

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

% *Judgment Reserved on: 19.4.2011*
Judgment Delivered on: 21.4.2011

+ **RSA No.170/2006, CM No.7619/2005 & CM No.7620/2006**

SH.SOM DUTT Appellant
Through: Mr.Mohit Gupta & Mr.A.N.Aggarwal,
Advocates.

Versus

YOGESH KUMAR SHARMA @ YOGESHWAR SHARMA
.....Respondents
Through: Mr.Shiv Kumar Sharma, 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.

CM No.7619/2005 (for exemption)

Allowed subject to just exceptions.

CM No.7620/2006 (for delay in refiling)

There is no opposition to the application. The delay in refiling the appeal is condoned. Application is disposed of.

RSA No.170/2006

1. This appeal has impugned the judgment and decree dated 14.9.2005 which had endorsed the finding of the trial judge dated

10.8.2004 whereby the suit filed by the plaintiff Yogesh Sharma seeking possession, mandatory and permanent injunction qua the land measuring 26 sq. yards in Khasra No.93/25 situated within the revenue estate of village Palam, New Delhi (now known as Sadh Nagar) had been decreed in favour of the plaintiff.

2. Plaintiff claimed himself to be the owner of the aforementioned suit property; his contention was that out of 26 sq. yards of land 13 sq. yards of land had been purchased by him from defendant no.6 by virtue of an agreement to sell, will, affidavit and receipt dated 23.5.1986; the remaining 13 sq. yards of land had been gifted to him by defendant no.6. Plaintiff had constructed a boundary wall and a room therein. He was in physical possession of the suit property. However, the defendant no.1 tried to trespass over the suit property on the basis of certain forged documents; proceedings under Section 145 of the Code of Criminal Procedure (Cr.P.C.) had been initiated; final order was passed by the SDM on 12.5.1988. Possession of the plaintiff was maintained. On 16.5.1988 the defendant no.1 trespassed into the suit property; criminal complaint was lodged on 17.5.1988. Thereafter present suit was filed on 22.5.1988.

3. Defendants had contested the suit. Separate written statements were filed by defendants no.1 and 2, defendants no.3 to 5 and defendant no.6. Their stand was the same. Defendant no.1 claimed himself to be a bonafide purchaser of the suit property in terms of the documents which included GPA, agreement to sell, receipt dated 07.3.1988; this property had been purchased by him from Surender Kaur and Nirmal Singh. Defendant no.6 has, however, supported the claim of the plaintiff.

4. On the pleadings of the parties seven issues were framed. Two witnesses were examined on behalf of the plaintiff. Plaintiff had proved his documents of purchase which was the agreement to sell Ex.PW-1/1, receipt Ex.PW-1/2. PW-2 (Bishan Swaroop) had stated that 13 sq. yards of land had been sold by him to the plaintiff and the balance 13 sq. yards had been donated by him to the plaintiff. Defendant had proved his documents of purchase i.e. GPA as Ex.DW-1/A, agreement to sell as Ex.DW-1/B and registered receipt as Ex.DW-1/C. His affidavit had been proved as Ex.DW-2/A. On the basis of this oral and documentary evidence, the suit of the plaintiff was decreed; it was held that the suit property falls in khasra No.93/25. Village Palam; plaintiff on the basis of the oral and documentary evidence was entitled to the relief claimed for.

5. This finding was endorsed in the first appeal.

6. On behalf of the appellant, it has been urged that the finding in the impugned judgment is erroneous. The plaintiff has to stand on its own legs. He has failed to discharge his onus. For this proposition reliance has been placed upon AIR 1998 SC 2352 Punjab U.P.& D. Authority Vs. M/s Shiv Saraswati Iaron & S.R. Mills. It is pointed out that the order of the SDM dated 12.5.1988 is only a prima facie view; SDM has no authority to decide on the question of title. For this proposition reliance has been placed upon AIR 1959 SC 960 Bhinka & Ors. Vs. Charan Singh as also on 2011 [1] JCC 182 Amaravati (Since Deceased) Vs. Dharamraj & Ors. It is pointed out that it had been brought to the notice of the SDM that a revision petition was pending against his order dated 06.4.1988 yet the SDM has chosen to pass the final order dated 12.5.1988 notwithstanding this fact. Impugned judgment

decreeing the claim of the plaintiff on documents which were unregistered is clearly an illegality. Reliance has been placed upon (2008) 8 SCC 564 K.C.Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd. to support his submission that if a document is inadmissible in evidence for want of registration its terms cannot read; it is pointed out that in this case the documents of purchase relied upon by the plaintiff which are an agreement to sell, will and receipt are unregistered documents; they could not have been read in evidence. For all the aforementioned reasons the judgment suffers from a perversity and is liable to be set aside.

7. Arguments have been rebutted. It is pointed out that there are two concurrent finding of fact against the appellant and findings of the fact cannot be interfered unless there is a perversity. No perversity has been pointed out and no substantial question of law has arisen. Reliance has been placed upon 2009 IV AD (SC) 277 Narayanan Rajendran & Anr. Vs. Lekshmy Sarojini & Ors. to support this submission.

8. This is a second appeal. It has been admitted and on 03.8.2007 the following substantial question of law was formulated:

Whether the plaintiff/respondent is entitled to possession on the basis of documents produced by him before the court?

9. Plaintiff had proved on record the agreement to sell qua 13 sq. yards of the land as Ex. PW-1/1; receipt had been proved as Ex. PW-1/2. The SDM had passed his order on 12.5.1988; by virtue of this order the possession of the plaintiff had been recognized. There is no dispute to the proposition that the order of a criminal court is not binding on a civil court; yet this was only one piece of evidence which was looked into by both the courts below to draw a

finding in favour of the plaintiff that he was in possession of the suit property at the relevant time; i.e. at the time when the dispute arose. PW-2 had also corroborated this version of PW-1 wherein he had stated that the possession of the suit property had been handed over by him to the plaintiff on the said date i.e. on 23.5.1986. PW-2 had sold this 13 sq. yards of land to PW-1; he had proved his affidavit as Ex.PW-2/1; he had on oath further deposed that balance 13 sq. yards of land had been gifted by him to the plaintiff. It is relevant to state that in the entire cross-examination of PW-2 no suggestion has been given to him that he was not the owner of this 26 sq. yards of land or that he could not have either sold or gifted the same to the plaintiff. Per contra the defendants had relied upon a power of attorney, agreement to sell and receipt dated 7.3.1988 (Ex.DW-1/A to Ex.DW-1/C); his contention was that he had purchased this property from Surender Kaur and Nirmal Singh who had been examined as DW-2 and DW-1. Testimony of DW-1 and DW-2 had been appreciated; they were the persons from whom the defendant had purchased this property; they were themselves not sure about the location of the suit property. DW-2 was unable to give the khasra number in which the disputed property fell. The defendant no.1 had examined himself as DW-3. His contention was that he had purchased 28 sq. yards of land from DW-1; he admitted that in his documents of purchase there is a mention of only 13 sq. yards of land having been sold to him and balance 15 sq. yards of land was government land which had admittedly been encroached upon by him. The site plan filed by him evidenced that he was in possession of 28 sq. yards of land; admittedly balance 15 sq. yards of land was public land and for

which there is no explanation as to how and in what capacity he was occupied this land. DW-13 had also failed to show that the suit property falls in khasra no.492 in village Nasirpur as was his plea; this was a specific issue i.e. issue no.6 and the onus to discharge this issue was on the defendant but he had failed to discharge this onus. On the other hand evidence of the plaintiff had established that this suit property is located in Khasra no.93/25.

10. Both the Courts below had held that the documentary evidence does not establish that the plaintiff is the owner of the suit property. However, it was established that the possession of the suit property had been handed over to the plaintiff at the time when he had purchased it vide Ex.PW1/1, PW1/2 & PW2/1 i.e. on 23.5.1986.

11. Plaintiff has clearly averred that the plaintiff had been dispossessed from the suit property on 17.5.1988; present suit was filed on 31.5.1988.

12. This was a suit under Section 6 of the Specific Relief Act; having been filed within six months from the date of dispossession, the suit was within time. Even otherwise limitation was never an issue before the courts below.

13. Both the courts below have returned positive fact findings in favour of the plaintiff on all the aforementioned issues and they are concurrent findings. They can in no manner be said to be perverse. They do not call for any interference. The plaintiff has been able to establish by cogent oral and documentary evidence that he was in possession of the suit property at the time when he was dispossessed on 17.5.1988. He was entitled to recovery of the aforementioned suit property. Substantial question of law is answered

in favour of the plaintiff/respondent and against the appellant.
There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

APRIL 21, 2011
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