

2
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA No.307/2010

%

Date of decision: 18th July, 2011

VIMALA MUKANDAN

..... Appellant

Through : Ms. Priya Kumar, Adv.

versus

T GOPI KRISHNA PRASAD GOPI

..... Respondent

Through : Mr. Mir Akhtar Hussain, Adv.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

- | | | |
|----|---|-----------|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

JUDGMENT (ORAL)

1. The appellant filed a suit for possession, recovery of damages and mesne profits against the respondent relating to flat bearing No.1/13, Naraina Vihar, New Delhi-110028. The case set up by the appellant before the learned Trial Court was that the appellant purchased the suit property vide agreement to sell, general power of attorney, receipt and Will, all dated 20th August, 1992 from Gopal Krishna Shanbhog. The respondent is the younger brother of the appellant and the appellant permitted the respondent as well as her mother to

stay in the suit property. However, the respondent ill treated his mother whereupon the plaintiff filed a Habeas Corpus Petition bearing No.625/1999 before this Court and by order dated 14th July, 1999, mother of the parties was produced before the Court and sent to the Nari Niketan. Vide notice dated 11th April, 2000, the appellant terminated the licence of the defendant and called upon the defendant to vacate the suit property. The respondent defended the suit on various grounds inter alia that the suit property was purchased Benami in the name of the appellant from the joint family funds.

2. The following issues were framed by the learned Trial Court on 21st August, 2004:-

“1. Whether the plaintiff is guilty of breach of trust and used the family money to buy the suit property in her name and is not the absolute owner thereof? OPD.

2. Whether the defendant is a co-owner or a mere licensee in the suit property? OPD.

3. Whether the plaintiff is entitled to the possession of the suit premises together with damages and mesne profits? If so, at what rate and from when?

4. Relief.”

2. The onus of issues No.1 and 2 was on the respondent. However, the respondent did not lead any evidence to prove the said issues. With respect to issue No.3, the learned Trial

Court held that the appellant had no locus standi to file the suit. The learned Trial Court further held that though the original agreement to sell, receipt, general power of attorney and Will have been duly proved by the appellant as Ex.P-1, P-2, P-3 and P-6 but the agreement to sell and the receipt were held to be invalid as being unregistered.

3. The learned counsel for the appellant submits that the appellant is the owner of the suit property on the basis of irrevocable registered power of attorney coupled with the sale agreement and receipt. It is submitted that the aforesaid power of attorney is irrevocable under Section 202 of the Contract Act. The learned counsel for the appellant refers to and relies upon the following judgments:

3.1. In the case of **Asha M. Jain v. Canara Bank, 94 (2001) DLT 841 (DB)**, the Division Bench of this Court held as under:-

“16. We have considered this aspect taking into consideration these judgments and we are in agreement with the view that the concept of power of attorney sales have been recognised as a mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied with other documents including General Power of Attorney, Special Power of Attorney and Will and affidavits and full consideration is paid. This is what also has happened in the present case. There are two General Power of Attorneys, Special Power of Attorney and the Will apart from the agreement to sell.

One of the General Power of Attorney is registered. Further the Will is also registered. Thus there are two contemporaneous documents which are registered and they lend authenticity to the date of execution of documents. The power of attorneys' are for consideration within the meaning of Section 202 of the Contract Act, 1872. Thus there is no doubt that interest has been created in the property in favor of the appellant. Possession is also been handed over. Thus the provisions of Section 53A of the Transfer of Property Act would also come into play."

3.2. In **Sparsh Builders Pvt. Ltd. v. Maharishi Ayurveda Products Pvt. Ltd., 163 (2009) DLT 411**, this Court held as under:

"25. Turning to the facts in the present case, it is not in dispute that several of the documents through which the Plaintiff claims to have purchased the suit property from the Defendant are registered documents. Prior to the amendment to the Delhi Stamp Act, 2008, the agreement to sell, a leasehold property along with other documents like GPA, Will, letter of possession etc., were not being compulsorily registered. An amendment brought about to the Delhi Stamp Act now envisages that stamp duty on 90 per cent of the sale consideration should be paid for registration or the agreement to sell, the GPA, Will etc. In the instant case, therefore, the agreement to sell dated 30th December 2004, GPA of the same date, the receipt, Will, possession letter being registered documents, cannot be brushed aside as if they do not constitute documents of title. Likewise the lease agreement is also a registered document. The Defendant

assailing the contents of such documents while admitting the signatures thereon, will have a very heavy burden to discharge in order to prove that the said documents were in fact written up later on blank stamp papers got signed by the Defendant. Intention of parties has to be ascertained from the documents themselves”

4. The learned counsel for the appellant also refers to and relies upon the judgments of **Seth Loon Karan v. I.E. John, AIR 1969 SC 73, Harbans Singh v. Shanti Devi, 1977 RLR 487, Prem Raj v. Babu Ram, 1991 RLR 458, Ramesh Mohan v. Raj Krishan, 1984 PLR 211, H.L. Malhotra v. Nanak Jai Singhani, 1986 RLR 89, Shikha Properties (P) Ltd. v. S. Bhagwant Singh & Others, 74 (1998) DLT 113 and Kuldip Singh Suri v. Surinder Singh Kalra, 76 (1998) DLT 232.**

5. The learned counsel for the appellant further submits that there was no issue with respect to the authority of the appellant to file a suit on the basis of the aforesaid documents as well as the registration of the sale agreement. It is submitted that the appellant being the owner of the suit property was competent to institute the suit. It is further submitted that the sale agreement was not compulsorily registerable document at the relevant time.

6. In the facts and circumstances of this case, this Court is

of the opinion that the findings of the learned Trial Court are contrary to the well settled law laid down in the aforesaid judgments. The learned Trial Court gravely erred in holding that the appellant had no authority to file a suit and that the sale agreement and the receipt were invalid being unregistered. The findings of the learned Trial Court are, therefore, liable to be set aside.

7. In the facts and circumstances of this case, the appeal is allowed and the judgment of the learned Trial Court is hereby set aside. The case is remanded back to the learned Trial Court for fresh adjudication.

8. The parties are directed to appear before the learned Trial Court on 16th August, 2011 when the learned Trial Court shall fix the date for hearing the final arguments on the basis of the pleadings and evidence already on record.

9. The Trial Court record be returned back immediately through a special messenger.

JULY 18, 2011
mk

J.R. MIDHA, J