

R-189

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

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Date of Judgment: 16.03.2010

+ **RSA No.189-191/2005 & CM Appl No. 10119/2005 (for stay)**

SHRI. SUDHIR TYAGI & ORS

.....Appellants

Through: Mr. Rajendra Dutt, Advocate.

Versus

SHRI. SUBHASH TYAGI

.....Respondent

Through: None.

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 12.05.05 which had allowed the appeal and reversed the judgment and decree dated 31.08.2004. Vide judgment and decree dated 31.08.04, the suit of the plaintiff, Sh. Subhash Tyagi, seeking permanent injunction against the defendant had been dismissed. It had been dismissed on a preliminary finding that the suit is not maintainable.

2. The plaintiff, in support of his claim, had relied upon a General Power of Attorney, Deed of Agreement, Will receipt and Affidavit purported to have been executed in his favour along with the physical delivery of the possession of the suit property to

substantiate his averment that he was in legal possession of the suit property; he had apprehended interference qua the defendant; the continued threats by the defendant to interfere in the physical possession of the suit property had thereof resulted into the filing of the present suit.

3. Trial court had held that these documents as aforementioned i.e the general Power of Attorney, deed of Agreement, Will receipt and Affidavit do not confer title as a sale can be effected under Section 54 of the Transfer of Property Act (TPA) only by a registered sale deed; Section 17 of the Indian Registration Act was also violated. The plaintiff having no legal title in the suit property, the suit was not maintainable. It was accordingly dismissed.

4. In appeal, this finding was set aside. The finding in the impugned judgment reads as follows:-

“By way of the suit filed by the plaintiff/appellant, the equitable relief of injunction to protect the possession of the suit lands was sought for. The main contention of the plaintiff has been that properties have been purchased by him through agreement to sell for consideration and possession was also handed over in his favour at the time of execution of documents. It is true that sale or transfer of ownership in respect of immovable property is not complete till the registration of sale deed between the parties and in the absence of sale deed, the absolute title of the properties is not transferred in favour of the transferee. However, Section 53 –A of Transfer of Property Act is meant to protect the legal rights of the transferee where the agreement to sell has been executed and possession of the property has been taken by the transferee in part performance thereof. By the above said provision, transferor or any person claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken possession other than a right expressly provided by the terms of the contract. In other words, the transferor or the legal heirs of transferor have no right to

disturb the possession of the transferee by recourse to extra legal methods.

8. Where the parties entered into an agreement to sell for consideration and also the possession is delivered to the transferee, a legal right is created under Section 53-A of the Transfer of Property Act 1882 and this right has to be taken into consideration by the courts of law while deciding the controversy between the parties. Legal right in the immovable property is not only; created through absolute transfer of title as the legal right can also originate in other and different forms. The ld. Civil Judge kept in mind only one kind of legal right which is created by the execution of sale deed with respect to the immovable property and lost sight of other legal rights available to the parties with respect to the immovable property. Also, as per the provisions of Delhi Land Reforms Act, the suit for injunction in order to get the protection against dispossession is maintainable before the Civil Court. Although the defendants have disputed the genuineness of documents so executed in favour of the plaintiff, yet this being a question of fact can be decided only on the evidence of the parties. The plaintiff/appellant has legal right and interest in the suit lands in view of documents executed in their favour and particularly, in view of pendency of suit for specific performance of the same. The ld. Civil Judge failed to appreciate the settled legal position and therefore, erred in dismissing the suit of the plaintiff on the question of maintainability. The documents so pleaded by the plaintiff are sufficient to create legal right in favour of the plaintiff to get protection of possession and therefore, the suit of the plaintiff should have been decided on merits. The judgment passed by ld. Civil Judge is, accordingly, set aside and the case is remanded back to the Court concerned with the directions to proceed with the trial of the case according to law. The appeal is, accordingly, allowed. Parties are directed to appear before ld. Trial court on 24.05.2005. Trial court record be sent back along with a copy of this judgment and appeal file be consigned to Record Room. "

5. The documents of the plaintiff had included a power of General Power of Attorney, Deed of Agreement, Will receipt and Affidavit coupled with the factual submission made by the plaintiff

that actual delivery of the suit property had been handed-over to him had weighed in the mind of the first appellate court to hold that he was in legal possession of the suit property. The case had been remanded back to the trial court to decide the case on merits. This judgment has been impugned before this court.

6. This is a second appeal. After its admission, the following substantial question of law has arisen which reads as follows:-

“Whether the Appellate Court while setting aside the decree and judgment of the trial court and remanding back the case for trial on merits, rightly considered the provisions contained in Section 53 (A) and 54 of the Transfer of Property Act read with Section 38 of the Specific Relief Act?”

7. There is no doubt that Section 54 of the Transfer of Property Act necessarily acknowledges that a transfer of immovable property has to be by way of a registered document. The plaintiff had however not set up his title in the suit property; in a suit for injunction, question of title does not necessarily have to be gone into. Provisions of Section 53-A of the Transfer of Property Act are a defence which is available to the defendant; such a person whose physical possession is established cannot be dispossessed without due process of law. In the instant case, the general power of attorney and will coupled with the specific averment made in the plaint that on the same day, physical delivery of the suit property had been given to the plaintiff weighed in the mind of the first appellate court to hold that the plaintiff was, in fact, in legal possession of the suit property. The suit could not have been thrown out on the ground that such a suit is not maintainable. The cause of action had clearly been deciphered in the plaint. Plaintiff was in legal possession in view of the aforementioned documentary

evidence as also his specific plea that on the date of the execution of the said documents, physical possession of the suit property had been handed over to him; a suit for permanent injunction was well maintainable. There was no bar to it. Section 38 of the Specific Relief Act, 1963 also presupposes that an injunction may be granted to the plaintiff where the right of the plaintiff is being threatened. There is no infirmity in the impugned judgment.

8. The matter had rightly been remanded back to trial court to be decided on merits. Suit was maintainable.

9. Substantial question of law is answered accordingly.

10. Appeal has no merit ; appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

MARCH 16, 2011
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