

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

% *Date of Judgment: 21.03.2011*

+ **RSA No.21/2003**

PRITAM KAUR & ORS. Appellants
Through: Mr.Pravir K. Jain, Advocate.

Versus

SHRI KRISHAN GOPAL & ANR. Respondents
Through: Mr. Rajat Aneja, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 19.09.2002 which had endorsed the findings of the trial Judge dated 14.08.1997 whereby the suit filed by the plaintiff i.e. legal representatives of deceased Gurmukh Singh seeking possession of quarter No. B-34, double storey, Motia Khan, Delhi had been dismissed.

2 The case of the plaintiff is that their successor Gurmukh Singh had purchased quarters No. B-33 and B-34, Block B, Motia Khan, Delhi vide sale deed of November, 1975. Sardari Lal the father of the defendants had deceitfully got signatures of Gurmukh Singh appended on blank papers; Gurmukh Singh had always treated Sardari Lal as a tenant and in fact an eviction petition had

also been filed against him. No agreement dated 22.09.1959
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was ever executed between the parties; in para 10 it has been averred that the plaintiff is an illiterate man and he had put his signatures on blank papers at the instance of Sardari Lal; this document was deceitfully converted into an agreement to sell which in fact was not executed between the parties.

3 The defendant in the written statement had denied this averment. It was pointed out that the agreement to sell had in fact been entered into between the parties whereby the plaintiff vide agreement to sell dated 22.09.1959 had agreed to sell the aforementioned property to the defendant and the defendant is also in possession of the said property. This agreement had been proved on record as Ex. DW-1/1. That apart, the defendant had also relied upon receipts Ex.DW-1/2 to Ex. DW-1/7 i.e. receipts of intervening period from 22.09.1959 to 26.10.1973 which have also been executed by Gurmukh Singh evidencing receipts of payment from Sardari Lal. The last of these documents is Ex. DW-1/7 dated 26.10.1973. It is not in dispute that Gurmukh Singh had died in the year 1976.

4 Trial Judge on the basis of oral and documentary evidence had dismissed the suit of the plaintiff. It was held that the plaintiff is not entitled for possession as vide aforementioned agreement to sell Ex. PW-1/1 he had agreed to sell the suit property to the defendant and thereafter receipts of payment i.e. Ex. DW-1/2 to Ex. DW-1/7 had evidenced this fact; protection under Section 53 A of the Transfer of Property Act was available in favour of the defendant; he could not be evicted. The Trial Judge in para 21 of the judgment had noted the submission of the plaintiff that the signatures of Gurmukh Singh were obtained on blank papers and it had returned

a finding that the signatures of Gurmukh Singh were never disputed; the plaintiff has failed to prove that these signatures were obtained on blank papers. That apart the receipts executed by the plaintiff Ex. DW-1/2 to Ex. DW-1/7 had also been adverted to dismiss the claim of the plaintiff. This finding was returned while disposing of issues No. 5 to 7 which were disposed of by a common discussion.

5 The impugned judgment had endorsed this finding. The finding returned is on para 8, relevant extract which reads as under:-

"8 I am in respectful agreement with the legal position stated in the above-cited judgments. I proceed to examine the evidence on record in the light of legal position stated in the above-referred judgments. There is no denial in the pleadings by the respondents that Gurmukh Singh, husband of appellant No. 1 became the owner of the suit premises by virtue of lease of conveyance in November, 1975. It was pleaded by the appellants that the father of the respondents had taken suit premises on rent in the year 1959 but the evidence led by the appellants is to the effect that the father of respondent used to teach the children of appellant No. 1 and later-on , unauthorisedly occupied the suit premises and this evidence is contrary to the pleadings of the appellants and thus has been rightly rejected by the learned trial court. It is a matter of record that the aforesaid husband of appellant No. 1 during his lifetime has filed eviction petitions Ex. DW-1/8 and DW-1/9 against the father of the respondents and the said petitions were dismissed. It is not in dispute that Sh. Gurmukh Singh, husband of appellant No. 1 had signed documents Ex. DW-1/1 to DW-1/7 but the appellants have tried to wriggle out of this by stating that the father of respondents had obtained the signatures of Gurmukh Singh on blank papers and the plea taken by them is that Sh. Gurmukh Singh was an illiterate person. It is not stated in the plaint by the appellants that Gurmukh Singh was an illiterate person and therefore, this plea cannot be accepted.

9 *In judgment reported in AIR 1992 Madhya Pradesh 22 (Ramjan Khan & Ors. Vs. Baba Raghunath Dass & Ors), it has been held that the burden was on the person who was relying upon the document to prove that the same were read and explained to the illiterate person who is said to have thumb marked it. The ratio of the above-cited judgment does not apply to the facts of the present case as the plea of Gurmukh Singh being an illiterate person is not taken in the plaint and is an after thought. It has been simply stated in the plaint by the appellants that the father of respondent had obtained signatures of Gurmukh Singh on blank*

papers by deceitful means. It has not been explained as to under what circumstances Gurmukh Singh was made to sign blank papers by father of the respondents. After having admitted the signatures of Gurmukh Singh on the agreement to sell and the receipts Ex. DW-1/1 to DW-1/7, appellants cannot be permitted to wriggle out of the same. Once the signatures of Gurmukh Singh on agreement to sell Ex. DW-1/1 and receipts Ex. DW-1/1 to DW-1/7 are admitted by the appellants, the burden of proof that these documents were blank when Gurmukh Singh had signed, shifts upon the appellants and they have failed to discharge the burden. No plausible reason is given by the respondent as to why husband of appellant No. 1 would sign blank documents at the instance of the father of the respondents who is admittedly in possession of the suit property since the year 1959. The agreement to sell Ex.DW-1/1 is dated 29.09.59 and father of the respondent is in possession of the suit property since the year 1959 and irresistible conclusion is that he is in possession of the suit property in part performance of the agreement to sell and the evidence of part performance are the receipts Ex. DW-1/2 to DW-1/7 which are admittedly signed by Gurmukh Singh, husband of appellant No. 1 and these receipts are in token of money received by Gurmukh Singh from father of respondents for payment of instalments to Rehabilitation Department.

10 *Appellants have not even pleaded nor led any evidence to the effect that the alleged tenancy of Sardari Lal (father of the respondent) or of the respondents was oral and documentary in shape of rent receipts etc. It has come in the evidence of appellant No. 1 that she has been depositing yearly instalments of Rs.1,200/- with the Rehabilitation Department in respect of the suit property but no documentary proof in support of the abovesaid deposition has been furnished by the appellants. The agreement to sell and the receipts indicating part performance of the said agreement have been put to appellant No. 1 in her cross-examination. There is no evidence on record to the effect that the agreement to sell is in violation any of the covenant of deed of conveyance in favour of Gurmukh Singh (husband of appellant No. 1). It has not been specifically put to the respondent in cross-examination that the amount mentioned in the receipts Ex. DW-1/2 to Ex DW-1/7 was not received by said Gurmukh Singh.*

11. *From the evidence on record, it can be easily concluded that the father of the respondents had done part performance of agreement to sell by making payment to Gurmukh Singh vide receipts Ex. DW-1/2 to DW-1/7. In judgment reports in AIR 2002 Supreme Court 960 (Shrimati Shamrao Suryavanshi & Anr. Vs. Prahlad Bhairoba Suryavanshi (dead) by L.Rs. and Ors.), following observations have been made:-*

'A perusal of Section 53-A shows that it does not forbid a defendant-transferee from taking a plea in his defence to protect his possession over the suit property obtained in part performance of a contract even though the period of limitation to bring a suit for specific

performance has expired. In absence of such a provision, Court has to interpret the provisions of Section 53-A in a scientific manner.'

12 *The plea of part performance is a mixed question of fact and law. In order to attract provisions of Section 53-A of the Transfer of Property Act, the property must be owned by the plaintiff. There should be an agreement to sell (or otherwise to transfer) by the plaintiff in favour of the defendant for consideration, and , in pursuance of that agreement, the defendant should have been in possession of the immovable property or part thereof and the defendant must have done something more in furtherance of the contract and he himself should be ready and willing to perform his part of the contract from the date of the agreement.*

13. *In view of the legal position as highlighted above regarding the interpretation of Section 53-A of Transfer of Property Act and the evidence on record, I hold that by admission of the appellants of signatures of Gurmukh Singh on agreement to sell Ex. DW-1/1 and receipts regarding payment DW-1/2 to DW-1/7, existence of these documents stands proved as plea of appellants of Gurmukh Singh signing blank papers is not at all plausible. The possession of the suit property by father of respondents and thereafter by the respondents stands protected as the appellants have failed to prove as to what more was to be done by the respondents or their father for performance of the agreement to sell in question. Learned trial court has rightly relied upon the observations made in judgment reported in 1997 RLR (Patel Natwarlal Vs.K.G.K.V.) in para 26 of the impugned judgment to hold that the respondent is entitled to protection under Section 53-A of Transfer of Property Act.*

14 *In view of the above discussion, it is held that the appellants are not entitled to possession of suit property. As a consequence, impugned judgment & decree is upheld and the present appeal is dismissed with costs. Decree sheet be accordingly drawn and thereafter, appeal file be consigned to the record room and trial court record be returned forthwith."*

6 On behalf of the appellant, it has been urged that the findings in the impugned judgment are perverse for the reason that the plaintiff has all along stated that the agreement to sell although signed by Gurmukh Singh, yet it was on a blank paper; the admission of the signatures on a document is not proof of the contents of the document. This has raised a substantial question of law. That apart the defendant has not examined Harbans Lal in

whose favour Sardari Lal had executed a power of attorney; only

the son of Sardari Lal had been examined as DW-1. He had no know-how of the transaction between the parties.

7 Arguments have been countered. It is pointed out by learned counsel for the respondents that no interference is called for in the two concurrent findings of fact.

8 Vehement contention of learned counsel for the appellant is that the impugned judgment has returned a finding against the plaintiff holding that the plaintiff had never averred that Gurmukh Singh was an illiterate man and this is controverted by the specific averment made in para 10 wherein the plaintiff had stated that the plaintiff is an illiterate man and his signatures had been obtained on blank paper.

9 This argument of learned counsel for the appellant is bereft of any force. This argument had been noted by both the courts below. The trial Judge had in fact held that this submission of the plaintiff has not been substantiated. The impugned judgment had noted that there has been no specific averment in the plaint that Gurmukh Singh was an illiterate man although in para 10 there is a bald statement that Gurmukh Singh was illiterate; however this was not the reason stated by the plaintiff to aver that the contents of this document were not known to him; in fact this was never the case of the plaintiff; it was never his case that the contents of this document were not known to him.

10 Ex. PW-1/1 is a registered document. It runs into four pages. The first party has been described as Gurmukh Singh and second party is Sardari Lal. Vide the aforementioned document, Gurmukh Singh had accepted the offer of the Government to purchase two quarters i.e. quarters No. B-33 and B-34, Block B, Motia Khan,

Delhi for a sum of Rs.1,720/- and reserve price was 1/5th of this total amount. One half of this 1/5th amount i.e. for quarter No.34 have been paid by Sardari Lal i.e. the defendant. Further in terms of the aforementioned document, the second party Sardari Lal had agreed to pay a compensation of Rs.4,298/- to Gurmukh Singh as cost of this property i.e. quarter No. B-34, Block B, Motia Khan, Delhi. The phases and the manner of payment of instalments had also been detailed. The last instalment has been paid by Sardari Lal to Gurmukh Singh vide Ex. DW-1/7 which is dated 20.10.1973. It is also relevant to state that these documents i.e. Ex.DW-1/2 to Ex.DW-1/7 had been proved through the version of DW-1 who was the son of the defendant; (defendant Sardari Lal having since expired); in the entire cross-examination of DW-1 not even a suggestion has been given to this witness that these documents had not been executed by Gurmukh Singh or that these documents are false or fabricated. It does not now lie in the mouth of the plaintiff/ appellant to assert otherwise. Both the fact finding courts had returned a concurrent finding against the plaintiff which calls for no interference.

11 This court is not a third fact finding court. Substantial questions of law have been embodied at page 2 of body of the appeal.

12 No such substantial question of law has arisen. There is no merit in this appeal. Dismissed.

INDERMEET KAUR, J.

MARCH 21, 2011

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