

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

Judgment delivered on : September 20, 2012

+ CS(OS) No.710/2008

DR. ASHOK GUPTA & ANR. Plaintiffs
Through: Mr. Lohit Ganguli, Adv.
versus

SHRI KISHAN CHAND & ORS. Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. This is a suit for perpetual injunction. The plaintiffs claim to be the owner of property No.F-14/57A, Model Town, Part-II, Delhi-110009. The plot on which suit property is constructed alleged to have been purchased by Smt. Uma Rani, mother of the plaintiffs, from one Shri Dharam Vir vide registered sale deed dated 31st August, 1964. Shri Dharam Vir, in turn, had purchased this plot from Shri Sat Narain and Shri Arjun Dass vide sale deed dated 29.06.1960 and Shri Sat Narain and Shri Arjun Dass had purchased this plot from Shri Krishna Nand Fauk vide registered sale deed dated 13.03.1958. Shri Krishna Nand Fauk had purchased this property from Delhi Land Finance(DLF) vide registered sale deed dated 25.04.1956. It is alleged that Smt. Uma Rani, mother of the plaintiffs, raised

construction after purchasing the aforesaid plot and got the property mutated in her name. Smt. Uma Rani expired on 23rd May, 2002. In her lifetime, she had bequeathed the suit property to the plaintiffs and their sister Smt. Anu Aron.

2. Defendant No.1 – Shri Kishan Chand purporting to act as an attorney of Ashok Kumar executed a sale deed in favour of defendant No.3 – Smt. Pushpa Gupta with respect to the aforesaid property on 5th March, 2008. The case of defendant No.3 in the written statement was that late Shri Krishna Nand Fauk had executed a Will bequeathing of his properties to defendant No.2- Shri Ashok Kumar and, therefore, the aforesaid property devolved on him after the death of Shri Krishna Nand Fauk. This was also her case that being the attorney of defendant No. 2, defendant No. 1 had sold the said property to her.

The case of the plaintiffs, on the other hand, is that Shri Krishna Nand Fauk having already sold the aforesaid property to Shri Sat Narain and Shri Arjun Dass vide sale deed dated 13.03.1958, no right in the aforesaid property devolved on defendant No.2- Ashok Kumar, assuming that the Will purporting to be executed by late Shri Sat Narain and Shri Arjun Dass in his favour is a genuine Will executed by Shri Krishna Nand Fauk.

3. During pendency of this suit, defendant No.3 settled the matter with the plaintiffs and IA 2283/2012 was filed in this regard. A decree in terms of the compromise between the plaintiffs and defendant No.3 came to be passed on 06th

February, 2012. However, since no statement of defendant No.3 had been recorded on that date, I issued summons to defendant No.3, who is present in the Court and she confirms the compromise with the plaintiffs as contained in IA 2283/2012(O.23 R.3 CPC).

4. In IA 2283/2012(O.23 R.3 CPC), the parties to the compromise, *inter alia*, stated as under:-

“(c) That it has been further agreed between the plaintiffs and defendant No.3 herein that the sale deed dt. 05.03.2008 in the name of defendant No.3 has come into question. The defendant no.3 and the plaintiff have so agreed because the defendant no.3 herself has been able to carry out the necessary title checks only now and has also obtained relevant information from the plaintiff which has led her to conclude that the said sale deed was not legally valid as the sellers therein purported to transfer a title they did not have themselves. Further even though she does not admit to having played any role in any kind of criminal conspiracy, cheating, forgery or fraud at the time of registration of the aforesaid sale deed or thereafter, but still with a view to maintaining peace, tranquility and to avoid unnecessary harassment, botheration and unwarranted litigation, she has therefore decided to compromise the present suit with the plaintiffs and hence the present joint application.

(d) That it has been further agreed among the plaintiffs and defendant No.3 herein that the sale deed dt. 05.03.2008 in respect of suit property i.e. Property No.F-14/57-A, Model Town-II, Delhi executed by Sh.Kishan Chand S/o Shri Jage Ram, R/o D-14/116, Sector-8, Rohini, Delhi in favour of Smt. Pushpa Gupta (defendant no.3 herein) registered as document vide Registration No.2638, Addl. Book No.1, Book No.1643 on Pages 121

to 136 in the office of Sub-Registrar VI-A, at Pitampura, Delhi be declared as null, void, cancelled and inoperative and therefore, neither the defendant No.3 herein nor any of her heirs, executors, administrators, successors, representatives and assignees shall claim any right, title or interest, whatsoever, in the property No.F-14/57-A, Model Town-II, Delhi and shall not dispute the ownership, right, title, interest and possession of the plaintiffs and his family in any manner in the above said property.”

5. Initially, the plaintiffs had filed the affidavits of plaintiff No.1 – Dr. Ashok Gupta but later they filed the affidavit of plaintiff No.2 – Shri Arun Gupta by way of ex-parte evidence. The learned counsel for the plaintiffs requests that affidavit of plaintiff No.2 – Shri Arun Gupta may be taken into consideration by the Court. In his affidavit by way of evidence, Dr. Arun Gupta has stated that plot in question was sold by DLF to Shri Krishna Nand Fauk vide registered sale deed EX.PW-1/2. Shri Krishna Nand Fauk further sold the plot to Shri Sat Narain and Shri Arjun Dass for a consideration of Rs.10,500/-, vide sale deed dated 13th March, 1958, which is Ex.PW-1/3. Shri Sat Narain and Shri Arjun Dass sold the aforesaid property to Shri Dharam Vir for a consideration of Rs.9,000/- vide registered sale deed dated 29.06.1960, which is Ex.PW-1/4. Shri Dharam Vir sold the property in question to their mother Smt. Uma Rani for a consideration of Rs.14,931/- vide Ex.PW-1/5. He has further stated that after purchasing the plot, the same was got mutated by their mother in her name with the MCD. According to him, after

getting the plan sanctioned from the MCD, their mother raised construction over the property in question consisting of the ground floor, first floor and portion of the second floor and obtained Form 'C' Certificate (Ex. PW-1/7) dated 27.09.1965 and Form 'D' Certificate (Ex.PW-1/8) dated 26.12.1965. Ex.PW-1/9(Colly) are electricity bills for the period 1968-2011. They are all in the name of Smt. Uma Rani, mother of the plaintiffs whereas Ex.PW-1/10(Colly) are 77 water bills for the period 1972-2011 in her name. Ex.PW-1/11(Colly) are various telephone bills for the period 1978-2011. Ex.PW-1/13(Colly) are documents pertaining to levy and collection of property tax in respect of the suit property. A number of other documents has also been filed by the plaintiffs evidencing their possession of the suit property. Ex.PW-1/24 is the mutation order whereby the suit property was mutated in the name of the plaintiffs and their sister Smt. Anu Aron. Mr Arun Gupta has also stated that defendant No.2 had filed a probate petition seeking probate of the Will alleged to have been executed by Shri Krishna Nand Fauk in his favour was filed by defendant No. 2, but the suit property was not shown as one of the properties of Krishna Nand Fauk in that petition.

4. I do not see any reason to believe the unrebutted deposition of plaintiff No.2 – Shri Arun Gupta which stands fully corroborated by overwhelming documentary evidence. Defendant No.3 – Smt. Pushpa Gupta in whose favour sale deed dated 05th March, 2008 was executed by defendant No.1 as the attorney of defendant

No.2 herself has admitted that the sale deed executed in favour of Smt. Uma Rani is the genuine document and it were defendants No.1 & 2 who had played fraud upon her by executing a sale deed in her favour, without their having any title in respect of the suit property.

5. The plaintiffs have established the title in favour of their mother Smt. Uma Rani by producing various sale deeds starting from the sale deed dated 25.04.1956 executed by DLF Limited in favour of Shri Krishna Nand Fauk. Since Shri Krishna Nand Fauk had already sold this property to Shri Sat Narain and Shri Arjun Dass vide registered sale deed dated 13th March, 1958, he was thereafter left with no right, title or interest in the suit land and even if it is assumed that, had bequeathed all his properties to defendant No.2 – Shri Ashok Kumar, that does not confer any title on defendant No.2, with respect to the suit land, the same having been already been sold by Shri Krishna Nand Fauk in his lifetime.

6. For the reasons stated hereinabove, I am satisfied that the plaintiffs have duly proved their case against defendants 1 & 2. A compromise decree has already been passed against defendant No.2 on 6th February, 2012. A decree is hereby passed declaring that the sale deed dated 5th March, 2008 purported to be executed by defendant No.1- Shri Kishan Chand as attorney of defendant No.2- Shri Ashok Kumar in respect of property No. F-14/57A, Model Town, Part-II, Delhi-110009 registered as document No.1577 is illegal, null and void and not binding upon the

plaintiffs. The defendants are restrained from creating any third party interest in respect of the aforesaid property and from interfering with the possession of the plaintiffs with respect to the said property. Decree sheet be drawn accordingly. There shall be no order as to costs. Copy of this decree be sent to the concerned Sub-Registrar for information and compliance.

V.K.JAIN, J

SEPTEMBER 20, 2012
‘sn’//