

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

+ **RFA No. 358/2000**

% **28th February, 2011**

SHRI RAMESH CHAND Appellant
Through: Harish Kr. Mehra, Advocate.
VERSUS

SURESH CHAND & ANR. Respondents
Through: Mr. R.L.Sharma, Adv. for R-1.

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 under Section 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 11.5.2000 whereby the suit of the respondent No.1/plaintiff for possession and mesne profits with respect to the property No. 563, Ambedkar Basti, near Balmiki Gate, Ghonda, Delhi-110053 was decreed.

2. The case of the respondent No.1/plaintiff was that Sh. Kundan Lal, father of the parties, who owned the property, sold the property to him by means of the documents being the agreement to sell, power of attorney,

affidavit, receipt and Will on 16.5.1996. It was pleaded that the appellant/defendant No.1 was residing as a licensee in the suit property and which licence was terminated making the appellant/defendant No.1 liable to hand over possession of the suit property. It was also pleaded that the appellant/defendant No.1 had the possession of the original papers of the property and which he had refused to part with and therefore a mandatory injunction was also sought for return of the documents.

3. The appellant/defendant No.1 contested the suit by stating that the father Sh. Kundan Lal owned three properties namely the suit property, another property being property no. 290 at the same Ambedkar Basti and third property being the property adjoining property no. 290. It was stated that father during his life time partitioned the properties. The suit property fell to the share of the appellant/defendant No.1. The partition was stated to be in July, 1973. The appellant/defendant No.1 also filed a counter-claim for cancellation of the documents executed in favour of the respondent No.1/plaintiff by the father on 16.5.1996.

4. After the pleadings were complete, the trial court framed following issues.

- “1. Has the plaintiff any right, title or interest in the suit property?
2. Whether the defendant became the owner of the suit property by virtue of oral partition in the year 1973?OPD

3. Whether the defendant no.1 became the owner of the suit property on the basis of adverse possession also?OPD
4. Whether the alleged documents i.e. agreement to sell, GPA, will are null and void in view of the para 5 of the preliminary objection in the W.S.?OPD
5. Whether the suit is barred by O-2 Rule 2 CPC? OPD.
6. Whether the suit is not properly valued?OPP
7. Whether the plaintiff is entitled to the relief claimed.
8. Whether the defendant no.1 is entitled to the relief of counter claim?OPD”

5. Issues no.1 and 4 were/are the real issues. As per the decision of the trial Court Sh. Kundal Lal had transferred the property in favour of the respondent No.1/plaintiff by virtue of the documents dated 16.5.1996. Before proceeding further, I may note that in Delhi, it is the usual method to transfer an immovable property by executing an agreement to sell, power of attorney, Will, affidavit etc and which mode of transfer has been recognized by various judgments of this court and one such judgment is the Division Bench judgment in the case of **Asha M. Jain Vs. Canara Bank (2001) 94 DLT 841**

6. The respondent No.1/plaintiff appeared in the witness box and proved the documents dated 16.5.1996 being the agreement to sell (Ex.PW1/2), General Power of Attorney (Ex.PW1/6), Affidavit (Ex.PW1/3), Receipt for Rs.1,40,000/- (Ex.PW1/4) and Will (Ex.PW1/5). The respondent No.1/plaintiff also got support of their stand from the depositions of the attesting

witnesses to the documents namely Sh. Munir Ahmed who was examined as PW-3 and Sh. Shri Ram was examined as PW-4. Brother of the parties Sh. Ram Swaroop, deposed in favour of the respondent No.1/plaintiff as PW-2.

7. In my opinion, the respondent No.1/plaintiff has validly proved that the right in the suit property was transferred in his favour by means of the documents dated 16.5.1996. The witnesses to these documents deposed in favour of the respondent No.1/plaintiff and supported the execution of the documents. Learned counsel for the appellant sought to argue that there were inconsistencies in the statement of the attesting witnesses because Sh. Munir Ahmed (PW-3) stated that he did not know whether Sh. Kundan Lal used to put thumb impression or signatures and Sh. Shri Ram (PW-4) talked of a sale deed whereas the documents in question do not show existence of a sale deed. Learned counsel for the appellant also argued that the brother Ram Swaroop (PW-2) stated that the property bearing no.290 Ambedkar Basti was given in gift and not in sale and thus there was contradiction in the statement of PW-2 because the suit property was not gifted but sold.

8. I do not find any substance whatsoever in the arguments of the learned counsel for the appellant. A civil case is decided on balance of probabilities. In every case, there may appear inconsistencies in the depositions of witnesses however, the depositions have to be taken as a whole. Minor inconsistencies which do not affect the main substance of the case, are to be taken in correct perspective along with the other evidences,

including documentary evidence which is led in the case. Assuming that a witness is not stating correctly in some places does not mean that he is to be held lying generally and hence an unreliable witness. This is so because it has been repeatedly said by the Supreme Court that the doctrine ***Falsus in Uno, Falsus in Omnibus*** does not apply in India. The inconsistencies which are pointed out by learned counsel for the appellant do not in any manner, whittle down the effect of the documents dated 16.5.1996, and which established that, the respondent No.1/plaintiff paid consideration of Rs.1,40,000/- to his father for purchase of the property. In any case, it has come in the deposition of the other brother PW-2 that the father offered the property for sale to all the brothers, and it was only the respondent No.1/plaintiff who offered to purchase the property, and thereafter purchased the property. The deposition of the brother Ram Swaroop (PW-2) is important because if the case of the appellant/defendant No.1 was correct that there was a partition in the year 1973 then, even Sh. Ram Swaroop would have got one of the properties, but Sh. Ram Swaroop who was having good relations with the appellant/defendant No.1, deposed that there was no partition in the year 1973. Another aspect worth noting is that before the stand of the appellant/defendant No.1 can be considered that there was a partition in the year 1973, it was necessary to be shown that besides the suit property Sh. Kundan Lal also owned two other properties namely 290 Ambedkar Basti and also the property adjoining of the 290 Ambedkar Basti.

There is not a shred of evidence on record that Sh. Kundan Lal owned the

two properties namely 290 Ambedkar Basti and the property adjoining 290 Ambedkar Basti and thus, this case of partition of the appellant/defendant No.1 accordingly falls to the ground. Also, if there was a partition, then, surely, the father also would have taken some share in the properties however, as per the case of the appellant/defendant No.1, the father did not choose to have even one out of three properties. This also is unbelievable assuming that father owned two other properties besides the suit property, and which in any case he is never shown to have owned.

9. At this stage, I must bring a relevant fact on record that this case was argued in detail on 31.1.2011 whereafter it was fixed for today. There was a possibility of compromise in the appellant/defendant No.1 getting a share of the said property. It transpires that in fact the appellant/defendant No.1 has also sold 50% of this property, whereas at best if the property was to be partitioned today, the appellant would have had only 1/4th share of the properties as there were three sons of late Sh. Kundan Lal and one daughter. The respondent No.1 agreed that the appellant/defendant No.1 may keep receipt for sale consideration of 50% of the property, which in fact would be double of his share of 1/4th, however, the counsel for the appellant, on instructions from the appellant, who is present in court refused the offer of the respondent No.1/plaintiff.

10. This court is entitled to interfere with the findings and conclusions of the trial court only if the findings and conclusions of the trial court are illegal

and perverse. Merely because two views are possible, this court will not interfere with the impugned judgment and decree unless the same causes grave injustice. I do not find illegality or perversity in the impugned judgment and decree which calls for interference by this court. The facts of the case show that respondent No.1/plaintiff was duly able to substantiate his case and get support from both attesting witnesses of the documents besides also from the brother Ram Swaroop who had good relations with the appellant/defendant No.1.

11. In view of the above, the appeal is devoid of merits, and the same is dismissed leaving the parties to bear their own costs. Interim orders stand vacated. Trial court record be sent back.

FEBRUARY 28, 2011
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VALMIKI J. MEHTA, J.