

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

+ **FAO 268/2008**

% *Reserved on : 24.01.2011*
Pronounced on: 31.01.2011

DILIP KUMAR Appellant
Through: Mr.S.K.Makkar and Mr.Ujjwal Jha,
Advocates

VERSUS

AMRIT RAI AGGARWAL & ORS. Respondents
Through: Mr.Raghuvender Sharma, Advocate
for R 1 to R 4.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J**

1. Appellant is aggrieved of the order dated 21.02.2008 passed by learned Additional District Judge, Delhi in Suit No. 525/2004, whereby the learned Judge has disposed of the injunction applications filed by the appellant and respondents No. 1 to 4 under Order XXXIX Rules 1 and 2 CPC. The learned Judge has allowed the application filed by these respondents under Order XXXIX Rules 1 and 2 thereby restraining the appellant from selling, transferring, alienating or creating any third party interest in the suit property bearing house No. 426-431 situated at Friends Industrial Area, Gali No.8, GT Road, Shahdara, Delhi shown in red colour in the site plan but dismissed the application filed by the appellant under Order XXXIX Rules 1 and 2 CPC with respect to similar relief qua the portion shown in green colour in the site plan. In this regard, the learned Additional District Judge has observed that the said

application was filed by the appellant basically to obtain stay of the execution proceedings with respect to the eviction order passed in favour of the respondents with respect to the green portion even though the objections filed by respondent No.6, Shashi Bala through whom the appellant is claiming title, to the aforesaid decree were dismissed by executing court and the said order was upheld by this Court. It is this portion of the order which seems to be the bone of contention insofar as the appellant is concerned.

2. Briefly stating, the facts giving rise to filing of this case are that the respondents filed a Suit bearing No.525/2004 against the appellant for possession, mesne profits and cancellation of documents i.e. general power of attorney, special power of attorney as also the sale deed executed in favour of appellant and respondent Nos. 5 and 7 in respect of portion of premises bearing No. house No. 426-431 situated at Friends Industrial Area, Gali No.8, GT Road, Shahdara, Delhi shown in red and green colour (hereinafter referred to as “the suit property”) as null and void and not binding on the respondent. They also prayed for decree of possession in respect of the premises shown in red colour in the site plan. They also sought decree for permanent injunction against the appellant for selling, transferring or creating any third party interest in the suit property and for directions against the appellant to demolish or remove the unauthorized construction in the suit property. They also claim the decree of ₹9,25,000/- towards the future damages with effect from 1st October till the eviction of the suit premises.

3. It would be necessary to take note of chain of succession which is being relied upon by the respondents claiming ownership of the suit property. In this regard, it may be observed that erstwhile owner Sh.Daulat Ram sold a piece of land measuring 1636 sq. yards to Sh.Ishwar Dass through a registered sale deed dated 31.5.1949 who raised construction and super structure of the factory and installed machineries therein. Vide registered sale deed dated 10.4.1953 Sh.Ishwar Dass sold the said property to M/s Laxmi Narain Ram Jeevan of Calcutta. Vide registered sale deed dated 27.3.1962 M/s Laxmi Narain Ram Jeevan sold the said property along with goodwill of the oil mill to Sh.Laxmi Narain Aggarwal, Sh.Brij Mohan Lal Mittal, Sh.Ghansham Dass, Sh.Tara Chand, Sh.Jugal Kishore, Sh.Tej Ram

Aggarwal and Sh.Amar Nath. Sh.Laxmi Narain Aggarwal, Sh. Tej Ram Aggarwal and Sh. Amar Nath vide registered sale deed dated 8.8.1963 sold one half undivided share of the said property in favour of Smt.Lilawati (since deceased) and Smt.Kusum Lata. Vide registered sale deed dated 8.8.1963 Sh.Brij Mohan Mittal, Sh.Ghanshyam Dass, Sh.Tara Chand and Sh.Jugal Kishore sold the other half undivided share of the said property to Sh.Suresh Chandra, Sh.Amrit Rai (Respondent No.1), Sh.Shashi Kumar and Sh.Ravi Kumar. Sh.Suresh Chandra sold his 1/8th share to Smt. Krishna (respondent No.4) vide registered sale deed dated 25.6.1970. Smt.Leelawati vide registered sale deed dated 13.2.1985 sold her 1/4th undivided share to Sh.Atul Aggarwal (respondent No.2). Smt.Kusum Lata sold her 1/4th undivided share to Sh.Sameer (respondent No.3) vide registered sale deed dated 13.2.1995. Sh.Ravi Kumar Gupta sold his 1/8th undivided share to Smt.Krishna (respondent No.4) vide registered sale deed dated 31.8.98. Sh.Shashi Kumar Gupta sold his 1/8th undivided share to Sh.Amrit Rai (respondent No.1) vide sale deed dated 31.8.98. It was alleged that the respondent Nos. 1 to 4 had become co-owner in the ratio of 1/4th undivided share of the suit property in view of above referred sale transactions through registered sale deeds.

4. According to respondent Nos. 1 to 4, they had also filed a suit for rendition of account, declaration and injunction in the Hon'ble High Court of Delhi being Case No.1551/1998 against the tenants including one Sh.Sher Singh and all the partners of Delhi Oil & General Mills. Sh.Sher Singh and others admitted themselves to be the tenants of the respondent Nos. 1 to 4. Later on respondent Nos. 1 to 4 also filed an eviction petition under section 14(1)(a) of the Delhi Rent Control Act against one of the tenants Sh. Sher Singh on the ground of no payment of rent. The said portion has been shown in green colour in the site plan. The Learned Addl. Rent Controller passed an eviction order on 6.4.1995 against Sh.Sher Singh. Respondent No.6, Smt.Shashi Bala filed objections and claimed herself to be the owner of the suit property. She relied on the agreement to sell dated 5.2.1997 in respect of land of 150 sq. yards, receipt, G.P.A, will, Jamabandi of the year 1967-68, khasra Girdawari of the year 1962 to 1966 to assert her title. Objections were dismissed by the ld. Rent controller, Delhi vide order

dated 10.4.2001. Appeal was filed against the said order before the Rent Control Tribunal. During the pendency of the appeal, respondent No. 6 in collusion with her husband Sh. Satish Kumar, respondent No.7 and the alleged seller respondent No.5 forged and fabricated certain documents alleging therein that respondent No.5, Sh. Amar Singh had purchased the land measuring 150 sq. yards from Sh. Daulat Ram on 22.6.1979 through agreement to sell, GPA etc. Sh. Daulat Ram had migrated to Pakistan in the first week of 1960 and became a Pakistani national and in his absence insolvency proceedings were started in the court of Id. District Judge, Delhi. Thus the documents of transfer allegedly executed by Sh.Daulat Ram on 22.6.1979 in favour of Sh.Amar Singh were forged, fabricated and manipulated documents. It was alleged that respondent Nos. 6 & 7 were land grabbers and have fabricated and forged the documents in collusion with stamp vendor, Notary Public, clerk of the tehsil and officials of the Sub Registrar's office. During pendency of the appeal before the learned Rent Control Tribunal respondent No.6 realised that the land is not actually 150 sq. yards as mentioned in the alleged agreement. She again manufactured and fabricated other sets of documents trying to rectify the mistake committed by her and executed special power of attorney dated 24.12.2001 in favour of her husband who in turn alleged to have sold the said property for consideration of one lakh to Smt.Shashi Bala, respondent No.6 vide sale deed dated 26.12.2001. She alleged that she purchased the said property on 26.12.2001 from her husband respondent No.7 i.e. land measuring 97.45 sq.yards. Respondent No.6 alleged to have sold the property having land area measuring 97.45 sq. yards on the ground floor and the construction built on the first floor on 139 sq. yards to Sh. Dalip Kumar Kumbhat, appellant herein. Appellant alleged to have further sold/rented out the said property to respondent Nos. 8 & 9 who carried out unauthorized construction in the premises and were running a factory in the portion as shown in red colour in the site plan. In view thereof, it was prayed that the documents regarding transfer of title in respect of the suit property in favour of respondent Nos. 5 to 9 and appellant be declared as null and void. Various other reliefs as already stated herein above have also been prayed for in the above facts.

5. Based upon the chain of documents, including the registered sale deed, the Trial Court reached to a conclusion that the respondent Nos. 1 to 4 had been successful in showing that they had a prima facie case in their favour and in case, the appellant was successful in selling, transferring or alienating the property of which they are also claiming ownership, the respondent Nos. 1 to 4 would suffer irreparable loss and injury and, therefore, allowed the application filed by them under Order XXXIX Rules 1 and 2.

6. Insofar as the green portion in which the appellant seems to be more interested, it is that portion according to respondent Nos. 1 to 4 of which they already had eviction order against one Sher Singh and objections of Shashi Bala through whom the appellant is claiming his title in this regard have already been dismissed by this court. The appellant wants an order of status quo even with respect to the said portion of the property to avoid execution proceedings which are pending qua the said portion of the property on the basis of eviction order passed against Sher Singh. Admittedly, Sh. Sher Singh was a tenant in the said portion and accepted respondents No.1 to 4 as his landlords. Thereafter, when an eviction order was passed against him in favour of Respondents No.1 to 4, objections filed by Shashi Bala were dismissed upto this Court. The Id. ADJ has dismissed the application filed by the respondent No.6 (defendant No.2) with respect to the said portion by observing that challenge of respondent No. 6 resisting eviction order has remained unsuccessful upto this Court. Respondent Nos. 1 to 4 have obtained the decree of eviction in accordance with law. Since objections of respondent No.6 have been dismissed there is no reason to stay the execution proceedings and thus, the application filed by respondent No. 6 and 7 and appellant, being defendant Nos.2 to 4, has been dismissed under Order XXXIX Rule 1 and 2 CPC.

7. It may also be observed that the appellant claims to have purchased the said portion of the property from Smt. Shashi Bala, who claims to have purchased the said property from her husband, who further claims to have purchased the said property from Sh. Amar Singh and then Amar Singh having purchased the said property from Sh. Daulat Ram even though Daulat Ram had migrated to Pakistan in the first week of 1960 and became a Pakistani national and in his

absence insolvency proceedings were started in the court of Ld. District Judge, Delhi. Once the objections of Smt. Shashi Bala have been dismissed, the question of reviving those objections by seeking an order under Order 39 Rule 1 and 2 CPC in this case is only an attempt to come out of the order of the Executing Court which is res judicata insofar as the claim of Smt. Shashi Bala and for that reason also that of the appellant is barred by the principle of res judicata.

8. Learned counsel for the appellant had submitted that in this case, the respondents want to evict the appellant who is the owner of the property in his own right. Even under Order 21 CPC while executing an eviction order against a tenant, the respondents cannot evict the appellant inasmuch as he is in possession of the property in his own independent right. He has relied upon a judgment of the Supreme Court in the case of H. Seshadri Vs. K.R. Natrajan & Anr. 2003(1) RCR 604.

9. However, this judgment, insofar as this case is concerned, does not help the appellant for the reason, the eviction order which is being sought to be executed by the respondents, firstly, is not the subject matter of this case, secondly, the persons through whom the appellant is claiming his right have already lost their case having filed objections against eviction order upto this Court. The order of this Court was not further challenged by him.

10. Therefore, anything which would be the outcome of the said suit would be binding upon the parties. However, in the meanwhile if a tenant was in possession of that portion of the property inducted by his predecessor who has admitted respondents No.1 to 4 as his land lords having lost the said eviction petition, the eviction order cannot be resisted by the appellant by just claiming to have purchased the property from Smt.Shashi Bala, who as stated above, has already lost her objections upto this Court. Once the objections of Smt.Shashi Bala to the eviction order claiming herself to be the owner of the property only on the basis of documents alleged to have been executed by Sh.Daulat Ram in favour of someone, who further executed a chain of documents, the appellant is debarred from raising similar pleas which were raised in the objections by making the application under Order XXXIX Rules 1 and 2, subject matter of this order because such an

attempts on the part of the appellant would also be barred by principles of res judicata as enshrined under Section 11 CPC inasmuch as, after amendment of the said Section, order passed by even a court having limited jurisdiction would create a bar in taking similar pleas having once taken in an earlier proceedings between the same parties by someone claiming through the party who were parties to those proceedings. Section 11 CPC for the sake of reference is reproduced hereunder:-

“11. Res judicata.

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

[Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

11. In any event, there is a serious dispute as to the title of Smt.Shashi Bala through whom the appellant is claiming title. The claim of the appellant having purchased the property in question through Smt. Shashi Bala even otherwise seems to be fraudulent in the light of Section 52, 53 of Transfer of Property Act and even otherwise the sale deed not being registered is violative of Sections 17 and 49 of the Registration Act.

12. The appellant has submitted that after their revision petition was dismissed by this Court, they also filed a review petition being RP No.135/2005, wherein certain objections have been made and it is stated that those objections will be taken into consideration while disposing of this appeal. The observations made by this Court in the review petition are as follows:-

“It is pointed out by learned counsel for the petitioner that after passing of the order dated 15th April, 2005, petitioner has come to know that respondent had filed a suit against the present petitioner seeking a declaration that they are owners and also for cancellation of documents namely GPA, agreement to sell and power of attorney dated 5.2.1997 on the basis of which the petitioner is claiming right, title or interest in respect of the suit premises. Naturally the question of title will have to be decided in the said suit. In the order dated 15th April, 2005, I had observed that both the Courts below have concurrently held that these documents appear to have been got prepared after passing of the eviction order only to frustrate it. Learned counsel appearing for the petitioner submits that this observation gives the impression that while deciding the petition being CM(M) 619/2005 this Court had decided the question of title. It is clarified that observations made in impugned order were based on the orders of the two Courts below. This review petition is disposed of with the observation that the question of title is yet to be decided by the Civil Court.”

13. The aforesaid review petition was filed by Smt. Shashi Bala and not by the appellant. However, the appellant submits that he has purchased the property from Shashi Bala and, therefore, he is entitled to take benefit of that.

14. It may be observed here that the relief sought for by the respondent in the suit is a substantive relief for claiming ownership of the whole property, subject matter of the suit. However, insofar as the portion of the property which was under the tenancy of Sh.Sher Singh is concerned, once the objections to the said eviction order stands dismissed as filed by Smt.Shashi Bala from whom the appellant is claiming to have purchased the said property, the eviction order cannot be resisted by filing an application under Order XXXIX Rules 1 and 2 CPC in the aforesaid suit, and, therefore, the Additional District Judge rightly held that the appellants were not entitled to the order of status quo thereby restraining respondent Nos. 1 to 4 from executing the said eviction order.

15. Hence, I find no merits in the appeal filed by the appellant. I would simply add that taking possession under an eviction order does not ipso facto make the landlord owner of the property unless and until he is otherwise owner of the property but certainly enables him to take possession of the property as landlord from the tenant.

16. The appeal is accordingly dismissed with no order as to costs.

17. LCR be sent back.

MOOL CHAND GARG, J

JANUARY 31, 2011

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