

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: August 4, 2011
Judgment Pronounced on: August 8, 2011

+ CS(OS) 2483/2008

KAMLA RANI AND ANR. Plaintiffs

Through: Mr. Suresh Singh, Adv.

versus

JOGINDER SINGH AND ORS. Defendants

Through: Mr. Vikas Sharma, proxy
counsel.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 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 Digest? | No. |

V.K. JAIN, J

1. This is a suit for declaration. The case of the plaintiffs is that they purchased second floor of property No.108 comprised in Khasra No.250 of Mehrauli from defendant No.1 on 21.05.2004 and the sale deed was duly executed by defendant No.1 in their favour. The sale deed by defendant No.1 was executed as attorney of the previous

owner Smt. Deep Mala. This is also the case of the plaintiffs that possession of the aforesaid property had already been delivered to them on 29.03.2004. It later transpired that in a sham transaction, defendant No.1 had conveyed title of the aforesaid property to defendant No.2 in a clandestine manner. Defendant No.2 then took a loan from defendant No.3 – Allahabad Bank on the strength of the title deed executed by defendant No.1 in his favour. The plaintiffs have accordingly sought a declaration that the right, title and interest in the second floor of property No.108 comprised in Khasra No.250 of Mehrauli vest with them and the sale deed executed by defendant No.1 in their favour is legal and valid in law. They have sought a further declaration that the sale deed executed by defendant No.1 in favour of defendant No.2 is *void ab initio*. They have also sought a declaration that the mortgage of the suit property by defendant No.2 in favour of defendant No.3 is vitiated in law.

2. Defendant No.1 filed written statement contesting this suit. It is alleged in the written statement that the dispute is between defendants No.2 & 3 and defendant No.1 has nothing to do with that dispute.

3. The name of defendant No.3 was deleted from the array of the defendants vide order dated 30.08.2010 since it had received the amount due to it from defendant No.2. Defendant No.2 was proceeded ex-parte on 24.08.2009 whereas defendant No.1 was proceeded ex-parte on 24.05.2011.

4. The plaintiffs have filed the affidavit of attorney – Shri Vinay Kumar Gupta by way of ex-parte evidence. In his affidavit by way of ex-parte evidence, Mr. Vinay Kumar Gupta had stated that the plaintiffs had purchased the second floor of property No. 108 comprised in Khasra No.250 of Mehrauli from defendant No.1 on 21.05.2004 vide sale deed executed PW-1/2. He has further stated that the plaintiffs were put in possession on 29.03.2004 and at that time the possession letter Ex.PW-1/3 and General Power of Attorney Ex.PW-1/4 were executed in their favour. According to him, part sale consideration was paid by the plaintiffs on 29.03.2004 and documents were handed over to them on the same date in the presence of defendant No.2. The possession letter and General Power of Attorney Ex.PW-1/3 & Ex.PW-1/4 respectively have also been signed by defendant No.2 as an attesting witness. He has further

stated that on coming to know that some officials from defendant No.3 Bank had visited the suit property, the plaintiff made enquiry in the matter and came to know that defendant No.2 had obtained a loan from defendant No.3 after mortgaging the suit property. On enquiry from the office of Sub-Registrar, they came to know that a sale deed had been executed by defendant No.1 in favour of defendant No.2 on 07.01.2004 and that sale deed is Ex.PW-1/6. He has further stated that during pendency of this suit, defendant No.2 has paid the loan amount to defendant No.3 and the documents of title have been returned to him by the Bank.

5. It is an admitted case that this sale deed by defendant No. 1 in favour of defendant No. 2 was executed on 07th January, 2004, more than two months before he executed documents, such as Power of Attorney and possession letter in favour of the plaintiff. Thus, this is not a case where defendant No. 1 first agreed to sell/sold the suit property to the plaintiffs and later sold it to defendant No. 2. Since defendant No. 2 had already become owner of the suit property on execution of the sale deed in his favour on 07th January, 2004, defendant No. 1, who, thereafter, was left

with no right, title or interest in the aforesaid property, had no legal right to enter into an agreement to sell the aforesaid property, deliver its possession to the plaintiffs and execute the sale deed in their favour.

6. Though the case of the plaintiffs is that the transaction between defendants No. 1 and 2 was a sham transaction, there is absolutely no evidence which would substantiate the case of the plaintiffs in this regard. A perusal of the sale deed executed in favour of defendant No. 2 would show that the property was sold by defendant No. 1 to defendant No. 2 for a sale consideration of Rs 10,50,000/- out of which Rs 1,50,000/- was paid in cash on 07th January, 2004 and the balance amount of Rs 9 lac was paid by banker's cheque No. 626766/3624 dated 07th January, 2004, drawn on Allahabad Bank, Lajpat Nagar, New Delhi. There is no evidence to prove that no such payment was actually made by defendant No. 2 to defendant No. 1. In fact, the sale deed executed by defendant No. 1 in favour of the plaintiffs is for a consideration of Rs 5 lac, which is less than half of the sale consideration, purporting to have been received by him from defendant No. 2. Thus, there is no evidence produced by the plaintiffs, which would

persuade the Court to hold that the transaction between defendants No. 1 and 2 with respect to sale of the suit property, was not a genuine sale transaction.

7. In any case, the plaintiffs have not sought any cancellation of the sale deed executed by defendant No. 1 in favour of defendant No. 2. The declaration sought by the plaintiffs cannot be granted to them unless they seek relief of cancellation of the sale deed executed by defendant No. 1 in favour of defendant No. 2. Section 34 of Specific Relief Act, to the extent it is relevant, provides that a declaration with respect to any legal character was or to any right as to any property shall not made by the Court, where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The words “further relief” means a relief flowing directly necessarily from the declaration sought. This is a relief appropriate to and necessarily consequent on the right or title asserted by the plaintiffs, would complete the claim of the plaintiff and avoid multiplicity of suits. Of course, the relief must be in relation to the legal character or right to any property, which the plaintiff is entitled to and which the defendant denies or is interested to deny.

In the case before this Court, the Sale Deed in favour of defendant No.2 is prior in point of time. The plaintiffs do not claim to have purchased this property from defendant No.2. Hence, they cannot be declared owners of the suit property on the basis of the subsequent Sale Deed executed by defendant No.1 in their favour unless and until the Sale Deed executed by defendant No.1 in favour of defendant No.2 is cancelled. The plaintiffs cannot be declared owners of the suit property, when a prior Sale Deed stands in favour of defendant No.2. The Sale Deed executed in favour of defendant No.2 is an obstacle in the way of plaintiffs which they must necessarily remove before they can be declared owners of the suit property. The suit, therefore, is clearly hit by the proviso to Section 34 of Specific Relief Act. Since I am of the view the even on merits the plaintiffs have failed to prove that the transaction between defendants No.1 and 2 was a sham or bogus transaction, I need not give an opportunity to the plaintiffs to amend the plaint so as to claim the relief of cancellation of the Sale Deed executed by defendant No.1 in favour of defendant No.2.

8. The case of the plaintiffs is that the Power of

Attorney and possession letter executed by defendant No. 1 in their favour was witnessed by defendant No. 2. The documents filed by the plaintiffs do show that defendant No. 2 Sunil was a witness to the General Power of Attorney, purporting to be executed by defendant No. 1 in favour of the plaintiffs, but, this only means that both defendants No. 1 and 2 had connived and conspired to cheat the plaintiffs by misrepresenting to them that the suit property was still owned by defendant No. 1, whereas, in fact, it had already been sold by him to defendant No. 2. If this is so, the appropriate remedy available to the plaintiffs in law is to sue defendants No. 1 and 2 for damages and also seek return of the money which they paid to defendant No. 1. They can also initiate appropriate criminal proceedings against the defendants for cheating them by misrepresenting that the suit property was owned by defendant No. 1, whereas he had, by that time, already sold it to defendant No. 2. But, defendant No. 2 being a witness to the documents executed in favour of the plaintiffs on 29th March, 2004, does not, by itself, show that the sale transaction between defendants No. 1 and 2 on 07th January, 2004 was a sham and bogus transaction which was not intended to be acted upon.

9. For the reasons given in the preceding paragraphs, I am of the considered view that the declarations sought by the plaintiffs cannot be granted to them.

The suit is hereby dismissed, without any order as to costs.

(V.K. JAIN)
JUDGE

AUGUST 08, 2011
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