

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

+ **RFA No. 385/2004**

% **1st May, 2012**

SHRI SANTU Appellant

Through : None.

versus

GAON SABHA GADAIPUR AND ORS. Respondents

Through : None.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. This case is on the Regular Board of this Court since 21.2.2012. No one is present for the parties although it is 12.45 P.M. I have, therefore, perused the record and am proceeding to dispose of the appeal.

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 of the trial Court dated 1.7.2004 dismissing the suit for injunction filed by the appellant/plaintiff. The suit pertains to a property admeasuring 2.5 biswa, i.e. 125 sq. yds., situated in khasra No. 512/1,

Village Gadaipur, Tehsil Mehruali, New Delhi. Before proceeding further, I may note that defendants were ex parte in the trial Court. No written statement was filed on their behalf. No evidence was led on behalf of the respondents/defendants, yet the trial Court dismissed the suit.

3. The trial Court has made the following observations for dismissing the suit:-

“13. I am of the opinion that even if Santu had some limited interest in the suit property for residence, he could not transfer the same to Goverdhan as it would contravene the implied terms of allotment of said plot which was granted to him under issue or licence under the Government Scheme meant to ameliorate the condition of weaker sections of the society. Such a land could not be transferred to Goverdhan by way of a purported General Power of Attorney Ex.P.1. Secondly Sh. Goverdhan has not claimed that he is the transferee owner or inheritor of that property. He is claiming that he is pursuing the suit for Santu and the best evidence could be the testimony of Santu himself. Thirdly the right of Santu stands extinguished not only because of the breach of implied terms of lease/license but also due to efflux of time because his lease/license stands expired after 9 years of grant i.e. 28.2.82 and much before the instant suit has been instituted on 25.11.94. There is no document on record which suggests that Santu ever remained in possession of the suit property. Mr. Goverdhan has brought on record the documents which suggest that he had taken electricity connection/water connection in his name and Ex.P.3 which is dated 29.5.84 unequivocally goes to suggest that Mr. Goverdhan is the owner/occupier of the suit property since inception.

14. I have reached to the conclusion that Goverdhan has no locus standi qua the suit property and thus had no right to institute the instant suit and much less in the name of Sh. Santu purporting to be his attorney. Because he was well aware that he is in unauthorised occupation of the said Government land allotted to Santu he moved the instant application in the name of Sh. Santu who was the allottee of the suit plot.”

I am unable to agree with the conclusions of the trial Court, inasmuch as, the appellant/plaintiff proved on record that being a poor villager he alongwith others was allotted the land through the Gram Pradhan.

4. The Gram Up-Pradhan/Sh. Hari Singh who, by filing an affidavit in favour of the appellant/plaintiff, deposed that the said plot of 125 sq. yds. was given under the 20 Point Programme for rehabilitation of the poor villagers, including the appellant/plaintiff. A copy of the L.R. Form No. 37 was proved and exhibited as Ex.P.4. The receipt in this regard was issued by the village Pradhan to Sh. Santu on 28.2.1982 which was towards the acknowledgment of having received ₹45/- as lease rent for nine years. This document is also again exhibited as Ex.P.4, though wrongly for the exhibit number.

5. The suit was instituted by the owner-Sh. Santu through his attorney, namely, one Sh. Goverdhan and at that stage Sh. Goverdhan must have

purchased some rights in the suit land by means of a General Power of Attorney which was Ex.P.1. There are no disputes between Sh. Santu and the attorney-Sh.Goverdhan and in accordance with Section 202 of the Contract Act, 1872, rights created through Power of Attorney are recognized by Courts, including in the recent judgment of the Supreme Court in the case of *Suraj Lamp Industries Pvt. Ltd. v. State of Haryana and Anr. 2012 (1) SCC 656*, wherein paras 12, 13 and 16 read as under:-

“12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (**except to the limited right granted under Section 53A of Transfer of Property Act**). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time **unless it is made irrevocable in a manner known to law**. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In *State of Rajasthan v. Basant Nehata* 2005 (12) SCC 77 this Court held:

“A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. **Except in cases where power of attorney is coupled with interest**, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.”

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

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16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as

conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

(underlining added)

6. I may note that the trial Court has also referred to the fact that there are electricity connections in the said plot for around 20 years and the documents pertaining to the electricity connections have been Ex.PW5/1 to Ex.PW5/3. Ex.P.6 is a certificate issued by Delhi Vidyut Board certifying the load of 2.5 KW provided against payment on 12.6.1986 for domestic purpose to Sh. Goverdhan, the attorney of Sh. Santu. The discussion by the trial Court with respect to the evidence led on behalf of the appellant/plaintiff is contained in paras 7, 8 and 9 of the impugned judgment and which read as under:-

“7. Thus the plaintiff is presumed not in possession of original of Ex.P.4. The signatures of deponent Hari Singh which he has appended on his affidavit (in Hindi) are materially different from those on receipt. Ex.P.4 as he has spelt his own name differently at both the places. Even if, I take his entire deposition sacrocent and read it together with plaint the only fact established is that the

plaintiff Santu being a poor landless labourer was allotted the suit plot for his residence for 9 years on lease basis w.e.f. 28.2.1982 i.e the date of receipt for a total lease rental of Rs.45/- paid by him in advance.

8. Now coming to the affidavit of Goverdhan. He has deposed that he is constituted attorney of plaintiff and the General Power of Attorney executed by the plaintiff is Ex.P.1. Ex.P.1 has been filed in original which is purported to have been executed on 4th April, 1984 in favour of Goverdhan constituting him as his general attorney in respect of plot of land admeasuring 2½ biswas in Khasra No. 512/1, Village Gadaipur allotted to him vide L.R. Form 37, Receipt No. 43 dated 28.2.82 on lease for Rs.45/- for the period of 9 years. The powers granted to the attorney are very exhaustive which include managing, renting out and selling out the said plot. I will revert back to the evidenciary value of Ex.P.1 little later.

9. Sh. Goverdhan has then deposed that the plaintiff is the owner of the built up house on the plot of land admeasuring 2½ Biswas (125 sq. yds.) comprised in Khasra No. 512/1 and the siteplan of the said house is Ex.P.2. which is also annexed to the plaint as Annexure P.1. I have perused Ex.P.2. which is a handmade rough siteplan and interestingly on the site plan of the suit property is mentioned – “House of Goverdhan in Kh. No. 512/1 Gadaipur”. Ex.P.3. is a certificate dated 29.5.84 issued under the signatures of Village Pradhan to the Delhi Electric Supply Undertaking certifying that Goverdhan s/o Pala is the owner of premises Khasra No. 512/1 of village Gadaipur which is being used by him for residential purpose and he may be given electric connection. Ex.P.5/1, Ex.P.5/2 and Ex.P.5/3 are copies of sanction letter and original electricity bills all in the name of Sh. Goverdhan. Ex.P.6. is a certificate issued by Delhi Vidyut Board certifying that a load of 2.5 KW was provided against payment on 12.6.86 for domestic

purpose to Sh. Goverdhan at a House in Khasra No. 512/1, Village Gadaipur. Ex.P.7/1 and Ex.P.7/2 are copies of receipts dated 29.5.84 and 8.6.84 issued by D.E.S.U. of having received payment from Goverdhan. Ex.P.8/1 and P.8/2 are the original water bills issued by MCD in the name of Sh. Goverdhan for the year 1993 and 1995. These are all the documents which have been exhibited on behalf of the plaintiff. It has been then deposed by Sh. Goverdhan that on 1.11.94 officials of defendant no.1 orally conveyed to the plaintiff to remove the residential structure otherwise they would initiate demolition and they again visited plaintiff on 9.11.94 and extended the same threat despite the fact that they were shown all the documents of the said property and old construction.”

In my opinion, therefore, the appellant/plaintiff clearly proved his entitlement to continue in possession of the suit property and, therefore, was entitled to the relief restraining the respondents from dispossessing the appellant/plaintiff or from demolishing the suit property of 2.5 biswa, i.e. 125 sq. yds., situated in khasra No. 512/1, Village Gadaipur, Tehsil Mehruali, New Delhi. I may also note that in Delhi, as on today, there is prevailing the Delhi Laws (Special Provisions) Act, 2006 pertaining to the temporary stay of demolition, as per which the Government itself has decided not to take any action of demolition or dispossession with respect to lands even if the same are in illegal occupation, of course subject to the terms of the provisions of this Act.

7. The facts of the present case show that the plot of the

appellant/plaintiff is a plot alongwith various other villagers who were simultaneously allotted plots and, thereafter, construction was made on the same.

8. In view of the same, the appeal is accepted and the impugned judgment dated 1.7.2004 is set aside. The suit of the appellant/plaintiff will stand decreed and the respondents are restrained from in any manner dispossessing the appellant/plaintiff from the suit property of 2.5 biswa, i.e. 125 sq. yds., situated in khasra No. 512/1, Village Gadaipur, Tehsil Mehruali, New Delhi or from demolishing any construction thereon. Parties are left to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

MAY 1, 2012

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