could not have been transferred because consideration stated in the document was inadequate is without merit because inadequacy of consideration is never a ground for setting aside a transaction. Unfortunately, on many an occasion, for some reason or the other, parties sometimes choose not to put the entire consideration in the documents, by which, interest in the property is transferred. So far as the stated consideration of Rs.80,000/- is concerned, it has been admitted to have been received by the appellant by means of encashment of the cheque which have been credited to his account. I may also note that at no point of time any notice was given by the appellant that the original plaintiff had got the documents signed from him under the influence of liquor and therefore the said documents have no effect in law.

6. Before a second appeal under Section 100 CPC is entertained, existence of a substantial question of law is a *sine qua non*. It is not the existence of only a question of law but a substantial question of law. In my opinion, the aforesaid facts do not show any perversity in the impugned judgment of the Appellate Court so as to

raise a substantial question of law. In fact, if I would sit as a court of first appeal, the impugned judgment would not be liable to be set aside because it exhaustively discusses the exhibited documents, one of which was registered being the General Power of Attorney, the execution of the rent agreements and payments of rent by means of cheques and the lack of credibility in the stand of the appellant.

7. In view of the above, there is no merit in the second appeal which is therefore dismissed leaving the parties to bear their own costs. Trial court record be sent back.

AUGUST 09, 2011
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VALMIKI J. MEHTA, J.