

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

% *Judgment Reserved on: 23.03.2011*
Judgment Delivered on: 25.03.2011

+ **RSA No. 286/2005 & CM Appl No. 14105/2005**

SH. SHUKAR HARIJAN**Appellant**

Through: Ms. Gita Dhingra, Advocate.

Versus

SMT. SUSHILA DEVI**Respondent**

Through: Mr. J.C. Mahindroo, 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.

1. This appeal has impugned the judgment and decree dated 20.05.2005 which had reversed the finding of the trial judge dated 02.12.2004. Vide judgment and decree dated 02.12.2004, the suit filed by the plaintiff Smt. Sushila Devi seeking recovery of possession and damages qua the suit property bearing no. P-4/29, Sultanpuri, New Delhi had been dismissed. Impugned judgment had reversed this finding. Suit of the plaintiff had been decreed.

2. Contention of the plaintiff is that the defendant had sold the aforementioned suit property to the plaintiff vide power of attorney dated 30.04.1982 against a consideration of ₹2,500/-. Possession of the suit property had also been handed over to the plaintiff in

part performance of this aforementioned agreement to sell. Sale deed could not be executed because of the imposition of restrictions by the Authorities. . The premises were under the lock and key of the plaintiff. Plaintiff used to visit the property occasionally. On 25.04.87, defendant threatened the plaintiff and asked for an additional sum of ₹ 10,000/- stating that the prices have escalated. Police complaint was lodged. Defendant thereafter filed a suit for injunction against the plaintiff from dispossessing the defendant in terms of the interim order which she had obtained in the said suit. Contention of the plaintiff is that this interim order had been passed on 18.08.87; on 19.08.87, defendant had illegally broken the locks of the suit property and taken possession of the same. Since 19.08.87, defendant is in unauthorized occupation of the suit property; in spite of requests, he had not vacated it. Present suit was filed.

3. Defendant had contested the suit. He had denied that he had entered into any agreement to sell with the plaintiff. His contention was that in the year 1982 when the father of the defendant had expired, he had no money to perform the ceremonial rites to cremate his deceased father; he had borrowed ₹ 2,500/- from the husband of the plaintiff namely Sh. Pratap Singh through Sh. Jawahar Singh; defendant had agreed to re-pay the amount. Since the defendant had no alternative, he handed over all the original papers of the suit property and the keys to the plaintiff's husband who also made the defendant sign certain blank papers and assured him that the possession, keys and papers shall be returned on his returning the said amount; defendant was forced to

sign the said blank paper; he had not sold this property to the plaintiff. He denied that he had tried to interfere with the possession of the property of the plaintiff; his contention is that he was in continuous possession of the suit property; he prayed for the dismissal of the suit.

4. On the pleadings of the parties, following 9 issues were framed:-

"1. Whether the suit is liable to be stayed under Section 10 CPC? (Onus subjected to)

2. Whether the plaintiff discloses any cause of action for filing the present suit? OPP

3. Whether the defendant never executed any Power of Attorney dated 30.04.87 in favour of the plaintiff? If so, to what effect? OPD

4. Whether the amount of ₹ 2500/- was received by the defendant from the husband of the plaintiff Sh. Pratap Singh towards the mortgage of the suit property? OPD.

5. Whether the defendant had signed certain blank documents/papers as alleged? OPD.

6. Whether the father of the defendant died in the year 1982 as alleged? OPD

7. Whether the plaintiff is the owner of the suit property?

8. Whether the plaintiff is entitled for the relief of possession and damages as prayed. If so, at what rate and to what amount?

9. Relief."

5. Issue nos. 3,5 and 7 are relevant for the controversy and dispute. Oral evidence was in the form of the testimony of PW-1. On behalf of the defendant, three witnesses were examined. In view of the oral and documentary evidence led before the trial judge, the trial judge was of the view that the general power of attorney, agreement to sell and original receipt i.e. documents Ex. PW 1 /2, PW 1/3 and PW 1 / 4 were not authentic; defence of the

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defendant that he had signed on blank papers which were thereafter converted into forged documents was accepted. Suit of the plaintiff was dismissed. It was held that the plaintiff has failed to prove that he was the owner of the suit property.

6. In appeal, this finding was set aside. The finding returned are as follows:-

"The sole question which arises for consideration in the present appeal is whether the respondent had sold plot no. P-4/29, Sultanpuri, New Delhi to the appellant for sum of Rs. 2500/- or the respondent had taken sum of Rs. 2500/- for purposes of performing the ceremonial rites for cremation of his father who had expired in the year 1982.

PW-1 Partap Singh is the husband and attorney of the appellant. He has proved Ex. PW 1/2 general power of attorney, agreement as Ex. PW 1/3, original receipt as Ex. PW 1/4, possession slip as Ex. PW 1/5, receipt of payment to DDA as Ex. PW 1/6 and Ex. PW 1/7, copy of police complaint as Ex. PW 1/8, site plan as Ex. PW 1/9 and death certificate of father of the respondent as Ex. PW 1/10. DW-1 respondent/defendant in his cross examination has admitted that Ex. PW 1/2 and Ex. PW 1/3 bear his signature and thumb impression. He has also admitted that Ex. PW1/4 bears his signature and thumb impression. In his further cross-examination, he has admitted that he had executed Ex. PW 1/2 to Ex. PW 1/4 . Thus one fact which emerges clear is that the respondent has himself without doubt admitted the execution of documents from Ex. PW 1/2 to Ex. PW 1/4 . However, his plea is that the husband of the appellant had got his signature on blank papers. Even if it is assumed that his signatures were obtained on blank papers, the respondent has not at all proved on the record as to what steps and efforts he made after the husband of the appellant did not return the said blank papers to him. He could have very well filed a police complaint to the effect that the husband of ther appellant had got his signatures on blank papers and as the amount had been paid by him, he has refused to return the said papers. However, there is nothing on the record to suggest that he ever made any such complaint to the police. In his cross-examination, he has deposed that he had lodged a complaint with the police when the appellant did not return the said papers and he can produce the same. However, no such complaint has been proved on the record by the respondent.

11. *The appellant has also proved on the record certified copy of the judgment of the court of shri Shahubuddin, Civil Judge, Delhi dated 21.12.1996 as Ex. DW 1/P6. The respondent had filed a suit against the husband of the appellant for mandatory injunction and permanent injunction praying that the husband of the appellant/Partap Singh and his brother came to the premises and started abusing him and as such he had sought to restrain them from forcibly dispossessing him. Firstly, it may be mentioned that the respondent, for the reasons best known to him, has not at all mentioned in the written statement that he had filed a suit against Partap Singh and secondly, this suit filed by the respondent was dismissed. The learned Civil Judge, while deciding issue no. 1 had opined as follows,*

That if the plaintiff was asked to sign on blank papers, then in my considered opinion he should have filed a suit for cancellation of those documents rather than a suit for permanent injunction. He should have filed a criminal case of forgery against the defendant if he suspected that defendant had committed forgery against him by getting signed certain blank papers mischievously. In his cross-examination, he has in specific and unequivocal terms admitted that he did not file any appeal against the said Judgment and decree. Thus the Judgment passed on 21.12.1996 has become final and is binding on the parties.

12. *The most important and clinching documentary evidence in order to demolish the plea of the respondent which has been proved on the record by the appellant is the death certificate of the father of the respondent on the basis of which he alleges that he had taken loan of Rs. 2500/-. This death certificate has been proved by the appellant on the record as Ex. DW1/PX. A perusal of this death certificate reveals that the father of the appellant had admittedly died in the year 1969. When the father of the respondent had admittedly died about 13 years ago, the question of performing ceremonial rites for cremation of his deceased father in the year 1982 does not arise at all. As such the plea of the respondent that he had taken loan of Rs. 2500 for this purpose from the appellant does not appeal to reason and is unbelievable. Secondly, Jawahar Singh DW-2 examined by the respondent has admitted that he cannot tell the date, month or year when the father of the respondent died. He has also deposed that he cannot say if documents Ex. PW 1/2, Ex. PW 1/3 and Ex. PW 1/4 were executed by the defendant at that time. He has deposed that he does not remember if he signed the said documents or not. He has deposed that he cannot say if the respondent had sold the property to the appellant or not. He has admitted that Jawahar Singh has deposed on his behalf against Partap Singh. Thus*

not much reliance can be placed on the testimony of this witness. The respondent has not at all examined Dashrath Singh, Kanhai Singh and Uma Shankar Singh in whose presence as per him he had returned the amount of Rs. 2500/- to the appellant.

13. *The counsel for the appellant in support of his contention has also place reliance on M.Kallappa Setty vs. M.V.L. Rao, AIR 1972 Supreme Court 2299 and Daulat Singh and another vs. Tulsiram and another, AIR 1990 Madhya Pradesh 348 in support of his contention. It has been held in these authorities that a trespasser has no right to disturb peaceful possession of long time of any person on any suit property and he cannot reap benefit of his illegal act Ex.DW 1/P6 proved on the record by the appellant reveals that the respondent had admitted that the appellant was in possession of the suit premises.*
14. *The appellant has claimed damages/mesne profits at the rate of Rs. 100/-per month. This amount towards damages/mesne profits claimed by the appellant, to me appears to be quite reasonable and accordingly the same is allowed.*
15. *In the result, the appeal is allowed and the impugned Judgment/decree dated 2.12.2004 passed by the learned trial court is set aside and instead the suit of the appellant is decreed. I, therefore, pass a decree for possession of premises no. P-4/29, Sultanpuri, New Delhi in favour of the appellant and against the respondent.*

I also pass a decree for sum of Rs. 900/- on account of damages/mesne in favour of the appellant and against the respondent."

7. On behalf of the appellant, it has been argued that the impugned judgment has not in any manner re-appreciated or re-examined the documentary evidence which had been examined in an in-depth detail by the trial court; trial court, on comparison of each and every document, i.e. PW 1 / 2, PW 1/3 and PW 1 / 4, had returned a categorical fact finding that the said documents were procured; the first page of Ex. PW 1 / 2 was in original typing whereas second page was a carbon copy. Ex. PW 1/3 also suffers from the same defect; the said document was in two parts; the first part was in carbon copy, later part was in original typing. For all the aforementioned reasons, the trial court vide a reasoned judgment

had dismissed the suit of the plaintiff. The first appellate court has not appreciated these fact findings and had perversely upset the finding of the trial judge. It is pointed out that the impugned judgment had only relied upon a death certificate produced by the defendant showing that his father had died in the year 1982; on this alone, the suit of the plaintiff had been decreed. It is submitted that the plaintiff has to stand on his own legs. Learned counsel for the appellant has relied upon the judgment reported in CM(M) No. 1212/2007 Sunil Kapoor Vs. Himmat Singh & Ors. to substantiate the submission that an agreement to sell, receipt and will are not documents of title and such documents by themselves do not entitle the plaintiff to claim a decree of possession of the suit property. It is further pointed out that Ex. PW 1/A which was the power of attorney purported to have been executed by the plaintiff Smt. Sushila Devi in favour of her husband Sh. Pratap Singh has also not been proved. Attention has been drawn to the testimony of PW -1 wherein he had stated that he does not know anything about the case of the plaintiff. It is pointed out that in these circumstances, reliance upon Ex. PW 1/A was uncalled for. Suit of the plaintiff was liable to be dismissed on this ground as well.

8. Arguments have been countered. It has been pointed out that the findings in the impugned judgment had re-appreciated the oral and documentary evidence and such finding calls for no interference.

9. Record has been perused. Defendant in his written statement had stated that he had not sold this suit property to the

plaintiff vide power of attorney dated 30.04.1982; no such document had been executed; defence was that defendant being a poor man did not have any money to perform the ceremonial rites to cremate his deceased father; he had borrowed ₹ 2,500/- from the husband of the plaintiff namely Sh. Pratap Singh through Sh. Jawahar Singh; defendant had agreed to refund the money; at that time, defendant had no alternate but to hand over all the original papers of the suit property and the keys to the plaintiff's husband who also made the defendant sign certain blank papers and assured him that the possession, keys and papers of the property shall be returned on his returning the said amount. In December 1985, the defendant returned the amount of ₹ 2,500/- to the husband of the plaintiff through Sh. Jawahar Singh in presence of Sh. Dashrath Singh, Shri. Kanhai Singh and Sh. Uma Shankar Singh but the plaintiff refused to hand over the original documents of the suit property and the blank papers which he had got signed from him. Defendant had admittedly filed a suit for injunction seeking perpetual and mandatory injunction to the effect that his papers i.e. property papers which had been taken by the plaintiff be returned back to him. This suit was decided vide judgment dated 21.12.1996; suit of the defendant/appellant had been dismissed. That judgment had since attained a finality. There is no dispute about this fact. Further, the Impugned judgment has noted that the father of the defendant had died in 1969; this was evident from the death certificate Ex. DW 1/PX which evidenced this fact; the statement of the defendant in his written statement that his father had died in 1982 was factually incorrect. In fact, the whole case of the defendant was based on this submission; submission

being that since his father had died in 1982 and he did not had any money, he had borrowed a sum of ₹ 2,500/- from the husband of the plaintiff which money was subsequently returned in December 1985. At the time when he had borrowed this money, he was forced to sign certain blank papers. These blank papers were, however, not returned back to him even after he had this amount. Suit filed by the defendant seeking return of these papers had admittedly been dismissed. As noted (supra) this judgment has attained a finality. Defence of the defendant is patently false. His father had died in 1969; his case being that his father died in 1982 was an incorrect statement and his entire version hinged upon this fact falls flat. This has rightly been noted in the impugned judgment.

10. That apart, there is no dispute to the proposition that the plaintiff has to stand on his own legs and to be entitled to the decree of possession; he must show that he has ownership and title in the suit property. For the said purpose, the plaintiff had relied upon PW 1/2 to PW 1/ 4. Ex. PW 1/2 is the general power of attorney; ex PW 1/ 3 is an agreement and PW 1/ 4 is the receipt. They are all documents of a contemporaneous date i.e. 30.04.1982. Ex. PW 1 / 2 has been thumb marked by the defendant Shukar Harijan on the second page at point X; document is attested by two witnesses namely Dashrath Prasad Araba and Sh. Hazir. PW 1/3 has also been thumb marked at point X by the defendant; it has also defined Shukar Harijan as the first party and the document has been attested by the same two witnesses. Back of the pages of both the documents shows that the stamp paper had been purchased on 30.01.1982; serial no's are 3275 for Ex. PW 1/3 and

3278 for Ex. PW 1 / 2. Name of the purchasers has also been scribbled, it is however not clearly legible. PW 1 on oath had averred that these documents had been executed by the defendant wherein he had agreed to sell the suit property to him and along with these documents, defendant had also handed over the possession of the suit property. Badheshwar Dassi was the witness to the transaction and this is evident from Ex. PW 1/ 2 and PW 1/ 3. PW 1 has admitted that he did not have any transaction with Badheshwar Dassi; he was the stamp vendor; he has no concern with the suit premises; he was present at the time when the aforementioned documents were executed; he had signed the documents as a witness. Vehement contention of the appellant is that PW 1 has admitted that Badheshwar Dassi had no transaction with the plaintiff and was not concerned with the suit premises and this goes to show that this witness was a procured witness; he had in fact not signed the aforementioned documents. This argument is without any merit. This admission of PW 1 in fact shows that he is a candid and frank witness; he had admitted and explained what had exactly transpired.

11. DW 1 was the defendant himself. In his cross-examination, he had admitted that he had executed PW 1 / 2 to PW 1 /4; this is a clear and categorical admission by the defendant. It is also an admitted case that the defendant had filed a suit against the plaintiff seeking a relief for the recovery of the said documents; which suit had been dismissed on 2.12.2004; that judgment had since attained a finality. Admittedly, no appeal has been filed against the said judgment. It is also admitted that Ex. DW1/PX is

the death certificate of the father of the defendant wherein the date of death had been evidenced as 1969.

12. The edifice of the case of the defendant was based on his submission that his father has died in 1982 when he had taken the loan of ₹ 2,500/- from the plaintiff where he was forced to sign the blank papers is thus completely falsified; this has been correctly impugned by the first appellate court. This finding calls for no interference.

13. The submission made by the appellant that Ex. PW 1/1 was not a valid power of attorney executed in favour of the husband by the plaintiff is also bereft of any force. PW 1 had come into the witness box to prove this document. This document bore the signatures of PW 1 at point B and C; of his wife at point A. PW 1 had given the entire narration of facts based on personal knowledge stating that all transaction related to this property had, in fact, been carried out by him on behalf of his wife who was a housewife. This submission of the learned counsel for the appellant also has no force.

14. Appeal has been admitted and the substantial question of law has been formulated on 23.03.2011. It reads as follow:-

“Whether the finding in the impugned judgment dated 20.05.2005 reversing the finding of the trial judge dated 2.12.2004 is perverse on law and facts? If so, its effect?”

15. The aforementioned discussion has answered this substantial question of law. The finding in the impugned judgment is in no

manner perverse. It calls for no interference. Appeal is without any merit. Appeal as also the application is dismissed.

(INDERMEET KAUR)
JUDGE

MARCH 25, 2011
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