

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

% *Date of Judgment: 25.4.2011*
+ **RSA No.90/2006**

SH.GELA RAM Appellant
Through: Mr.Kali Charan, Advocate.

Versus

SH.BRAHM PAL & ORS. Respondents
Through: Ms.Sweta, 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. (Oral)

1. This appeal has impugned the judgment and decree dated 01.12.2005 which had endorsed the finding of the trial judge dated 30.8.2005 whereby the suit filed by the plaintiff Gela Ram seeking possession and damages qua the suit property i.e. a plot of land measuring 120 sq. yards bearing no.67, situated in Ambedkar Basti, had been dismissed.

2. The case set out by the plaintiff is that he is the owner of the aforementioned suit property; Sangat was the erstwhile owner; after his death his daughter Shivdevi became the owner of the suit property; she had converted the estate

into a residential house. Shivdevi and her husband Nanak had transferred the aforementioned suit property in favour of the plaintiff for a consideration of Rs.3000/-; on 27.9.1979 an agreement to sell, GPA and registered receipt had been executed in favour of the plaintiff; he was given actual physical possession of the suit property. The further case of the plaintiff is that he had thereafter on 16.3.1982 filed a suit for permanent injunction against Shivdevi and Nanak who had tried to interfere in his peaceful possession as their intentions had become dishonest. Status quo was ordered to be maintained vide order dated 29.6.1982. During the pendency of this suit, the plaintiff was dispossessed forcibly by Shivdevi and Nanak. This was in May 1985. Thereafter suit was dismissed in default. A criminal complaint was also filed by the plaintiff. Thereafter he came to file the present suit seeking possession of the suit property; this was on 07.11.1990.

3. In the written statement it was denied that the plaintiff had any lawful or legal title to the suit property; it was stated that the defendant was in possession of the suit property and the plaintiff had never been granted possession of the same; he is a land grabber and wants to grab the land of the defendants; earlier also he had filed a suit for injunction in which he remain unsuccessful and he had deliberately allowed the suit to be dismissed in default on 29.11.1985. The present suit filed after five years after the dismissal of the earlier suit is only with malafide intentions.

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

1. Whether on the basis of GPA, Receipt and Agreement to Sell, the plaintiff has become the owner of the suit property? OPP
2. Whether plaintiff has no cause of action against the defendant? OPD
3. Whether the plaintiff is entitled for a decree of possession and recovery of damage/mesne profits as prayed against the defendant? OPP

5. Oral and documentary evidence was led. The plaintiff had examined himself as PW-1 and had proved his documents i.e. agreement to sell, GPA and receipt dated 27.9.1979 as Ex.P1 to Ex.P3. On the basis of these documents he claimed possession of the suit property. Defendant had examined one witness in defence. The plaintiff had to prove his title. It was held that the agreement to sell, GPA and the receipt dated 27.9.1979 were not documents of title on the basis of which the plaintiff could claim possession. Section 54 of the Transfer of Property Act was also adverted to. Documents Ex.P1 to P3 were also found to be suspect; as besides the fact that they had not been notarized; the signature of the person who had drafted the said document i.e. agreement to sell was also not noted on the said document; plaintiff not having established his case, the suit of the plaintiff was dismissed.

6. In appeal this finding was endorsed.

7. This is a second appeal. It was admitted and on 10.3.2006 the following substantial question of law was formulated:

“Whether a person who came into possession of the property on the basis of agreement to sell, GPA etc. can file a suit for possession, if dispossessed, on the basis of title or prior possession?

8. On behalf of the appellant, it has been urged that the two courts below have returned a perverse finding. On the basis of the aforementioned documents i.e. Ex.P1 to P3 dated 27.9.1979 plaintiff had proved that he was the owner of the suit property; he was also granted physical possession of the same.

9. Arguments have been rebutted.

10. As per the averments in the plaint, plaintiff had earlier filed a suit for permanent injunction which had been dismissed in default. His contention is that during the pendency of this suit he was dispossessed forcibly; this was in May 1985; he had filed a criminal complaint. No details of the criminal complaint and proceedings initiated after his forcible dispossession from the suit property had either been given or proved. This had rightly been noted by the trial judge. Trial judge had also noted that a person who is claiming possession on the basis of the aforementioned documents i.e. the agreement to sell, GPA and receipt which are not the documents of title cannot get possession; his averment that he had been granted possession of this property contemporaneously with the execution of the aforementioned documents had not been proved by the plaintiff. The finding in the impugned judgment reads as under:

“5. The appellant/plaintiff had relied upon documents Ex.P1 to P3 i.e. Agreement to Sell dt. 27.9.1979, General Power of Attorney and

Receipt which alleged to have been executed by Smt. Shiv Devi and her husband Shri Nanak. However, the trial court taking note of Section 67 of the Indian Evidence Act held, that in the absence of producing any attesting witness of these documents, including the official from Sub Registrar even to prove the registered document Ex.P3, those documents could not be considered for any purpose. Moreover, the trial court while referring to Ex.P3 in the receipt also observed that in the said receipt there was no mention that the said amount was taken by Nank and Smt. Shiv Devi towards the sale of the suit property. It will be appropriate to take note of the observation made by the trial court in this regard:-

“Since it is the settled for of land that proof of registration of a document cannot be said to be proof of due execution of the document within the meaning of Section 67 of the Indian Evidence Act. Moreover, no record has been summoned from the concerned registrar office and further even through it is mentioned in exhibit P3 that a sum of Rs.3,000/- has been received by Shri Nank and Smt.Shiv Devi on 27.9.1979 but it has been nowhere mentionedthat the said amount was taken by Shri Nanak and Shiv Devi towards the sale of the suit property.

Here it has also mentioned that the case of the plaintiff is also hit by Section 54 of the Transfer of Property Act which specifically provides that the transfer of the immovable property can only be effected by executing a registered document. I do not finding any force in the argument of the counsel for the plaintiff that since there were administrative restriction on the sale deed, the same could not be got executed in the year 1979. In this regard it will be suffice to mention that mere assertion is not sufficient rather is was the duty of the plaintiff to prove that at the particular point of time there were restrictions on the sale deeds. Further this plea of the plaintiff has nowhere been mentioned in plaint or in the evidence of the plaintiff. Reliance is placed on G.Ram Petr. Vs. Delhi Development Authority, resp. AIR 2003 Delhi 120.

Further a bare perusal of the Ex.P1 and P2 creates doubts in the mind of this court as to their authenticity. In this regards it be seen that the aforesaid exhibits are alleged to be executed on 27.9.1979 but Ex.P2 (i.e. General Power of Attorney) has been notarized by the notary public on 28.9.1979. Further as far as Ex.P1 is concerned it be seen that the

same has not even been notarized and even the signature of the person who has drafted the same are missing from this exhibit. In the light of the aforesaid discussion, this court is of the considered opinion that on the basis of GPA, agreement to sell and Receipt, no title qua suit property transferred in the name of the plaintiff. Hence, it is held that the plaintiff has not become the owner of the suit property by virtue of aforesaid document. This issue is decided against the plaintiff and in favour of the contesting defendant. Issue disposed of accordingly.”

6. On the basis of the aforesaid observation, the suit filed by the appellant was dismissed.

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9. As regard the criminal prosecution, alleged to have been lodged against the respondents no evidence has been led by the appellant to support his plea. For the aforesaid reasons coupled with the reasons given by the trial court I do not find any merit in the appeal. The same is hereby dismissed with no orders as to cost. File of trial court be sent back along with the copy of this order. File of appeal be consigned to record room.”

11. There is no perversity in this finding. The aforementioned documents do not transfer title of immovable property in favour of the plaintiff. These documents (Ex.P1 to P3) were even otherwise held to be suspect. This judgment calls for no interference. Substantial question of law is answered in favour of the respondent and against the appellant. There is no merit in the appeal. It is dismissed.

INDERMEET KAUR, J.

APRIL 25, 2011
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