

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

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Judgment reserved on: 10.05.2011

Judgment delivered on:12.05.2011

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RSA No.185/2007 & CM No. 9698/2007

SHRI ANIL KUMAR & ANR Appellants

Through: Mr. Sumit Kumar Khatri,
Advocate.

Versus

SAVITRI DEVI Respondent

Through: Mr. R.K. 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.

1 This appeal has impugned the judgment and decree dated 27.04.2007 which had reversed the findings of the trial Judge dated 31.05.2006. Vide judgment and decree dated 31.05.2006 the suit filed by the plaintiff Savitri Devi seeking permanent and mandatory injunction to the effect that the defendant be directed to vacate the suit property (i.e. property bearing plot

No. 46-B situated at Village Karkardooma in abadi of Vishwas

Nagar, Illaqa Shahdara) as also for payment of license fee had been dismissed. The impugned judgment had reversed this finding. The suit of the plaintiff stood decreed.

2 The plaintiff was the wife of Kishan Chand. First wife of Kishan Chand, Ram Devi (the mother of the defendant) had expired, pursuant thereto the plaintiff had married Kishan Chand. This was on 06.02.1972. The plaintiff and the defendant were living together in the said house. The accommodation comprised of only 50 square yards. A further piece of 200 square yards was purchased by the plaintiff with the help of her husband Kishan Chand; documents were executed in favour of the plaintiff; construction was raised upon the property. Since the earlier property which comprised of 50 square yards was falling short for the defendants, the plaintiff permitted defendant No. 1 on a license basis to occupy a portion of this property on a license fee of Rs.1,200/- per month. License fee was thereafter enhanced to Rs.2,000/- and then to Rs.3,000/- per month. Defendant No.2 was also permitted as a licensee to occupy the said portion of the suit property; the initial license fee was enhanced to Rs.2,000/- per month. Thereafter both the defendants stopped paying the license fee to the plaintiff from September, 1998; they created nuisance and misbehaved with

the plaintiff; inspite of requests, they did not vacate the suit property. Suit was accordingly filed.

3 Defendant No. 1 contested the suit. In his written statement, it was stated that the suit in the present form is not maintainable; on merits it was sated that the marriage of the plaintiff with their father is a nullity in the eyes of law; further the property at Vishwas Nagar had been purchased by the funds contributed by their father Kishan Chand and defendants; defendant No. 1 is living as a original owner thereof; he cannot be evicted. It was denied that the plaintiff had paid consideration for the purchase or construction of the suit property. It was denied that the defendant is a licensee.

4 Stand of defendant No. 2 was also more or less the same.

5 On the pleadings of the parties, the following three issues were framed:-

1. *Whether the suit property has been properly valued for the purpose of court fee, if not, then effect thereof? OPP*
2. *Whether the plaintiff is entitled to the suit of permanent injunction as prayed for? OPP*
3. *Whether the plaintiff is entitled to suit for mandatory injunction as prayed for.*

6 Five witnesses were produced on behalf of the plaintiff and five witnesses were examined in defence. Oral and documentary evidence was led. The trial Judge was of the view

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that the agreement to sell is not a document of transfer; provisions of Section 54 of the Transfer of Property Act read with Section 17 of the Indian Registration Act were adverted to; the plaintiff not having been able to prove her title in the suit property which was based on GPA Ex. PW-1/A and receipt Ex. PW-4/A were not the sufficient to establish her ownership; suit was dismissed.

7 This finding was reversed by the first appellate court. The appellate court was of the view that the documents of title which had been relied upon by the plaintiff were not disputed; the only defence of the defendants was that they had also contributed to the funds for the purchase of this property. The court was of the view that the plaintiff is entitled to the relief claimed for by her; suit was accordingly decreed.

8 This is a second appeal. It has been admitted and on 01.08.2007, the following substantial question of law was formulated:-

1 Whether the respondent has become owner of the case property by virtue of general power of attorney, Ex. Mark A, agreement to sell Ex. PW-4/A and receipt for the sum of Rs.40,000/- without getting the same registered?

9 On behalf of the appellant, it has been urged that the impugned judgment suffers from a perversity as the power of

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attorney, Will, affidavit, receipt are themselves are not documents of title; the trial Judge had rightly noted the provisions of Section 54 of the Transfer of Property Act (hereinafter referred to as the 'TPA'); a sale could not have been effect of immoveable properties without the execution of a conveyance deed; it is further pointed out all the aforementioned four documents on which reliance has been placed in the impugned judgment, only the receipt is registered; documents were in fact fabricated.

10 Arguments have been countered. It is pointed out that the impugned judgment does not suffer from any perversity and on no count it calls for any interference.

11 Record has been perused. The trial court had dismissed the suit. The impugned judgment had reversed it; the case of the plaintiff was based on the aforementioned documents by virtue of which she claimed title in the suit property. These documents were a power of attorney, agreement to sell, Will and affidavit. Admittedly the receipt is the only registered document; other documents were un-registered. In the written statement, there was no defence to the effect that the said documents are either forged or fabricated. This argument cannot now be urged at second appeal stage. In fact in the written statement only the

date of execution of the said documents was challenged; otherwise there was an implicit admission qua the aforementioned documents.

12 The impugned judgment had returned the following finding in this context:-

"24 In addition to testimonies of various witnesses examined by both the parties, to support their pleadings, documentary evidence has only been led by appellant. As already discussed, Ex. PW1/A , Ex. Mark A & Ex. PW4/A are the documents which the appellant claims to be the title documents of the suit property in her favour. The Ld. Counsel for the respondent has contended that in the absence of Sale Deed, the Power of Attorney, the Agreement for Sale and the receipt does not confer ownership on the appellant for the suit property. The Ld. Counsel submitted that the Ld. Trial Court rightly held that these documents confer no right title or interest in respect of the suit property on the appellant.

25. Section 53-A and section 54 of Transfer of Property Act deals with sale of immovable property. Section 202 of the Contract Act deals with the appointment of an attorney. The joint effect of section 53-A of Transfer of Property Act and section 202 of the Contract Act has been discussed by our High Court in Civil Revision No. 470 of 2003, the case titled J.C. Mehra Vs. Kusum Gupta, wherein Hon'ble justice Sh.C.K. Mahajan has held :-

There are two separate concept of ownership in England namely legal owner and equitable owner. Legal owner is a person with whom the title vests in an immovable property by virtue of titled deeds. Equitable owner is an owner in equity on account of various reasons including of having paid money but not having a specific registered titled deed in his name. In India there is only one concept and is that of legal owner.

There was no concept of equitable owner apart from a legal owner. The sale of immovable property is dealt with under Section 54 of the Transfer of property Act. Section 53A of Transfer of Property Act was introduced in 1929 by way of an amending Act. Once necessary ingredients of Section 53-A are complied with and possession of the property is delivered to the proposed transferee then neither the actual owner nor his successor in interest had any right to enforce against the proposed transferee any right in respect of the immovable property except those specified by the agreement to sell itself. Added to the protection given to an incomplete owner under section 53-A, who is not having a registered sale deed but only has an agreement to sell with possession, protection was given by virtue of provision of Section 202 of the Contract Act and in terms whereof a person, who executed power of attorney for consideration, the same could not be revoked. Thus, on a conjoint reading of Section 53A of Transfer of property Act and Section 202 of the Contract Act, the effect is that transferor of a property, who has executed an agreement to sell and a power of attorney, though continued to be the legal owner of the property as per title deed yet all his powers were taken away and such powers vested were vested in the person whose favour the agreement to sell and power of attorney was executed.

The issue is as to whether a person who purchases a property by means of an agreement to sell for consideration along with possession (or the right to recover rents) and power of attorney can seek to evict the person after five years of his having got the agreement to sell and power of attorney in his favour. The issue no longer is res-integra.

26. Against this order of the High Court in J.C. Mehra (Supra) case a petition for special leave to appeal (Civil) No. 14088/2003 was preferred before the Supreme Court of India. This special leave petition was dismissed on 18.8.03.

27. The concept of power of attorney sales was discussed at length in 2002 II AD Delhi 734 , the case titled Asha M. Jain Vs. The Canara Bank & others. The D.B of our High Court held as under :-

. 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 with the meaning of Section 202 of the Contract Act, 1872. Thus there is no doubt that interest has been created in the property in favour 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 -----.

28. In view of the findings of our High Court in Asha Jain (Supra), the documents Ex. PW1/A, Ex. Mark A & Ex. PW4/A confer title of the suit property to the appellant. Whereas respondent has failed to prove that either the suit property was joint family property or they are having better title on the suit property than appellant. Thereby, appellant being the owner of the suit property has right to seek directions against the respondents to hand over peaceful possession

of the portion of the suit property in their possession to her. Regarding the relief of recovery of arrears of licence fee from the respondents, except the statement of appellant as PW1, no documentary evidence has come on record to establish that both respondents were residing in the suit property as licensee by paying licence fee of Rs. 3,000/- & Rs. 2,000/- respectively. Similarly, appellant being held to be owner of the suit property is also entitled to relief of permanent injunction against the respondents restraining them, their wives, agents from alienating or selling or parting with possession of the suit property in their possession.

29. Accordingly, Issue No. 2 is decided in favour of the appellant and against the respondents. Issue No. 3 qua possession of the premises in occupation of R-2 & R-3, out of the suit premises, is decided in favour of the appellant and against the respondents. Whereas the relief qua recovery of arrears of licence fee is decided against the appellant.”

13 This finding calls for no interference. The oral and documentary evidence was examined by the court below, legal position had also been adverted to. It was correctly appreciated. It does not call for any interference.

14 The judgments relied upon by learned counsel for the appellant reported in 2005 (80) DRJ 532 (DB) Ashok Kumar Vs. Union of India & Others and 2006 (88) DRJ 214 (DB) M.L. Aggarwal Vs. Oriental Bank of Commerce & Ors. were in a different context. In the first case, the writ petition challenging the acquisition proceedings had been dismissed; there was no

registered sale deed in favour of the petitioner as required under Section 54 of the TPA to substantiate his claim. In the judgment of M.L. Aggarwal (Supra) the Court had noted that the subsequent purchaser of a property (which has been mortgaged with the bank), in the absence of a registered sale deed would not derive any title.

15 Substantial question of law is accordingly answered in favour of the respondent and against the appellant. There is no merit in this appeal. Appeal as also pending application is dismissed.

INDERMEET KAUR, J.

MAY 12, 2011

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