

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

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Date of decision: 9th September, 2013

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RFA No.395/2013

SANJAY SINGH

..... Appellant

Through: Mr. Rakesh Kumar Singh, Adv.

Versus

M/S CORPORATE WARRANTIES PVT. LTD. Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal impugns the judgment and decree (dated 15th May, 2013 of the Court of Addl. District Judge-02 (South) in CS No.12/2010 (Unique Case ID No.02406C0365612010)) of ejectment of the appellant from property No.D-129, Saket, New Delhi and for recovery of *mesne* profits of Rs.3,96,000/-.
2. The appeal came up before this Court first on 26th August, 2013 when the counsel for the appellant being unable to answer the queries raised by this Court had sought adjournment. While so adjourning the appeal, the Trial Court record was also requisitioned and has been received.
3. The counsel for the appellant has been heard.

4. The respondent / plaintiff instituted the suit from which this appeal arises, pleading:

- (i) that it was the then owner / landlord of property No.D-129, Saket, New Delhi, having acquired the same from Sh. A.K. Rangaswami vide Sale Deed dated 29.12.2009;
- (ii) that the said Sh. A.K. Rangaswami had leased out the said property to the appellant / defendant at a rent of Rs.30,000/- per month vide lease deed dated 27.11.2007 for a period of eleven months commencing from 10.12.2007 and ending on 09.11.2008; on the request of the appellant / defendant a fresh lease dated 10.11.2008 for a period of eleven months commencing from 11.11.2008 and ending on 10.10.2009 was granted at a rent of Rs.33,000/- per month;
- (iii) that the said Mr. A.K. Rangaswami vide communication dated 28.08.2009 and legal notice dated 07.10.2009 asked the appellant / defendant to vacate the property on or before 10.10.2009 and also tendered to the appellant / defendant Rs.90,000/- in refund of the security deposit earlier paid by the appellant/defendant;

- (iv) that the appellant / defendant however failed to vacate the property; and,
- (v) that upon sale of the property by Sh. A.K. Rangaswami to the respondent/plaintiff on 30.12.2009 as aforesaid, the respondent / plaintiff also vide legal notice dated 28.01.2010 determined the tenancy of the appellant / defendant and asked him to vacate the premises.

Upon the failure of the appellant / defendant to comply, the suit aforesaid for recovery of possession / ejectment was filed.

5. The appellant / defendant contested the suit, by filing written statement, on the grounds:

- (i) that Sh. A.K. Rangaswami had promised the appellant / defendant that the lease would be renewed from time to time and further that he would sell the property to the appellant / defendant;
- (ii) that Sh. A.K. Rangaswami had vide Agreement to Sell dated 30.11.2009 expressly agreed to sell the property in favour of the appellant / defendant for a sale consideration of Rs.3,90,00,000/- and the appellant / defendant in part

performance of the said Agreement to Sell had paid a sum of Rs.10,00,000/- as advance to the said Sh. A.K. Rangaswami;

- (iii) that the provisions of Section 53-A of the Transfer of Property Act, 1982 are attracted and the appellant / defendant in part performance of the Agreement to Sell continued in possession of the premises;
- (iv) that the said Sh. A.K. Rangaswami by selling the property to the respondent / plaintiff had violated the Agreement to Sell dated 30.11.2009 with the appellant / defendant;
- (v) that there was no jural relationship of landlord and tenant between the respondent / plaintiff and the appellant / defendant;
- (vi) that the respondent / plaintiff was not entitled to claim the relief of recovery of possession without seeking declaration of his title to the property;
- (vii) that the title of Sh. A.K. Rangaswami himself was suspect and it was not certain whether Sh. A.K. Rangaswami or his wife Smt. Malathi Rangaswami had title to the property; and
- (viii) that Sh. A.K. Rangaswami was a necessary party to the suit.

6. The respondent / plaintiff filed a replication denying that Sh. A.K. Rangaswami had ever agreed to sell the property to the respondent / plaintiff.

7. On the pleadings aforesaid of the parties, the following issues were framed on 21.02.2011:

- “1. *Whether the Court has jurisdiction to try the suit? OPP*
2. *Whether the suit of the plaintiff is maintainable? OPP*
3. *Whether plaintiff is entitled to the possession as claimed? OPP*
4. *Whether the plaintiff entitled to mesne profit? If so at what rate? OPP*
5. *Whether the defendant is a tenant under the plaintiff? OPP*
6. *Relief.”*

8. The appellant / defendant filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground of the court fees thereon having been paid not on the basis of market value of the property but on the basis of the last paid rent and which application was dismissed vide order dated 20.04.2011.

9. The respondent / plaintiff examined two witnesses i.e. its Director Mr. Anand Singh and Sh. A.K. Rangaswami aforesaid and closed its evidence in affirmative. The appellant / defendant failed to lead any evidence inspite of repeated opportunities and his evidence was closed on 28.07.2012. However

on the application of the appellant / defendant one more opportunity was given to lead evidence. The appellant / defendant still failed to avail of the said opportunity and his evidence was again closed vide order dated 17.08.2012. Thereafter, one Mr. Mahendra Bikram Singh filed an application for impleadment on the basis that the appellant / defendant had executed an Agreement to Sell the property in his favour and which application was dismissed vide order dated 29.11.2012 holding the same to be in abuse of the process of the Court. Vide order dated 05.04.2013, the appellant / defendant was directed to appear in person along with his identity and residential proof. The appellant / defendant however failed to appear and on the concession of the counsel for the respondent / plaintiff for expeditious disposal of the suit, his presence was dispensed with and final arguments heard.

10. The learned Additional District Judge has in the impugned judgment found/ observed / held:

- (i) that the suit had been correctly valued for the purpose of court fees and jurisdiction and the Court of the Additional District Judge had jurisdiction to entertain the same notwithstanding the fact that the respondent / plaintiff had purchased the suit

property from Sh. A.K. Rangaswami for a consideration of Rs.4,60,00,000/-;

- (ii) that Sh. A.K. Rangaswami appearing as a witness on behalf of the respondent / plaintiff had denied having ever entered into an Agreement to Sell the property to the appellant / defendant or having executed any Agreement to Sell dated 30.11.2009 and had from his passport demonstrated that he was not even in India on that date;
- (iii) that the counsel for the appellant / defendant in cross-examination of Sh. A.K. Rangaswami neither challenged the entries in the passport nor confronted him with the alleged Agreement to Sell dated 30.11.2009;
- (iv) that the Director of the respondent / plaintiff had proved the execution of the Sale Deed by Sh. A.K. Rangaswami in favour of the respondent / plaintiff;
- (v) that the appellant / defendant on the contrary had failed to lead any evidence;

- (vi) that the Sale Deed executed by Sh. A.K. Rangaswami in favour of the respondent / plaintiff had been proved in accordance with law;
- (vii) that the appellant / defendant as a tenant could not argue about the ownership and title of Sh. A.K. Rangaswami;
- (viii) that the appellant / defendant had failed to prove the Agreement to Sell dated 30.11.2009 under which he was claiming to be in possession;
- (ix) that in the face of Sh. A.K. Rangaswami having proved that he was not in India on 30.11.2009, the Agreement to Sell relied upon by the appellant / defendant was highly suspicious;
- (x) that no steps for specific performance of the said Agreement to Sell had been taken by the appellant / defendant; rather the appellant / defendant was claimed to have executed another Agreement to Sell in favour of Mr. Mahendra Bikram Singh aforesaid;
- (xi) that the Agreement to Sell dated 30.11.2009 in any case could not be admitted into evidence being compulsorily registrable

under Section 17(1A) of the Registration Act, 1908 and being not registered; and

- (xii) that the respondent / plaintiff having by virtue of the Sale Deed stepped into the shoes of Sh. A.K. Rangaswami, was entitled to maintain the suit.

Accordingly, a decree for ejectment / recovery of possession in favour of the respondent / plaintiff and against the appellant / defendant was passed.

11. The counsel for the appellant / defendant has at the outset argued that the possession of the appellant / defendant of the property, after the Agreement to Sell dated 30.11.2009 executed by Sh. A.K. Rangaswami in his favour, changed from as that of a tenant and became as that of a purchaser and the appellant / defendant could not have been sued for recovery of possession as a tenant and if at all, could have been sued for possession as an unauthorized occupant, by paying court fees on the market value of the property. Reliance in this regard is placed on ***Ahamadali Fakruddin Bohri Vs. Mulla Fidaali Sultanali Bohri*** AIR 1938 Nagpur 162 and ***R. Kanthimathi Vs. Mrs. Beatrice Xavier*** AIR 2003 SC 4149.

12. The aforesaid argument of the counsel for the appellant / defendant loses sight of the fact that the same is without any foundation being laid

therefor by leading evidence. As aforesaid, the appellant / defendant failed to lead any evidence despite repeated opportunities and even failed to appear before the Court when he was directed to appear along with proof of his identity.

13. I have nevertheless perused the cross examination done by the counsel for the appellant / defendant of the Director of the respondent / plaintiff company and of Sh. A.K. Rangaswami. The counsel for the appellant / defendant is not found to have put any questions in the cross-examination of the Director of the respondent / plaintiff company qua the Agreement to Sell dated 30.11.2009. Sh. A.K. Rangaswami in his affidavit by way of examination-in-chief unequivocally stated that he had never entered into any Agreement to Sell the property to the appellant / defendant and he was not in India on 30.11.2009 of which date the appellant / defendant claimed an Agreement to Sell in his favour and the document dated 30.11.2009 relied by the appellant / defendant was a forged and fabricated document. The counsel for the appellant / defendant in cross-examination only gave a suggestion to Sh. A.K. Rangaswami of having entered into the Agreement to Sell with the appellant / defendant on 30.11.2009 and of having received an amount of Rs.10,00,000/- in cash as earnest money towards sale

consideration from the appellant / defendant and which suggestion was denied. The counsel for the appellant / defendant shied away from even putting the Agreement to Sell dated 30.11.2009, original of which is found on the Trial Court record, to Sh. A.K. Rangaswami in his cross-examination or to confront Sh. A.K. Rangaswami with his purported signatures thereon. The same shows that the counsel for the appellant is making arguments and citing judgments without even proving the Agreement to Sell.

14. Be that as it may and even though the Agreement to Sell has not been proved, for the sake of completeness, I deal with the contention of the counsel for the appellant / defendant that upon the execution of the said Agreement to Sell, the possession of the appellant / defendant of the property changed from that of a tenant and became as that of a purchaser in possession.

15. The counsel for the appellant / defendant in this regard has relied on Clauses 11 and 13 of the said Agreement to Sell which are as under:

“11. That as mentioned hereinabove, the above said property is under tenancy of second party and since a considerable amount of Rs.10,00,000/- (Rupees Ten Lacs only) has been received by the first party from the

second party as advance pursuant to this agreement to sale, and as such, from the date of execution of this agreement to sale, the second party shall not be liable for any payment of lease rent for the said property, which is being occupied by the second party, as lawful tenant. However, the lease deed, if required, with respect to the said property will be executed by the first party in favour of the second party from time to time as the case may be upto the date of execution of sale deed.

13. *That the second party is already in possession of the said property being a lawful tenant and on the execution and registration of the sale deed the symbolic possession will be delivered by the first party to the second party and the second party will become the owner in possession of the second party as a lawful owner thereof."*

16. The aforesaid Clauses nowhere show that the possession of the appellant / defendant of the property in pursuance to the aforesaid

Agreement if any changed from that of a tenant to that of a purchaser. Though Clause 11 of the Agreement provides that the payment of rent would stop but merely because a landlord suspends the rent payable by the tenant does not bring the relationship of landlord and tenant to an end. This is also evident from Clause II supra envisaging execution of further Lease Deed only in favour of the appellant / defendant till the execution of Sale Deed. Further, Clause 13 provides for delivery of possession of the property to the appellant / defendant only at the time of execution of the Sale Deed. Thus the said clauses of the Agreement to Sell nowhere provide for delivery of possession of the property to the appellant / defendant as purchaser, in pursuance to and in part performance of the Agreement to Sell.

17. Thus the status of the appellant / defendant even if the execution of Agreement to Sell were to be believed, remained as that of a tenant and did not change to as that of a purchaser. The only rights of an agreement purchaser (as discussed by me in detail in the recent judgment dated 6th August, 2013 in RFA No.324/2013 titled ***Sanjiv Pathak Vs. Somnath*** and attention to which of the counsel for the appellant / defendant was drawn during the hearing on 26.08.2013 and which the counsel for the appellant / defendant has failed to distinguish) are of specific performance of the said

agreement. As per the terms of the said Agreement to Sell, sale in pursuance thereto was to be completed within a period of 12 months therefrom i.e. on or before 30.11.2010. I have enquired from the counsel for the appellant / defendant whether the appellant / defendant has taken any steps for specific performance. The counsel fairly admits that no steps have been taken. A tenant in the property, even if enters into an agreement for purchase thereof, cannot avoid his / her ejection therefrom as a tenant and only has a remedy of specific performance of the Agreement to Sell in his favour.

18. In fact the contentions of the counsel for the appellant are contradictory. He on the one hand contends that the appellant / defendant is in possession of the property in part performance of an Agreement of Sale but upon his attention being invited to Section 17(1A) of the Registration Act providing that no plea of being in possession in part performance can be taken when the Agreement to Sell is not registered (and which the Agreement to Sell relied upon by the appellant / defendant is not), on the other hand states that the Agreement to Sell in his favour is not compulsorily registrable and in this regard relies on *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana* (2012) 1 SCC 656. Only an Agreement to Sell immovable property, whereunder possession in part performance is not

handed, can be said to be not compulsorily registrable. If that is so, the possession of the appellant/defendant did not change from that of a tenant to that of a purchaser.

19. In the aforesaid view of the matter, reliance placed by the counsel for the respondent / plaintiff on *Ahamadali Fakruddin Bohri & R. Kanthimathi* (supra) is misconceived. Moreover, in view of the amendment to the Registration Act in the year 2001 by insertion of Section 17(1A), the position as discussed in *R. Kanthimathi* relating to agreement of a date prior thereto, is not applicable.

20. The counsel for the appellant / defendant has next contended that the Sale Deed by Sh. A.K. Rangaswami in favour of the respondent / plaintiff was not proved as only a certified copy thereof was proved and not the original.

21. The said argument also is without reference to the records. The Director of the respondent / plaintiff company in his affidavit by way of examination-in-chief claimed the respondent / plaintiff having purchased the property vide the Sale Deed. The Trial Court record shows that at the time of tendering of the said affidavit into evidence, the original Sale Deed was seen by the Court and by the counsel for the appellant / defendant and

returned to the said witness and exhibit mark put on the certified copy thereof. The counsel for the appellant / defendant neither raised any objection to the Sale Deed being so admitted into evidence nor cross-examined the Director of the respondent / plaintiff company with respect thereto. The sale has been so affirmed by Sh. A.K. Rangaswami also.

22. The counsel for the appellant / plaintiff however relies on ***Food Corporation of India Vs. Babulal Agrawal*** (2004) 2 SCC 712 and on ***Smt. Rekha Rana Vs. Smt. Ratnashree Jain*** AIR 2006 MP 107 in this regard.

23. The said reliance is also misconceived and the counsel for the appellant / defendant is himself unable to justify the same. This is a classic case where the appellant / defendant, without laying any foundation in evidence, neither in the cross examination of the witnesses of the respondent / plaintiff nor by leading his own evidence, is just wanting to cite precedents which turn on their own facts.

24. The counsel for the appellant / defendant has lastly contended that the Director of the respondent / plaintiff company who had instituted the suit and signed and verified the plaint and who appeared as a witness was not authorized. The said Director in his affidavit by way of examination-in-chief has deposed that he is the Director and principal officer of the

respondent / plaintiff company and was fully aware of the facts and circumstances of the case and had been duly authorized by the Board of Directors of the respondent / plaintiff vide Resolution dated 11th February, 2010 of its Board of Directors extract whereof was proved as Ex.PW1/1 to institute the suit and give evidence therein. He has also proved the certificate of incorporation and the copy of the Memorandum of Articles of Association of the respondent / plaintiff company.

25. Again, there is no cross examination whatsoever. Not even a suggestion has been given that he was not a Director or was not aware of the facts and circumstances of the case. No objection was taken to the proof of the extract of the Resolution of the Board of Directors of the respondent company. The said Resolution shows the said Director to be authorized to sign, verify pleadings, affidavits, to engage counsel and to make statements before the Court. The argument is again found to be made in a vacuum.

26. The counsel for the appellant / defendant now states that he be given time to further study the matter.

27. Finding that the respondent / plaintiff has not even been awarded future *mesne* profits, though the appellant / defendant is not entitled to any indulgence but the counsel was informed that one week's adjournment

subject to payment of costs can be given. Though the counsel agreed but subsequently on taking instructions from the appellant / defendant has stated that the appellant / defendant does not want any adjournment.

28. Though the counsel for the appellant/defendant has not urged, but the defence in the written statement to title of the respondent/plaintiff and of Sh. A.K. Rangaswami and of the appellant/defendant having not attorned to respondent/plaintiff as landlord, is also meritless. It has been held in *Nalakath Sainuddin Vs. Koorikadan Sulaiman* (2002) 6 SCC 1, *Mahendra Raghunathdas Gupta Vs. Vishwanath Bhikaji Mogul* (1997) 5 SCC 329 and *Mohar Singh Vs. Devi Charan* (1988) 3 SCC 63 that on transfer of tenanted premises by the landlord, the transferee automatically becomes the landlord of the tenant by operation of law and the coming into being of the relationship of landlord and tenant between the transferee and tenant is not dependent upon any overt act on the part of the tenant. Similarly, it is the settled position in law that in a suit between landlord and tenant, it is only the title as landlord which is relevant and not the title as owner. As far back as in *Sri Ram Pasricha Vs. Jagannath* (1976) 4 SCC 184 it was held that under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant. Recently also, in *State of Andhra*

Pradesh Vs. D. Raghukul Pershad (2012) 8 SCC 584 it was held that relief of eviction of a tenant is not based on the title of the landlord to the leased premises and even if an averment to the said effect, of landlord being owner, is made in the plaint, as long as no relief of declaration of title is claimed and only the relief of eviction of tenant on the ground that lease has come to an end is claimed, the Court is not called upon to decide the question of title.

29. No merit is thus found in the appeal; rather the entire conduct of the proceedings by the appellant / defendant is found to be in abuse of the process of law. The appeal is accordingly dismissed with costs of Rs.20,000/- on the appellant / defendant.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 09, 2013

pp/gsr