

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

+ **RFA 404/2011**

% **3rd November, 2011**

RAJKUMAR Appellant

Through : Mr. P.K. Burman, Advocate.

versus

OM PRAKASH THAKUR Respondent

Through : Mr. Rajeshwar Kumar Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 CPC is to the impugned judgment of the Trial Court dated 6th May, 2011 which has decreed the suit of the respondent/plaintiff for possession and recovery of mesne profits against the defendant/appellant.

2. The facts of the case are that the appellant/defendant transferred the rights of the suit property being Janta Flat No. 71, Pocket B-6, Sector-17, 1st Floor, Rohini, Delhi for an amount of Rs.40,000/- and executed and transferred documents being the Agreement to Sell, General Power of

Attorney, Will, receipt, etc., on 19th December, 2006. The entire chain of the original title documents were also delivered by the appellant/defendant to the respondent/plaintiff on the execution of registered documents dated 19th December, 2006. The appellant/defendant on his request was allowed to stay in the flat for four months by the respondent/plaintiff. Since after the expiry of four months the appellant/defendant failed to vacate the flat, the said suit came to be filed.

3. The appellant/defendant in the written statement took up a case that the total price was not Rs.40,000/- but it was Rs.10,00,000/- and, therefore, the respondent/plaintiff is not entitled to possession as the balance amount of Rs.9,60,000/- has not been paid.

4. After the pleadings were complete, the Trial Court framed following issues:-

“1. Whether the plaintiff is entitled to a decree of possession in respect of flat No.71, Pocket B-6, Sector-17, First Floor, Rohini, Delhi, shown as red in the site plan annexed with the plaint? OPP

2. Whether the plaintiff is entitled to a decree of Rs.1,28,000/- being mesne profits for the unauthorised user of the said flat till the date of filing of the suit? OPP

3. Whether the plaintiff is entitled to future mesne profits for the user of the said flat? If so, at what rate? OPP

4. Whether the plaintiff was to pay an outstanding sale consideration of Rs.9,60,000/-, as alleged by the defendant? OPD

5. Relief.”

5. On behalf of the respondent/plaintiff various witnesses were examined. The documents with respect to the suit property were exhibited as Ex. PW1/1 and Ex.PW1/2. In fact the brother of the appellant/defendant also sold a similar flat to the respondent/plaintiff on the same day by registered documents for a sum of Rs.40,000/- and which documents were also exhibited as Ex.PW1/3.

6. The defendant examined himself and proved his affidavit as Ex. DW1/A. It was not disputed by the appellant/defendant that the title documents Ex.PW1/1, collectively, relate to the said property. The appellant/defendant also did not dispute that he had signed the documents executed in favour of the respondent/plaintiff which were collectively exhibited as Ex.PW1/2. The appellant/defendant also admitted that he was not a tenant of the plaintiff/respondent.

7. The main issue with regard to the title of the property was issue number '1' and with respect to which the Trial Court has held as under:-

“9. The plaintiff through his pleadings and evidence on record, has amply proved that on 19.12.2006 he had purchased the impugned property from the defendant for a consideration of Rs.40,000/- and that the defendant had executed the documents Ex.PW1/2 viz agreement to sell dated 19.12.2006, GPA dated 19.12.2006, receipt dated

19.12.2006 and possession letter dated 19.12.2006. It is pertinent to mention that the agreement to sell dated 19.12.2006 and the GPA dated 19.12.2006, concerning the impugned property, are both registered before the office of Sub Registrar VIC, Rohini, Delhi. The receipt and the possession letter, both dated 19.12.2004 are notarised.

10. Further, the plaintiff is also in possession of the original title documents dated 03.12.1999, executed by the original allottee Shri Satvinder Kumar Jain in favour of the defendant. The said documents are collectively Ex.PW1/1 (running into 7 pages). If the defendant had not sold the property then why the defendant handed over all the original title documents, in his favour to the plaintiff and why the defendant further executed title documents Ex.PW1/2, collectively, him in favour of the plaintiff. It is also pertinent to mention that Shri Rajender Parshad, a brother of the defendant, also executed the title documents, pertaining to sale of his Janta Flat, similarly situated on first floor in Sector 17 Rohini, Delhi also for a consideration of Rs.40,000/-. The said documents were also registered in the office of Sub Registrar, collectively, as Ex.PW1/3.

It is the case of the plaintiff that he has paid the entire consideration of Rs.40,000/- for purchase of the impugned flat. Nevertheless the defendant submits that still an amount of Rs.9,60,000/- is outstanding against the plaintiff. Admittedly, no legal notice has been sent for recovery of said amount by the defendant to the plaintiff.

Rather the defendant admits that he had signed the registered documents, relating to sale of the impugned flat, in favour of the plaintiff on receipt of Rs.40,000/-. He admits that he had sold the suit property after suffering loss in the business. Thus, it is clear from the evidence of the parties that the plaintiff has purchased the impugned flat from the defendant for a consideration of Rs.40,000/-. It also stands proved that the defendant executed the title documents in respect of impugned flat on 19.12.2006 in the office of Sub Registrar VIC, Rohini, Delhi. It is also an admitted fact that the defendant is residing in the premises and as per his own admission, the defendant is not the tenant of the plaintiff. Hence, the plaintiff being an owner of the impugned flat, having purchased it from the defendant is entitled to a decree of possession of flat No.7, B-6, Sector-17, 1st Floor, Rohini, Delhi, more specifically shown as red in the site plan Ex.PW1/5. Issue No.1 is accordingly decided in favour of the plaintiff and against the defendant.”

8. I completely agree with the aforesaid findings of the Trial Court inasmuch as not only the documents executed in favour of the plaintiff/respondent are registered documents, but are of the same date when the appellant’s brother also executed documents with respect to a similar flat for an amount of Rs.40,000/-. In fact, the Trial Court has rightly held that if the appellant/defendant has sold the flat at a total price of

Rs.10,00,000/- then a legal notice would have been sent to the respondent/plaintiff for payment of the balance price, but admittedly no such notice was sent showing that there was no balance dues of Rs.9,60,000/-. The respondent/plaintiff also has possession of the complete chain of title deeds and which would not have been the position if the complete rights were not transferred in favour of the respondent/plaintiff.

9. A civil case is decided on the balance of probabilities. The balance of probabilities in the present case shows that the appellant/defendant is trying to be clever half by seeking to deny the rights of respondent/plaintiff after executing necessary documents in favour of the respondent/plaintiff and yet he illegally wants to stay in possession of the suit property.

10. The present appeal is, therefore, without any merits and is, accordingly, dismissed leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

NOVEMBER 03, 2011

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