

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

+ **RFA No. 169/2011**

% **30th August, 2011**

SH. VINOD Appellant
Through: Mr. Atul Kumar Sharma,
Advocate.

VERSUS

SH. MANOJ KUMAR Respondent
Through: Mr. Vijay Khanna, Advocate.

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 under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment dated 19.1.2011 by which the suit of the appellant/plaintiff for possession, damages and permanent injunction against the respondent/defendant was dismissed.

2. The facts of the case are that the appellant/plaintiff alleged that he had purchased the suit property out of Khasra No.470 measuring 67 sq. yards bearing No.F-15 situated in Rana Park, Siras Pur, Delhi-42 from the defendant by means of documentation dated 23.6.2008 being the General Power of Attorney, Agreement to Sell, Will and affidavit etc. The total consideration alleged to have been paid by the appellant/plaintiff to the respondent/defendant was a sum of Rs.4 lakhs in cash. The case of the appellant/plaintiff further was that the respondent/defendant asked him not to take possession because he had a problem of study and examination of his children and therefore sought time to vacate the property, but failed to hand over possession subsequently. The appellant/plaintiff thereafter claimed that he terminated the licence of the respondent/defendant in April, 2009 and thereafter filed the subject suit. It was alleged that plaintiff/appellant is a handicapped person and is running a stationery shop.

3. The respondent/defendant appeared and contested the suit and laid out a defence that in fact the transaction was not one of transfer of the title in the property, but was of a loan. It was stated that the respondent/defendant had taken a loan of Rs.2 lakhs from the appellant/plaintiff through Mr. Ashok Baghri and the appellant/plaintiff took signatures on some blank papers from the respondent/defendant.

The appellant/plaintiff is stated to have received the original documents of the property as security and which documents were promised to be returned back when the defendant/respondent returned the loan amount with interest.

4. After pleadings were complete, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for a decree of possession, as prayed for? OPP
2. Whether the plaintiff is entitled for mesne profit and damages @ Rs.5000/- per month w.e.f. April 2009 till handing over the vacant possession of the suit property? OPP
3. Whether the plaintiff is entitled for a decree of permanent injunction? OPP
4. Whether the agreement to sell dated 23.06.2008 alleged to be executed by defendant in favour of the plaintiff is forged and fabricated document? OPD
5. Relief, if any.”

5. The basic findings and conclusions of the trial Court are contained in paras 18 to 24 of the impugned judgment and which read as under:-

“18. The normal legal position is that if a document is signed by a person, the contents of the document can be presumed to be known to the person signing it meaning thereby the person concerned signed the document after it was typed and after knowing the contents of the documents. This presumption is a rebuttable presumption and can be rebutted by the person signing it. The defendant has alleged that these were forged documents and his signatures were obtained on blank documents. In my view, the defendant has

been able to rebut the presumption of execution of documents against him for several reasons. One, the affidavit Ex.PW-1/5 is not signed by the defendant above the typed word "Deponent" as is usually done. Further, this affidavit before verification also has a place for the signatures of deponent at the place marked as "Deponent" but the signature of defendant is missing on page 2 of the affidavit before the verification. After verification, the signatures of defendant is below the word "Deponent". The presumption arises that the signatures on the affidavit were done when the stamp paper and the page 2 were blank and thereafter, it was got typed.

19. Secondly, the document agreement to sell and purchase consists of three pages, the page nos.2 and 3 of this document Ex.PW-1/3 are of equal size and dimensions but on page no.2 the typing is done at less than half of the page while on page no.3, it is considerably more than half of the page. It the document was got signed after it was got typed, then the reverse should have been the position. It appears that on page no.2 of the document Ex.PW-1/3 since the signatures of the defendant were somewhere in the middle of the page, the page no.2 was got typed in such a way so that the text on it may not reach upto the signatures.

20. Third reason for discarding the case of the plaintiff and the documents in question is that the plaintiff has alleged to have paid a sum of Rs.4.00 lacs to the defendant for purchase of suit property and got the execution of the document, but after making such a huge payment, the possession of the suit property is not taken. It is not usual and not worth believing that a person will make the payment of whole consideration to the seller of the immovable property yet not take its possession despite been done. Taking possession of the immovable property by the purchaser is by no mean less important than execution of documents.

21. Further, the payment of the huge amount of Rs.4.00 lacs in cash in itself, raise a suspicion that any such payment was made by the plaintiff to the defendant. In the transaction of immovable property either whole or part of the sale consideration is paid by way of some valuable instrument like cheque, pay order, bank draft which is not done in the present case.

22. Fifthly, the plaintiff's case throughout is that he is running a stationary shop but the defendant is a property dealer, but the defendant belatedly has taken the contention in the written arguments that the plaintiff is also a property dealer and he(defendant) himself left the work of property dealer which he did for small time. The plaintiff has himself proved the complaint made to SHO PS Samaipur Ex.PW-1/7 on 02.07.2009 in which he has stated that he was earning his livelihood by doing the business of property dealing. If the plaintiff was doing the work of property dealing what was the need to hide this fact in the plaint though, this fact is pleaded by him in the said complaint to SHO Ex.PW-1/7. A person, who is doing the property dealing can be presumed to have enough knowledge that in a sale transaction of immovable property, the taking of possession of immovable property by the purchaser is very important aspect of the transaction. The plaintiff can be presumed to have this knowledge. Had he paid Rs.4.00 lacs to the defendant for this transaction, he would certainly have taken possession of the suit property from him besides execution of documents in question.

23. The defendant has stated that he took loan of Rs.2.00 lacs from the plaintiff and in affidavit in evidence he stated that out of Rs.2.00 lacs he has already repaid Rs.1.50 lacs to the plaintiff. The defendant has produced his wife Smt. Usha Rani as DW-3, who has corroborated his statement. The defendant has also produced DW-2 Sh. Dinesh Chand who has stated that the defendant took loan of Rs.2.00 lacs from the plaintiff through Sh. Ashok Baghri. DW-2 Dinesh Chand has also stated in his cross-examination that he had also taken loan from the plaintiff in the sum of Rs.25,000/-. This statement of DW-2 Dinesh Chand adds authenticity to the case of the defendant that he took loan and also shows that plaintiff used to give loan like a money lender to different persons.

24. In view of the above, the documents Ex.PW-1/2 to PW-1/6 look to be sham documents and the case of the defendant looks to be more plausible that he took loan of Rs.2.00 lacs from the plaintiff in bad time and plaintiff obtained his signatures on blank stamp papers and blank papers which later on he converted into the documents Ex.PW-1/2 to PW-1/6. Another reason which goes in favour of defendant is the

contention on behalf of defendant that he still holds the chain of documents, photocopies of which he filed alongwith the written arguments. This argument is taken by the defendant to create doubt in the case of the plaintiff for the simple reason that in a sale transaction of the immovable property the chain of previous documents is also received by the purchaser from the seller. However, defendant has not proved this fact by cogent evidence. In view of the above, I do not find any merit in the case of the plaintiff. I do not find any genuine document produced by the plaintiff for decreeing the case of the plaintiff. Issue no.1 is thus, decided in favour of the defendant and against the plaintiff.” (underlining added)

6. I completely agree with the findings and conclusions of the trial Court. So far as the affidavit Ex.PW1/5 which is stated to have been executed in favour of the appellant/plaintiff and as has been dealt with by the trial Court in para 18, even a single reference to the same shows that the signatures of the respondent/defendant were taken on blank documents. A reference to page 2 of affidavit Ex.PW1/5 shows that the respondent/defendant has signed only at one place where the expression “Deponent” appears and not at both the places. Further, even the signature which appears is on the side and below the typed expression “Deponent” showing that the document would have been signed by the respondent/defendant as a blank document.

It is therefore clear that affidavit Ex.PW1/5 would have been a document which was signed in blank. Even the agreement to sell is one which the trial Court has rightly held in para 19 of the impugned

judgment as having been taken in blank because the second page is half the size of the third page so far as the typed contents thereof are concerned, and which is only possible if the second page had to be adjusted on account of an earlier existing signature of the respondent/defendant. Even on the third page the signature of the respondent/defendant appears below the expression "First Party". The trial Court was therefore justified in holding that the Agreement to Sell was got typed on papers which contained the signatures of the respondent/defendant before the same was typed.

7. The trial Court has further noted, and rightly so, that if the entire sale consideration was paid, there was no reason for the appellant/plaintiff to have permitted the defendant/respondent to continue in possession of the premises. After all, at best the case was that they were neighbours and it cannot be that merely on account of being neighbours, a person after paying complete price of the property will not take actual possession of the property. To this aspect, I may add that the documents in question are dated 23.6.2008, and the stand of the appellant/plaintiff therefore would not be believable that the respondent/defendant did not hand over possession because of the requirement of study of his children. It is well-known that in June, there are summer vacations of the children and therefore the stand of the

appellant/plaintiff is unbelievable that the possession was not taken of the property on account of studies of the children of the respondent/defendant. Further, the trial Court is justified in arriving at a finding that the amount paid of Rs.4 lacs in cash itself raises a suspicion that the amount would not have been paid as the transaction in question is not backed by means of a cheque or by pay order. The trial Court has also further given a finding that whereas the appellant/plaintiff claimed that he was having stationery business, it was admitted by the appellant/plaintiff that in fact he was a property dealer. Being a property dealer, the trial Court has rightly observed that the appellant would have taken possession as allegedly complete price was paid.

8. To the aforesaid findings of the trial Court, I may add the following additional reasons for sustaining the impugned judgment:-

(i) Firstly, the subject suit was only a suit for possession and injunction on the basis that the title in the property had already stood transferred to the appellant/plaintiff by virtue of the subject documents. The subject documents are the usual documents of Agreement to Sell, Power of Attorney etc. and which documents were used in Delhi to transfer ownership by virtue of the doctrine of Part Performance as enshrined in Section 53A of the Transfer of Property Act, 1882 and the doctrine of irrevocability of a power of attorney given for consideration as

per Section 202 of the Contract Act, 1872. Since this type of transaction were leading to huge losses of revenue, the Legislature by Act 48 of 2001 w.e.f. 24.9.2001 amended various provisions of Transfer of Property Act, 1882, Registration Act, 1908 and the Stamp Act, 1899 as applicable to Delhi and whereby an Agreement to Sell by which ownership in the property was claimed, and before such agreement to sell was used to take benefit transfer of title, it became necessary that the Agreement to Sell in question had to be stamped with 90% of the value of the sale and also be registered. Admittedly, neither the documents are registered nor the Agreement to Sell is on stamp papers of 90% of value of consideration. The subject suit is not a suit for specific performance whereby the appellant/plaintiff had sought specific performance of the Agreement to Sell. Accordingly, on account of non-registration and non-stamping of the documents, and the suit being only for possession and not for specific performance, is another reason to decline the relief to the appellant/plaintiff and justify the dismissal of the suit.

Further additional reasons are that if the appellant really had purchased the property, then, the appellant/plaintiff would definitely have immediately applied for mutation of the property in the house tax record, however, admittedly nothing has been filed to show that such mutation was applied for. Not only this, no document has been filed by

the appellant/plaintiff that the transaction in question has been disclosed by him in the income tax returns. Quite clearly the transaction in question was not a transaction of Agreement to Sell and if the appellant had really purchased the property he would have applied for mutation in house tax records and also would have shown the same as a purchase in his income tax record and which admittedly has not been done.

9. An Appellate Court is entitled to interfere with the findings and conclusions of the Court below if the same are illegal or perverse. Merely because two views are possible and the trial Court has taken one plausible and possible view would not mean that this Court would interfere unless gross injustice is caused. In the facts of the present case, the trial Court has given convincing reasons to justify the transaction as a loan and not one of sale and purchase of the property. I completely agree with the reasoning of the trial Court and I have also given my additional reasons in support of the impugned order dismissing the suit.

10. In view of the above, there is no merit in the appeal. The appeal is therefore dismissed, leaving the parties to bear their own costs.

AUGUST 30, 2011
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VALMIKI J. MEHTA, J.