

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

% **RSA 17 OF 2004**

+ **Date of Decision: 4th January, 2012**

RAMPAL & ORS. **.....Appellants**
! **Through: Mr. Jayant Tripathi, Advocate**

Versus

\$ **MAHIPAL & ORS.** **....Respondents**
Through: Mr. B.R. Sharma, Advocate

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K BHASIN,J:

This second appeal is filed against the common judgment dated 22.09.2003 passed by the learned Additional District Judge while disposing of two appeals which had arisen out of a common judgment and decree dated 31.08.1999 passed by the trial Court dismissing two suits for injunction filed separately by the appellants and the respondents herein. The present appellants were the plaintiffs in one of those two suits which was registered as Suit No.73 of 1988 and the first appeal arising out of that suit was registered as RCA no. 157/03. The other suit in which the respondents herein were the plaintiffs was registered as suit no. 74/1988 and the first appeal arising out of that suit was registered as

RCA No.134/03. Vide judgment dated 22.09.2003 the first appellate Court dismissed the appeal of the present appellants while respondents' appeal was allowed and the judgment and decree passed by the trial Court dismissing their suit for permanent injunction was set aside.

2. The facts leading to the initiation of legal fight between the parties by filing of two separate suits for injunction against each other in respect of the suit plot may first be noted in brief. The fight between the parties was in respect of the ownership and possession of one plot of land measuring 216 sq. yds out of khasra No. 168 in the revenue estate of village Mauzpur, Shahdara, Delhi. This land admittedly belonged to the predecessor-in –interest of the appellants, namely, late Shri Kishnu. As per the case of the respondents herein the suit plot was sold by late Shri Kishnu to one Smt. Chander Kala by executing a sale deed. That Smt. Chander Kal then sold half of that plot in favour of respondent no. 1 Mahipal Sharma and half to his wife but was also handed over to them by her. The appellants on the other hand denied that the suit plot was ever sold by late Shri Kishnu to anyone and they claimed themselves to be its owner in possession. As both the parties wanted to raise construction over the suit plot but were unable to so claimed themselves to the owners in possession of as the other side was not permitting that to be done and that situation led to the filing of separate suits for injunction claiming the decree of injunction against each other for not interfering in the possession over the suit plot. Both the suits were consolidated by the trial Court and

common evidence was recorded in the case of the respondents herein which was treated as the lead case.

3. The trial Court after examining the evidence adduced by the parties dismissed both the suits vide its common judgment dated 31.08.1999 holding that neither party was able to establish either the title or that the possession in respect of the suit plot. Then both the parties filed separate appeals against the said decision of the learned trial Court and the learned Appellate Court vide its common judgment dated 22/09/2003 allowed the appeal of the respondents herein, while dismissing the appeal of the appellants herein. The learned appellate Court accepted the case of the respondents herein that they had become the owners of the suit plot by the virtue of agreement to sell executed by Smt. Chandarkala who had purchased it from late Sh. Kishnu who admittedly was its owner and case of being the owners of the suit plot they were presumed to be in its possession also given in case of vacant plots possession goes with the title and consequently their possession deserved to be protected.

4. Feeling aggrieved the appellants filed their appeal under section 100 CPC and in the memorandum of appeal they claimed that in this second appeal the following substantial questions of law arise for decision by this Court:

(a) *“Whether issue of physical possession of a disputed property can be presumed and decided on the mere finding of ownership of one party, ignoring the physical and actual possession by the other party, in a simplicitor suit of permanent injunction”*

(b) *“Whether the documents of title, in which the description and identification of the property do not tally with the property, are*

totally different and are also contrary to the revenue record, can be relied upon to decide the issue of title and ownership of the property?'

(c) Whether the suit for permanent injunction, wherein dispossession has been prayed for, can be decided without framing and deciding the mandatory issue as to, who is actual physical possession of the property?'

5. Learned counsel for the appellants mainly argued that despite the fact that the first Appellate Court had come to the conclusion that based on documents like agreement to sell etc. the respondents had become the owners of the suit plot it should also have gone into the evidence in respect of the actual physical possession of the suit plot and if that had been done the Appellate Court would have come to the conclusion that the appellants herein were in actual physical possession and that circumstance would have been sufficient to entitle them to a decree of injunction against the respondents restraining them from interfering in their possession of the suit plot as is the relief given to the respondents herein on the basis of their deemed possession. Therefore, counsel contended, this appeal deserves to be admitted for hearing on the aforesaid substantial questions of law which definitely arise for consideration by this Court.

6. However, I am not persuaded to accept the submissions advanced on behalf of the appellants. The trial Court had come to the conclusion that both the parties had failed to prove their title as well as actual physical possession in respect of the suit plot. While not accepting the case of the respondents herein that they were the owners of the suit plot by virtue of two agreements to sell executed by Smt.

Chander Kala, the learned trial Court observed that in the absence of a sale deed these kind of documents did not confer any title in their favour. The learned first Appellate Court, however, relied upon one judgment of the Division Bench of this Court in the case of “***Asha M. Jain Vs. The Canara Bank & Ors.***”, 94 (2001) DLT 841, wherein it had been held that even on the basis of an agreement to sell, general power of attorney etc. also the purchaser of some immovable property gets the title, and came to the conclusion that the respondents herein were the owners of the suit plot. Since this Court already has held that documents like agreement to sell etc, which are normally executed in Delhi, do pass over the title in favour of the purchaser it cannot be said that any question of law, much less a substantial one, arises for consideration of this Court.

7. There is no doubt that the learned first Appellate Court has not specifically dealt with the evidence in respect of the actual physical possession of the suit plot but considering the fact that the findings of the trial Court to the effect that none of the parties was able to establish its possession had not been upset it is evident that the same stood accepted by the first Appellate Court. The other conclusion arrived at by the first Appellate Court was that in case of vacant plots possession goes with the title, which is the correct position in law, and since in this case it had accepted the title of the respondents herein it was fully justified in coming to the further conclusion that they were also presumed to be in possession of the suit plot and consequently entitled to the decree of injunction as had been prayed by them in their

suit. In this regard also, there is no substantial question of law involved which needs to be decided by this Court.

8. This appeal is accordingly dismissed.

P.K. BHASIN, J

January 4, 2012