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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 29/2010

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12th October, 2011

DARSHAN KUMAR ANAND

..... Appellant

Through: Mr. Zafar Alam, Adv.

VERSUS

KRISHAN LAL CHADHA & ANR.

..... Respondents

Through: Mr. Mahesh Chaudhary, Adv. for
respondent no.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 Regular Second Appeal is to the two concurrent judgments of the courts below, the first of the Original Court dated 06.1.2006, and the second of the Appellate Court dated 12.1.2010, and by which judgments, the suit of the respondents/plaintiffs for possession of the subject property has been decreed.

2. The facts of the case are that the plot No.E-61, Amar Colony, Lajpat Nagar, IV, New Delhi was purchased by one late Sh. Dharam Pal Anand by a Sale Deed dated 16.9.1964. Construction was thereafter raised by Sh. Dharam Pal Anand on this plot. The appellant/defendant was residing in the subject property as a licensee being the son of Sh. Dharam Pal Anand and Smt. Sudarshan Kumari Anand. The appellant was the natural son of Sh. Dharma Pal Anand and the step-son of Smt. Sudarshan Kumari Anand. Sh. Dharam Pal Anand before his death executed a Will dated 17.8.1974, in favour of his wife Smt. Sudarshan Kumari Anand, which Will was duly registered before the Sub-Registrar. Pursuant to this Will, Smt. Sudarshan Kumari Anand became the owner of the subject property. Smt. Sudershan Kumari Anand not only got the property mutated in her name before the local authority, but also thereafter, paid the property tax payable on the subject property. Smt. Sudarshan Kumari Anand also let out one floor of the property to a tenant, i.e. NTPC and received the rent from such tenant. Smt. Sudarshan Kumari Anand before her death, executed a Will dated 03.4.1987 bequeathing the property to the respondents/plaintiffs, and which Will was also duly registered in the office of Sub-Registrar.

3. The case of the respondents/plaintiffs was that since the appellant/defendant was harassing Smt. Sudarshan Kumari Anand on

one pretext or the other, he was disinherited and the property was bequeathed to the respondents/plaintiffs, the respondent no.2 being the Institution for the Blinds. The further case, which was set up in the suit was that the appellant/defendant was living as a licensee in the first floor and, thereafter, forcibly occupied the *Barsati* floor of the suit property. The subject suit for possession and mesne profits was filed by the respondents/plaintiffs stating that the appellant/defendant being only a gratuitous licensee had no right to remain in possession of the property, which was bequeathed to the plaintiffs.

4. The appellant defended the suit by disputing the validity of both the Wills dated 17.8.1974 and 03.4.1987. It was also the stand of the appellant/defendant that though the Sale Deed of the property was in the name of the father, Sh. Dharam Pal Anand, actually the appellant was the owner and the father Sh. Dharam Pal Anand was only a Benami owner of the property.

5. The only issue which was framed in the suit was with regard to the entitlement of the respondents/plaintiffs for possession, mesne profits and injunction.

6. The Will of Sh. Dharam Pal Anand dated 17.8.1974 was duly proved and exhibited as Ex. PW3/1. The Will was proved through the

attesting witness, PW-5/Sh. Madan Lal Jain. The attesting witness proved the signatures of Sh. Dharma Pal Anand on the Will dated 17.8.1974, Ex.PW3/1 at points 'X', 'Y', 'Z' and 'A'. The attesting witness also proved his own signatures and the fact that he had gone to the office of the Sub-Registrar at the time of registration of the Will and he signed before the sub-Registrar at point 'C'. This witness also deposed with regard to the sound state of mind of Sh. Dharam Pal Anand. Though this Will was sought to be probated by Smt. Sudarshan Kumari Anand, however, during the pendency of the petition, Smt. Sudarshan Kumari Anand died, therefore, that petition could not be pursued further.

7. The Will dated 03.4.1987 executed by Smt. Sudarshan Kumari Anand in favour of the respondents/plaintiffs was got probated by the respondents/plaintiffs and this probated Will was proved as Ex.PW1/1. The judgment of the Probate Court qua the Will dated 03.4.1987, Ex. PW1/1 has become final. The Trial Court has arrived at a finding of the fact that the appellant/defendant did not file any documents to show that he had contributed funds for purchase of the plot or for raising the construction on the suit property. Accordingly, the Trial Court held that the appellant/defendant failed to prove that the property was

owned by him and that allegedly the father-Sh. Dharam Pal Anand was only a Benami owner.

8. The aforesaid findings of the Trial Court have been upheld by the Appellate Court. Before the Appellate Court, the respondent/plaintiff had moved an application under Order 41 Rule 27, CPC for leading additional evidence, which was allowed. One of the prayers in this application was for production of the sale deed in favour of Sh. Dharam Pal Anand, however, the appellant failed to avail of the opportunity even before the Appellate Court and did not file this sale deed. The Appellate Court has referred to the Wills, which have been exhibited as Ex. PW3/1 and Ex. PW1/1 and also the factum of Smt. Sudarshan Kumari Anand acquiring the title of the property as per the Will Ex. PW3/1 of her husband, and the letting out thereafter of the property by her to NTPC and her receiving rent from NTPC. Both the courts below have also referred to the defendant taking forcibly possession of the *Barsati* floor of the suit property

9. Learned counsel for the appellant argued the following aspects before this Court:

- (i) The suit was liable to be dismissed because the respondents had failed to prove the title to the property.

- (ii) The finding with respect to the property being owned by Sh. Dharam Pal Anand and not that he was only a Benami owner, is against the evidence led in the case and hence a perverse finding.
- (iii) The appellant is the owner because he has the title deeds of the property in his possession, and also because he was also in possession of the first floor of the house.
- (iv) It is argued that the first Will Ex. PW3/1 is not validly proved.
- (v) The finding of the Appellate Court that the forcible possession has been taken by the appellant of the *Barsati* floor is a perverse and illegal finding.
- (vi) The appellant ought to have been allowed to place on record the document/Sale Deed, as also the house tax receipts by allowing the application filed in this Court under Order 41(27) CPC.

It is argued that the aforesaid questions are substantial questions of law justifying interference under Section 100 CPC.

10. In my opinion, none of the arguments which have been raised on behalf of the appellant have any substance whatsoever. In my opinion

no question of law, much less a substantial question of law, arises as per the issues which have been argued on behalf of the appellant.

11. The argument that the respondents have failed to prove title of the property, is a misconceived argument because the appellant/defendant has himself alleged that the Sale Deed was in the name of the father, Sh. Dharam Pal Anand. Once the Sale Deed of the property was in the name of Sh. Dharma Pal Anand he in law is the owner and the onus to prove that appellant is allegedly the real owner and Sh. Dharam Pal Anand is only a Benami owner was very heavy upon the appellant. The trial court has noted that no document whatsoever was filed by the appellant to show that he contributed funds either for purchase of the plot or for construction of the property. Before the Appellate Court the appellant could have used the opportunity to lead evidence when the application under Order 41 Rule 27, CPC was allowed, however, the appellant failed to lead evidence or file the Sale Deed in favour of Sh. Dharam Pal Anand which is now sought to be led in evidence.

In view of the above, the finding of the fact as arrived at by the courts below that the father Sh. Dharma Pal Anand was the owner and that the appellant/defendant was not the actual owner is a finding

of the fact which does not raise a question of law, much less a substantial question of law.

12. So far as the arguments of the appellant having the possession of the title deeds of the property and being in possession of two floors in the subject property, and that there is a wrong finding of appellant having forcible possession of *Barsati* floor, in my opinion such arguments have no legs to stand upon, inasmuch as, once it is proved that the respondents/plaintiffs were the owners of the property, they would naturally be entitled to possession of the suit property. Both the courts below have referred to the proved Wills Ex. PW3/1 executed by late Sh. Dharam Pal Anand in favour of Smt. Sudarshan Kumari Anand and Ex. PW1/1, the Will executed by Smt. Sudarshan Kumari Anand in favour of the respondents/plaintiffs. In the chain of events of Sh. Dharam Pal Anand being the owner and who executed the Will Ex. PW3/1 in favour of Smt. Sudarshan Kumari Anand, and who further executed the Will Ex. PW1/1 in favour of the respondents/plaintiffs, it became abundantly clear that the respondents/plaintiffs were the owners of the property entitling them to possession thereof. Merely because the title deeds of the property are with the appellant or that he is in possession of two floors in the property, the same cannot make a difference because such possession of the floors or of the title deeds is

an illegal possession and which possession of floors or of the title deeds was only because appellant was residing as a family member/son of late Sh. Dharam Pal Anand and late Smt. Sudarshan Kumari Anand in the suit property.

The argument that the Will Ex.PW3/1 of Sh. Dharam Pal Anand has not been proved is an argument of desperation because the Will has been proved and exhibited through the attesting witness Sh. Madanlal Jain.

13. The final argument which was pressed on behalf of the appellant was for allowing the application under Order 41 Rule 27 CPC, being C.M. No. 4913/2010 filed in this Court. By this application, once again the appellant seeks to file on record the Sale Deed in favour of the father Sh. Dharam Pal Anand to show that the consideration amount was of the moneys of the appellant. The property tax receipts of the subject property are also sought to be placed on record to show that the same are in possession of the appellant and which aspect makes him the owner.

14. In my opinion, this application under Order 41 (27) CPC is misconceived and is liable to be dismissed because no litigant can lead evidence at his leisure and pleasure. The first stage to lead evidence

on behalf of the appellant was before the trial court, but which opportunity was not availed of by the appellant by filing the alleged proof on record, which admittedly all along had been in his possession. The second stage was when the application of the respondents under Order 41 Rule 27, CPC was allowed by the appellate Court and which application sought to lead evidence on two aspects, one of proving of the Will Ex. PW3/1 and the second of filing of the very Sale Deed executed in favour of Sh. Dharam Pal Anand. This application was allowed by the Appellate Court, and evidence was led by the respondent qua proving of the Will Ex. PW3/1. At this stage itself, the appellant/defendant could have volunteered and filed the Sale Deed in favour of Sh. Dharam Pal Anand, but once again this opportunity was also not availed of by the appellant. Now the issue is whether at the stage of a second appeal should the clock be set back by many years by sending the case back to the trial court at the stage of leading of the defence evidence and allowing the appellant to prove the Sale Deed and the property tax receipts. In my opinion, if this application is allowed, grave prejudice will be caused to the respondents in causing delay to the finalization of the suit for possession and mesne profits filed by the respondents/plaintiffs, and thus the same is dismissed.

15. (i) Let me now presume that the application under Order 41(27) CPC is allowed and the documents being the sale deed and the house tax receipts can be looked at. The argument of the learned counsel for the appellant was that on the back of the second page of the Sale Deed executed in favour of Sh. Dharam Pal Anand, there is an endorsement with respect to the payment of money to the vendors by the appellant, and consequently, it is the appellant who is the owner of the property having paid the consideration for the sale deed. In order to satisfy my judicial conscience, I have gone through the said endorsement appearing at the back of the second page of the Sale Deed.

(ii) Any doubt which has been sought to be created on behalf of the appellant to claim that he paid the consideration is removed when we refer to the last page of the Sale Deed, which is page no.7. This Sale Deed is not a document which is signed both by the buyer and the seller i.e. the vendee Sh. Dharam Pal Anand was not present at the time of execution of the sale deed. The Sale Deed is only signed by the vendors of this document inasmuch as there is no requirement in law for execution of a Sale Deed that the vendee of the Sale Deed had to be present. Since the vendee of the Sale Deed i.e. the father, Sh. Dharma Pal Anand was not present, therefore, the monies were given by the appellant for and on behalf of the vendee Sh. Dharam Pal Anand.

Obviously the father who for some reason was not present at the time of registration of the Sale Deed had given the moneys to the son/appellant for being paid to the vendors and accordingly the moneys are shown to have been paid by the appellant to the vendors. Thus it cannot be said that the monies were of the appellant because, in fact, it must be that the father Sh. Dharma Pal Anand had given the monies for purchase of the property to the appellant/son and the monies were given by the appellant/son to the vendors of the property. The endorsement only records payment of monies by the appellant to the vendors, however, that cannot mean that the monies were necessarily and only of the appellant and not of the father. Therefore, in my opinion, neither the additional evidence can be allowed at this stage nor even if the same is looked into the same can alter the conclusion that the father Dharam Pal Anand was the actual owner of the property whose monies were, in fact, paid for purchase of the property.

(iii) Also, assuming that money is paid by the appellant would not automatically mean that the transaction in question is a Benami transaction. There are various reasons why someone else other than the vendee may pay the money for purchase of a property. One such reason is that it may be possible that the appellant may have wanted to gift the money to his father. Further a benami transaction is with a

specific purpose/intention/object and it is only to achieve that a Benami transaction is entered into. As per the record of this case I do not find any object or intention or purpose as to why there should be a Benami transaction and the father should not be the actual owner of the property.

(iv) So far as the taking on record the house tax receipts, once again, this evidence is irrelevant because merely because the property tax receipts are in possession of the appellant, that cannot make him the owner of the property, because in the property tax receipts the owner of the property is shown to be late Sh. Dharam Pal Anand, i.e. the father and not the appellant.

16. In view of the above, no substantial question of law arises. There is thus no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

**OCTOBER 12, 2011
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VALMIKI J. MEHTA, J.