

*** HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: March 5, 2012

+ RSA 31/2012

Suresh Kumar Jain Appellant
Through: Mr.Abhinav Vasisht, Sr.Advocate with
Mr. Naveen Kumar Chaudhary with Mr.Rajesh
Kumar Verma, Advocates

-versus-

Mohan Lal & Anr Respondents
Through: None

**CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL**

Veena Birbal, J.

1. By way of this appeal under Section 100 and Order XLII of the CPC, appellant has challenged the two concurrent judgments i.e., one dated 13th July, 2005 passed in Ex.No.02/03 by the learned Civil Judge and the other dated 26th November, 2011 passed in MCA No.09/2010 by the learned Addl. District Judge, Delhi.

2. The facts of the case are as under:-

Late Shri Ram Prakash, father of respondent no.1 had filed a suit bearing no.467/87 for possession and damages against M/s Moti

Ram Jain & sons before the Id. Civil Judge. The said suit was decreed in favour of plaintiff therein i.e., late Shri Ram Prakash, father of respondent no.1 vide judgment and decree dated 4th July, 1988. By the said decree, possession of suit property i.e., plot no.37, measuring 656 sq. yds situated at East Azad Nagar, Delhi-51 was awarded in favour of late Shri Ram Prakash. The decree holder filed execution petition and got possession of 444 sq. yds on 04.11.1992. Thereafter, he got possession of 167 sq. yds and remaining 45 sq. yds. portion was yet to be recovered. The said Shri Ram Prakash during the execution proceedings expired and Shri Mohan Lal i.e., respondent no.1 herein was substituted in his place. When the proceedings for execution of remaining portion of suit property were pending, appellant and respondent no.2 herein, who are the sons of Judgment Debtor i.e., Moti Ram Jain had filed objections wherein they contended that they are the owners of property bearing no.B-37/2A, East Azad Nagar, Shahdara admeasuring 200 sq. yds. As per their stand, respondent no.2 had purchased the same from one Budh Ram vide General Power of Attorney, Agreement to Sell, Will and affidavit on 12.7.1977. Thereafter, in the year 1991, respondent no.2 had sold 100

sq. yds to his brother i.e., appellant vide General Power of Attorney, Agreement to Sell, Will, affidavit and receipt all dated 25.2.1991. It is alleged that electricity and water connections were also in the name of appellant. According to them, property no.B 37/2A, East Azad Nagar, Delhi was not the suit property and was not part of the premises let out to the J.D by D.H. It was prayed that they have been illegally dispossessed from the suit property and ownership of the said property be ascertained after due enquiry and their objections be treated as a suit and an opportunity be given to them to lead evidence. Their objections were dismissed vide impugned order dated 13th July, 2005. In appeal, the learned ADJ vide impugned judgment dated 26.11.2011 has also upheld the findings of the learned Civil Judge.

3. The stand of appellant is that he along with respondent no.2 are the owners of B-37/2A, East Azad Nagar, Delhi measuring 200 sq. yds. They have relied upon certain documents which are mentioned in the preceding paras to substantiate their stand. The findings of the learned Civil Judge in this regard is as under:-

“Ld. counsel for the Objectors has taken me through the documents of so called title of the objectors. It is noteworthy that these are only G.P.A, agreement to sell,

affidavit & receipt etc. There is no sale deed. Perusal of these documents would reveal that one Sh.Budh Ram s/o Sh.Heera La has been shown as owner of 200 sq. yds portion in Khasra no.267, Village Gondli, East Azad Nagar Shadara, delhi. The said Sh.Budh Ram vide G.P.A dated 12.7.1977 appointed Objector no.2 as his attorney. It is pertinent to note that this is the initial document of so called title of objectors. The objectors have not filed any document of title of the said Sh.Budh Ram. It is not known how the said Sh.Budh Ram was the owner of the disputed property. Merely a recital is an instrument that a particular person is owner of some property will not make him owner thereof. There must be some documents to show previous title. Therefore this G.P.A is of no value. Further the said Sh.Budh Ram is described as “Sh.Budh Ram s/o Sh.Heera Lal R/o East Azad Nagar, Delhi-51”. No house no is mentioned of this alleged owner. From the description of the person, it is quite possible that he is a fictitious person. Even otherwise from the description of property given in this document it is not shown that disputed property is bearing no.B 37/2A. No such number is mentioned in this G.P.A dated 12.7.1977. All other documents i.e., Agreement, Will Deed, Affidavit and Receipt are of no value because previous title is not shown. Similarly the later G.P.A dated 25.2.1991 and other related documents also are of no value because these documents were executed by objection no.2 in favour of objector no.1 and whereas objector no.2 does not get any title in the property from the earlier mentioned documents.”

4. The findings of the learned ADJ is as under:-

“As discussed above, the judgment and decree dated 04.07.1988, the orders dated 23.03.1990 and 15.12.1990 and order passed in suit no.395/92 have attained finality. Despite that the appellant and the respondent no.2 who are the son of Sh. Moti Ram Jain the proprietor of the firm filed

the objection before the executing court on the similar grounds which was again dismissed and then the appellant filed the present appeal. I am of the opinion that the pleas raised by the appellant are barred by the principle of res judicata not only because of the decree dated 04.07.1988 but also because of the orders dated 23.03.1990 and 15.12.1990. Despite that the appellant has re-agitated the same issues which have already been settled. Therefore, the present appeal is devoid of merits and has been preferred just to avoid the enforcement of the decree. Not the least, by initiating one proceedings one after the another, the appellant not only deliberately delay the enforcement of the decree but also remained in and enjoyed the possession of the suit land for which he was not entitled to. Hence, it is a fit case to impose exemplary cost upon the appellant.”

5. It may be noticed that the objections which appellant and respondent no.2 had raised before the execution court under Order 21 Rules 97 to 101 read with section 151 CPC, were earlier raised by their father i.e. Judgment Debtor, in the reply to the application of Judgment Debtor for removal of unauthorized structure from the spot. The same were rejected vide order dated 31.03.2000 by the execution order. For the disposal of said application of Decree Holder, court notice was also issued to Suresh Kumar Jain i.e. appellant with direction to appear with the documents relating to his alleged title on the said property and other documents showing his alleged settled

position over the suit property. The appellant had filed requisite documents and admitted that he was the son of Judgment Debtor Moti Ram Jain. The said documents were examined and the learned Execution Court had observed that none of the documents had been filed prior to passing of the decree. The said documents had been considered and rejected by the learned Execution Court vide order dated 31.3.2000. The said order was challenged by filing WP(C) 4504/2000 and on 5th September, 2002, same was dismissed as withdrawn. Thereafter, objections under Order 21 Rules 97-101 read with section 151 CPC were filed by appellant and respondent no.2 which were rejected vide impugned order referred to above. It is also admitted position that on the basis of alleged documents earlier, a civil suit no.395/1992 for declaration and permanent injunction was filed by appellant and respondent no.2 in November, 1992. The said suit was also dismissed. The said decision was never challenged in higher forum and the findings in the said suit had attained finality. Despite the said decision objections had been filed before the Execution Court to substantiate the alleged ownership in respect of suit property when the suit for declaration and permanent injunction in respect of the

same on the basis of aforesaid documents had already been decided and already attained finality.

6. Perusal of record shows that Judgment Debtor himself had also filed objections under Order 47 CPC which were dismissed by the Execution Court vide orders dated 15.12.1990 with costs. Civil Revision petition was also dismissed on 10.10.1991. Appellant and respondent no.2 are trying to re agitate the issue which has already been decided in the earlier proceedings as is noted above.

In view of the above discussion, no substantial question of law arises in this case. The second appeal stands dismissed with costs of Rs.20000/-.

VEENA BIRBAL, J

MARCH 05, 2012

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