

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

+ **RFA No.127/2004**

% **15th March, 2012**

SHRI O.P. AGGARWAL & ANR. Appellants
Through: Mr. O.P. Aggarwal, Advocate.

versus

SHRI AKSHAY LAL & ORS. Respondents
Through: Mr. Atar Singh Tokas, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The appellant No.1, who is an Advocate, states that he has informed Mr. Atar Singh Tokas, counsel for the respondents, and Mr. Tokas informed him that the respondents have taken back the file from him. I am not inclined to adjourn this old appeal any further as this matter is on the Regular Board of this Court since 2.2.2012.

2. The challenge by means of this Regular First Appeal(RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree of the trial Court dated 13.12.2003 dismissing the suit filed by the appellants/plaintiffs for possession and

mesne profits with respect to the suit property bearing MCD No.500/23, Plot No.29, Gali No.10, Bhikam Singh Colony, Behind Masjid, Shahdara, Delhi.

3. The facts of this case are that the appellants/plaintiffs by means of usual documents being the Agreement to Sell, Power of Attorney, Will etc all dated 11.2.2002(Power of Attorney and Will being duly registered with the sub-Registrar, Delhi) purchased the rights in the suit property from one Sh. Sadat Ali Khan. Sh. Sadat Ali Khan had purchased the suit property from Smt. Jasbeer Kaur by means of similar set of documents dated 18.12.1998, and some of which documents are registered documents. Smt. Jasbeer Kaur had purchased the property from Sh. Chanan Singh vide similar set of documents dated 3.12.1997. Sh. Chanan Singh was the son of Sardar Dasondha Singh, who had purchased the suit property from the original owner, namely, Shree Ram Sarvaria and Sons Ltd. by means of a registered sale deed dated 16.3.1955. The appellants/plaintiffs claimed that the respondents were illegal occupants/trespassers in possession of the suit property and therefore after putting them to notice of their illegal occupation, the subject suit was filed.

4. The respondents/defendants appeared and contested the suit and prayed for dismissal of the suit on the ground that the

appellants/plaintiffs were not the owners of the suit property. It was also pleaded that the documents relied upon by the appellants/plaintiffs cannot confer any ownership rights in the suit property. It was also pleaded that the earlier chain of title deeds as relied upon by the appellants/plaintiffs were fabricated documents. The respondents/defendants claimed that the suit property was transferred by one Smt. Sakeena Begum in favour of Mohd. Saleem by means of documents dated 22.5.1989. Mohd. Saleem is thereafter said to have transferred the suit property by means of documents dated 14.6.1991 to one Sh. Vijay Gupta and whereafter by means of the documents dated 23.10.1996, the defendant No.4 had purchased the rights in the suit property.

5. After completion of pleadings, the trial Court framed the following issues:-

- “1. Whether the suit of the Plaintiff is not maintainable and liable to be dismissed as alleged in P.O. No.1 to 7?
2. Whether the Plaintiff is entitled to the declaration as prayed?
3. Whether the Plaintiff is entitled to the possession as prayed?
4. Whether the Plaintiff is entitled to the injunction as prayed?
5. Whether the Plaintiff is entitled to the damages? If so, at what rate and for what period?
6. Relief.”

6. The trial Court has dismissed the suit by arriving at the findings and conclusions under issue Nos.2 to 4 that the

appellants/plaintiffs cannot be said to be owners of the property inasmuch as the documents such as the Agreement to Sell, Power of Attorney etc do not confer ownership rights in the suit property. The trial Court also held that the documents which have been proved and exhibited by the appellants cannot be looked into in the absence of the persons, who executed such documents, having not been summoned to prove these documents.

7. In my opinion, the impugned judgment is illegal, and the appeal deserves to be allowed by setting aside the impugned judgment by decreeing the suit of the appellants/plaintiffs. The jamabandi which has been filed and proved on record by the defendants themselves as Ex.DW2/1 shows that the ownership of the first/original owner-M/s. Shree Ram Sarwaria & Sons Limited is duly shown in this record as one of the co-owners of the khasra No.259 of Vishwasnagar Colony, village Karkardooma, Shahdara. The ownership of the original owner-Shree Ram Sarwaria & Sons Limited therefore cannot be disputed. Shree Ram Sarwaria & Sons Limited had executed a registered sale deed in favour of Sardar Dasondha Singh and which registered sale deed in original has been proved and exhibited in the trial Court as Ex.PW1/8. The possession of this original title deed, with the appellants/plaintiffs is a very strong proof of the ownership of the suit property being of the appellants/plaintiffs by

means of chain of title documents which have also been referred to above. The appellants/plaintiffs has also filed, proved and exhibited the various title documents in a chain as Ex.PW1/1 to Ex.PW1/15. I do not agree with the trial Court that it was necessary that the executants of such documents had necessarily to be summoned to prove these documents inasmuch as if what the trial Court holds is accepted, it will be necessary that to prove the chain of title deeds running into decades all earlier owners have to be summoned. This is not required to be done. Once documents pertaining to rights in the property, and such documents being original documents and also registered documents, are filed and proved on record, the onus of proof that such documents are not genuine documents, in fact, shifts to the opposite party. Further, the fact that the defendants/respondents are not owners becomes clear from the fact that the earlier owner who is claimed to be the owner of the property on behalf of the respondents/defendants is stated to be one Smt. Sakeena Begum, but how Smt. Sakeena Begum is the owner of this property is not shown on record. It was necessary for the respondents/defendants to show that Smt. Sakeena Begum had purchased from the original owner Shree Ram Sarvaria and Sons Ltd, however, there is no document to connect Smt. Sakeena Begum with Shree Ram Sarvaria and Sons Ltd. Therefore, once Smt. Sakeena Begum herself never had title,

no rights in the property flow to the so called subsequent purchasers, namely, Mohd. Saleem, Sh. Vijay Gupta and defendant No.4-Smt. Sundra Devi.

8. I must at this stage itself mention that the defendants/respondents though filed certain original documents, however the said documents were not proved as no one on behalf of the respondents/defendants stepped into the witness box either to prove the case as set up in the written statement or the so called chain of title documents of the suit property. The only evidence which was led on behalf of the respondents/defendants was of two witnesses, DW1 and DW2, and which official witnesses proved the jamabandi and the alleged Award of the Government acquiring the suit land. A party to a case who does not have the courage to step into the witness box to prove his case and is not willing to be cross-examined cannot be allowed to succeed.

9. The trial Court has rightly held that mere filing of the Award cannot mean that the Government became the owner inasmuch as the Government becomes the owner of the land only after possession of the land is taken under Section 16 of the Land Acquisition Act, 1894 and which is not so proved on record and nor is the Government claiming any rights in the suit property. So far as the jamabandi, Ex.DW2/1 is

concerned, I have already held that the same shows the ownership of the suit property originally in the name of Shree Ram Sarwaria & Sons Limited.

10. A civil case is decided on balance of probabilities. The preponderance of probabilities in the present case shows that the respondents/defendants had no right, title and interest in the suit property. Whereas on the one hand, appellants/plaintiffs proved the entire chain of title documents including the registered sale deed dated 16.3.1955 in favour of Sh. Dasondha Singh by Shree Ram Sarwaria & Sons Limited, the respondents/defendants failed to even prove the so called documents by which they derived title, and which in any case did not confer title upon them as it is not shown as to how the so called owner Smt. Sakeena Begum had become owner of the suit property by purchasing the same from original owner Shree Ram Sarwaria & Sons Limited. As already stated above, the respondents/defendants did not have the courage to step into the witness box and be subjected to cross-examination.

11. No doubt, documents such as Agreement to Sell, Power of Attorney, Will etc do not strictly confer ownership rights as a sale deed, however, such documents create certain rights in an immovable property, though which are strictly not ownership rights but definitely the same can

be construed as entitling the persons who have such documents to claim possession of the suit property inasmuch as at least the right to the suit property would stand transferred to the person in whose favour such documents have been executed. The Supreme Court in the recent judgment of *Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana and Anr.* 183 (2011) DLT 1(SC) has reiterated the rights created by virtue of Section 53A of Transfer of Property Act, 1882 and Section 202 of the Contract Act, 1872 in paras 12, 13 and 16 of the said judgment.

12. The appellant No.1/plaintiff No.1 in the affidavit by way of evidence has stated in the examination-in-chief that the suit property can easily earn ₹ 2,000/- per month and which amount should be awarded in favour of the appellants/plaintiffs. There is no cross-examination to this aspect by the respondents/defendants. Also, considering that the suit property is of 200 sq. yds, an amount of ₹ 2,000/- per month cannot, in any manner, be said to be unreasonable.

13. In view of the above, appeal is accepted. Suit of the appellants/plaintiffs is decreed for possession with respect to property admeasuring 200 sq. yds. bearing MCD No.500/23, Plot No.29, Gali No.10, Bhikam Singh Colony, Behind Masjid, Shahdara, Delhi. The appellants/plaintiffs are also granted mesne profits @ ₹ 2000/- per month

from the date of filing of the suit till the appellants/plaintiffs receive actual physical vacant possession from the respondents/defendants. Decree sheet with respect to mesne profits be prepared after the appellants/plaintiffs pays/files the Court fees with respect to mesne profits. Appellants are also entitled to costs of this appeal. Trial Court record be sent back.

14. At this stage, counsel for the respondents/defendants appears and states that in fact he has duly issued legal notice to the respondent No.1 for discharge, and which notice has been filed alongwith the list of documents dated 6.3.2012 in this Court. Accordingly, it is observed that the Advocate, Mr. Atar Singh Tokas has duly notified the respondent No.1, and who shall accordingly bear the consequences of the appeal having been heard and disposed of ex parte.

VALMIKI J. MEHTA, J

MARCH 15, 2012

Ne