

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

+ **RFA No. 600/2011**

% **11th April, 2012**

SMT GEETA & ANR Appellant
Through : Mr. Saud Ahmad Syed and Mr. Saqib
Haroon, Advocates.

versus

BAL GOVIND ROHTGI Respondent
Through : Mr. D.V. Khatri, Advocate.

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

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J. (ORAL)

1. 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 30.4.2010 dismissing the suit filed by the appellants/plaintiffs for possession of property bearing No. 547, Panna Udhyan, Village Narela, Delhi admeasuring 150 sq. yds., out of a total of 300 sq. yds.

2. The facts as pleaded by the appellants/plaintiffs were that the maternal grandfather of the appellants/plaintiffs, namely, Sh. Ram Rik was the owner

of 300 sq. yds. of land and the suit property admeasuring 150 sq. yds. is half of that land of 300 sq. yds. It was pleaded that Sh. Ram Rik left behind one son-Sh. Dhan Singh and one daughter-Smt. Vidya, and both of whom had become half owners each of the total property of 300 sq. yds. It was pleaded that the mother of Sh. Dhan Singh and Smt. Vidya i.e. wife of Sh. Ram Rik had given up her rights by virtue of a Will in favour of the mother of the appellants/plaintiffs and, consequently, Smt. Vidya was the owner of half of the property of 300 sq. yds., i.e. of 150 sq. yds.

3. The respondent/defendant contested the suit and pleaded that neither Sh. Ram Rik was the owner of 300 sq. yds. of plot nor was, therefore, the mother of the plaintiffs-Smt. Vidya the owner of 150 sq. yds. of the property. It was pleaded that the mother of the plaintiffs only had possessory rights, and that too only for 75 sq. yds., and which possessory rights were sold to the defendant/respondent by means of documents dated 1.7.1999 and which documents are an agreement and a receipt. It was pleaded that the mother of the plaintiffs-Smt. Vidya, had contested a litigation initiated by Sh. Dhan Singh against her as also the present respondent/defendant, and in that litigation Smt. Vidya filed a written statement admitting the execution of the documents dated 1.7.1999 in favour of the respondent/defendant herein.

4. The trial Court after completion of pleadings framed the following

issues:-

- “(1) Whether the plaintiff is the owner of the suit property bearing no. 547 measuring 150 sq. yards, Panna Udyan, Village Narela, Delhi? OPP
- (2) Whether the suit property has been purchased by the defendant from the mother of the plaintiff on 01.07.1999? OPD
- (3) Whether the plaintiff is entitled for mandatory injunction for demolishing the illegal construction raised on the suit property by the defendant? OPP
- (4) Whether the suit is maintainable in the present form? OPP
- (5) Whether the suit is bad for non-joinder of necessary parties? OPP
- (6) Whether the suit is barred by limitation? OPP
- (7) Whether the suit is barred by u/o 2 rule 2 CPC? OPP
- (8) Whether any cause of action arises in favour of the plaintiff against the defendant? OPP
- (9) Relief.”

5. The only issue which has been argued before this Court is with respect to the fact that the trial Court ought to have at least granted a decree for possession and injunction with respect to 75 sq. yds. out of a total of 150 sq. yds., inasmuch as, it was pleaded on behalf of the appellants/plaintiffs that the mother of the appellants/plaintiffs was the owner of half of the portion of 300 sq. yds., i.e. 150 sq. yds., and the respondent/defendant had only shown to have purchased rights of 75 sq. yds. pursuant to the documentation dated 1.7.1999.

6. In my opinion, the arguments which have been urged on behalf of the appellants/plaintiffs have no merits whatsoever and, therefore, the appeal is liable to be dismissed. Firstly, the respondent/defendant categorically stated

in the written statement that Sh. Ram Rik, the maternal grandfather of the appellants/plaintiffs and the father of Smt. Vidya, was not the owner of 300 sq. yds. of land. Admittedly, not a single document whatsoever was filed on behalf of the appellants/plaintiffs in Court below to show the ownership rights of Sh. Ram Rik in a plot of 300 sq. yds. Therefore, a self serving averment of Sh. Ram Rik being the owner of plot of 300 sq. yds., of which Smt. Vidya became the owner of 150 sq. yds. cannot make Sh. Ram Rik the owner of 300 sq. yds. or Smt. Vidya the owner of 150 sq. yds. out of the 300 sq. yds. Therefore, it also cannot be urged that since the respondent/defendant had purchased only 75 sq. yds., and consequently the possession of area in excess of 75 sq. yds., i.e. another area of 75 sq. yds. out of the total of 150 sq. yds., be given to the appellants/plaintiffs and the respondent/defendant be enjoined qua this balance area of 75 sq. yds. out of total area of 150 sq. yds., inasmuch as, the argument is clearly a suspicious one. Before a claim can be laid only to the balance 75 sq. yds. out of total area of 150 sq. yds. of land which is alleged to be owned by the mother of the appellants/plaintiffs and forming part of 300 sq. yds. which allegedly belonged to the father of Smt. Vidya, namely, Sh. Ram Rik, the appellants have to show that firstly Sh. Ram Rik was the owner of a plot of 300 sq. yds., because only if Sh. Ram Rik was the owner of a plot of 300 sq. yds., then 150 sq. yds. would have fallen to the

mother of the appellants/plaintiffs-Smt. Vidya and only thereafter it could have been claimed by the appellants/plaintiffs that since respondent/defendant had purchased rights under the documentation dated 1.7.1999 only of 75 sq. yds., hence possession of balance of 75 sq. yds. be directed to be handed over by the respondent/defendant. The fact of the matter, however, is that since no documentary evidence whatsoever has been filed of ownership of Sh.Ram Rik of 300 sq. yds. and also of the mother-Smt. Vidya of 150 sq. yds., therefore, in law, the appellants/plaintiffs cannot be said to be the owner of the so called balance portion of 75 sq. yds. out of 150 sq. yds. which allegedly belonged to their mother-Smt. Vidya.

7. On the contrary, the respondent/defendant has substantiated his plea that Sh.Ram Rik was not the owner of the property and really Smt. Vidya was only in possessory rights of a portion of the land of 75 sq. yds., inasmuch as, the respondent/defendant filed the house tax records as early as of the years 1974 and 1977, proved as Ex.DW3/5 and Ex.DW3/6, and which documents show that property No. 547 was in fact standing in the name of Sh. Kishania, the grandfather of the respondent/defendant.

8. Merely because a person files a suit and makes pleading supported by an oral deposition, such person cannot become the owner of the immovable property. It is an undisputed fact that the mother of the appellants/plaintiffs

during her life time in judicial proceedings, i.e. in the written statement filed by her in the suit instituted by her brother-Sh. Dhan Singh had specifically admitted that she had sold rights what she had in the suit property of 75 sq. yds. to the respondent/defendant by means of documentation dated 1.7.1999 being the agreement dated 1.7.1999, Ex.DW2/5 and receipt, Ex.DW3/1. It has been held by the Supreme Court in the case of *Nagindas Ramdas v. Dalpatram Iccharam alias Brijram and Anr. (1974) 1 SCC 242* that admissions in pleadings or judicial admissions, made by the parties or their agents at the hearing of the case, stand on a higher footing than evidentiary admissions and they themselves can be the basis of passing of a judgment. The relevant observations of the Supreme Court in this regard are contained in para 27 of the judgment and which reads as under:-

27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than

evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to the wrong.”

(underlining added)

9. Therefore, in view of the categorical admission made by Smt. Vidya, mother of the appellants/plaintiffs in the litigation filed against her by her brother-Sh. Dhan Singh, it is clear that Smt. Vidya, the mother of the appellants/plaintiffs had executed documentation dated 1.7.1999 transferring whatever rights she had in the suit property to the respondent/defendant.

10. Learned counsel for the appellants/plaintiffs also sought to argue that the agreement dated 1.7.1999 and the receipts of the same date Ex.DW2/5 and DW3/1 cannot have any legal value, because they ought to have been duly stamped and registered. This argument is without any merit, inasmuch as, such documents though statedly transferred ownership rights in an immovable property, in reality, Smt. Vidya through these documents dated 1.7.1999 only transferred her possessory rights in the immovable property which was neither owned by her nor by her father-Sh. Ram Rik. She had, in fact, by means of the documents dated 1.7.1999 basically given up her claim in consideration of having received an amount of ₹65,000/-.

11. Further, the agreement/document dated 1.7.1999, treating the same as

an agreement to sell, and which transferred possession thereunder, the same alone has the benefit of creating rights of possession in favour of the respondent/plaintiff pursuant to the doctrine of part performance contained in Section 53A of the Transfer of Property Act, 1882. I may note that the documents in this case are prior to the amendment of Section 53A of the Transfer of Property Act, 1882 by Act/Amendment 48 of 2001 (with effect from 24.9.2001) whereafter an agreement to sell falling under Section 53A cannot be looked into unless the same is registered and the stamp duty paid thereon is on 90% price payable of the sale.

12. Though after 24.9.2001 the benefit of doctrine of part performance is not available under the agreement to sell unless the agreement to sell was stamped at 90% of the value of the sale, however, the amended provision of Section 53A of the Transfer of Property Act, 1882 does not apply to the facts of the present case as the “Agreement to Sell” in question is dated 1.7.1999 i.e. prior to 24.9.2001. The judgment of the Supreme Court in the case of *Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr.* 183 (2011) DLT 1 (SC), has observed that documents such as agreement to sell cannot create ownership rights in an immovable property, however, a reference to paras 12 & 16 of the said judgment show that Supreme Court has preserved rights which are created by means of Section 53A of the Transfer of

Property Act, 1882. Paras 12 & 16 of the said judgment 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 immovable 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.

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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 immovable 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 SA/GPA/WILL transactions known as GPA sales.”

(underlining added)

13. A right to possession of an immovable property arises not only from a

complete ownership right in the property but also by having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof. In the present case there is no title of the appellants/plaintiffs in the suit property, inasmuch as, their predecessor in interest i.e. their mother-Smt. Vidya was not the owner of 150 sq. yds. In fact, not only that the mother was not the owner of 150 sq. yds., the father of the mother, i.e. the grandfather of appellants/plaintiffs-Sh.RamRik was himself not the owner of 300 sq. yds. of the land and of which 150 sq. yds. of land which is alleged to have fallen to the share of Smt. Vidya, mother of appellants/plaintiffs. Whatever rights Smt.Vidya had in the suit property were transferred by means of documentations dated 1.7.1999 to the respondent/defendant, and therefore, the appellants/plaintiffs were not entitled to the relief of possession and injunction as claimed in the suit.

14. In view of the above, there is no merit in the appeal and the same is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

APRIL 11, 2012

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