

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

+ **RSA No.87/2011**

% **July 26th, 2011**

DILIP JAIN Appellant

Through: Mr. C.S.Bhandari, Advocate

VERSUS

KISHAN PAL & ANR. Respondents

Through: None.

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)

+ CM No. 10705/2011 (U/o 32 Rule 15 CPC)

This is an application for appointing the father of the appellant to prosecute the appeal on the ground that the appellant is of unsound mind. On a query to the counsel for the appellant, it transpires that the appellant in fact is in jail for certain offences. I, therefore, while allowing the present application make it absolutely clear that I am allowing the present application only for the limited purpose for hearing arguments in this appeal which in any case is without merits and is being dismissed. The present

application is therefore allowed for a very limited purpose for arguments of the present RSA only.

Nothing contained in this order will in any manner be used by the appellant Sh. Dilip Jain in the criminal cases which are said to be pending against him.

Application stands disposed of.

CM No.10704/2011 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No.10706/2011 (delay in re-filing)

Delay of 40 days in re-filing the appeal is condoned subject to just exceptions.

CM stands disposed of.

+RSA No. 87/2011

1. The present regular second appeal challenges the impugned judgment of the appellate court dated 16.12.2010, which has dismissed the appeal of the present appellant against the judgment and decree of the first court dated 14.7.2009 whereby the suit for specific performance and possession was decreed.

2. The facts of the case are that the respondents filed a suit for specific performance and possession against the appellant/defendant with the averments that the appellant had agreed to sell the shop premises

measuring 7.7 sq. yards (8 X 10) out of Khasra No. 697, Nathu Colony, Village Saboli, Shahdara, Delhi. The right to the property was claimed by plaintiffs/respondents by virtue of registered documents being the Agreement to Sell, General Power of Attorney and Receipt dated 21.4.1989. The appellant in his defence alleged that the documents were not the documents of transfer or title but were executed allegedly for a loan of Rs.50,000/-. The appellant has been disbelieved by both the courts below and it has been held that the documents in questions were in fact documents of transfer of titling the property for a sum of Rs.2,50,000/-. The trial court has succinctly given the appropriate findings in paras 16 to 18 of the impugned judgment and which reads as under:-

“16. In the instant case, the appellant has alleged that in December, 01 a sum of Rs.50000/- was taken as a loan from respondents against the security of the documents Ex.PW1/A to C dated 21.04.89. It is quite strange that exact date of taking the loan is (not sic) reflected by the appellant. There is no writing to this effect. There is no evidence to this effect. More bard assertion is not enough. The second plea that a sum of Rs.2.50 lacs was not given to him also doesn't find support from the record. There is no evidence from the appellant in support of his contention. On this contrary, the evidence adduced by the respondents is cogent and convincing. PW1&2 have categorically stated that appellant agreed to sell the suit property for a sum of Rs.2.50 lacs. The payment was made to the appellant by them in the presence of PW3 who has fully supported the case of the respondents. There is nothing on the record that PW3 has any motive to depose against the appellant. Nothing has come on record to view his testimony with the aid of spectacles. On 19.01.02 parties to the suit alongwith PW3 and father of the appellant went to the office of Sub-Registrar-IV, Delhi where PW4 drafted the documents namely GPA, agreement to sell, affidavit, Will, and receipt dated 19.01.02 at the instructions

of the appellant who even paid the charges to him. There is nothing in his cross examination that documents in question were not drafted as per the dictation of the appellant. Sh. Shivsen Jain was also present at the time of the execution of documents in question and he has put his signatures on documents namely Ex.PW1/D to H. He could have easily objected at that time if payment was not received by the appellant. The documents Ex.PW1/A to C of the suit property in the favour of appellant were handed over to the respondents. The GPA Ex.PW1/D was duly presented for registration before Sub-Registrar-IV, Seelampur, Delhi. The said document is duly registered. There is a presumption that a registered document is validly executed. All this show that the documents namely Ex.PW1/D to H were duly executed by the appellant in favour of respondents after the receipt of entire sale consideration amount of Rs.2.50 lacs. The appellant has failed to prove by leading any evidence that consideration amount was not paid by the respondents to him. The appellant has failed to prove that the documents were executed without any consideration.

17. Learned counsel for the appellant submitted that GPA Ex.PW1/D in favour of respondents was duly cancelled by him through cancellation deed Ex.DW1/4 as such no support could be drawn from Ex.PW1/D. Heard and perused the record. It is clear from the record that the appellant executed GPA, agreement to sell, Will, receipt and affidavit Ex.PW1/D to H in favour of the respondents. He has received the entire sale consideration amount was paid to the appellant. The GPA was registered. The constructive possession was given. In these circumstances, an interest stands created in favour of the respondents U/s 202 of Indian Contract Act, 1872. Support is drawn from ***Asha M. Jain v. Canara Bank and others, 94 (2001) DLT 841 and Shikha Properties Pvt. Ltd. v. S.Bhagwat and others, Manu/DE/0159/1998.*** No notice was given by the appellant to the respondents before cancellation of the attorney Ex.PW1/D and all these facts to my mind, the cancellation of GPA Ex.PW1/D doesn't have any effect.

18. Learned counsel for the appellant submitted that possession was not delivered to the respondents because entire payment was not received. Learned counsel for the respondents, on the other hand, urged to the contrary. Heard

and perused the record. The documents in question reflect that possession of the suit property has been handed over to the respondents though in fact physical possession was not delivered. The constructive possession was given to the respondents by executing the documents. The appellant was allowed to remain in the suit property at his request as such argument doesn't hold water." (underlining added)

3. In my opinion, no fault whatsoever can be found in the aforesaid findings inasmuch as it has been established on record that the appellant went to the office of the Sub-Registrar where the documents were drafted by PW-4 Sh. M.P.Singh, Advocate. It has been further established that thereafter there was registration before the sub-Registrar. PW-3 Sh. Omkar proved the payment of money of Rs.2.5 lacs in his presence. The most important aspect is that the appellant/defendant led no evidence and his evidence was closed. The orders by which the evidence was closed was thereafter sought to be recalled by filing of an application for leading additional evidence and which was dismissed. Both these orders became final as the same were not challenged by the appellant.

4. It is necessary before a regular second appeal can be entertained that there must arise not only a question of law but a substantial question of law. Where there are registered documents which show transfer of interest in the property by virtue of provisions of Section 53-A of the Transfer of Property Act, 1882 read with 202 of the Contract Act, 1872, it cannot be believed that the interest in the property was not transferred. A Division Bench of this

court has upheld the nature of such transactions in its judgment reported as ***Asha M. Jain Vs. Canara Bank & Ors 1994 (2001) DLT 841.***

5. No substantial question of law arises.
6. Dismissed.

JULY 26, 2011
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VALMIKI J. MEHTA, J.