

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

+ **RSA No.5/2012**

% **15th April, 2014**

SH. DWARKA PRASAD & ANR. Appellants
Through: Mr. M. L. Lahoty, Advocate with Mr.
Paban K. Sharma, Advocate.

Versus

SHRI BALDEV KISHAN SHAHI (SINCE DECEASED) NOW
REPRESENTED BY LEGAL HEIRS Respondents
Through: Mr. Siddharth Bambha, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) impugns the judgment of the first appellate court dated 7.12.2011. The first appellate court by the impugned judgment allowed the appeal filed by the respondent/plaintiff and set aside the judgment of the trial court dated 24.2.2010 by which the suit filed by the respondent/plaintiff for possession of the suit property was dismissed.

The suit property is plot No.36, Block No.3, Khasra No.3776/2635/783,

Mauza Chandrawal @ Shahdara.
RSA 5/2012

Page 1 of 13

2(i) The case of the respondent/plaintiff (now represented by his legal heirs) was that the suit property was originally owned by the Government. The Government acting under the appropriate authority of Disabled Persons (Compensation and Rehabilitation), 1984 Act sold the suit property to one Sh. Amir Chand Shahi by means of the sale certificate dated 26.11.1960, Ex.PW2/1. The respondent/plaintiff is the legal heir of Sh. Amir Chand Shahi and the appellants/defendant nos.2 and 3 are said to have illegally trespassed into the suit property. The appellants/defendant nos.2 and 3 contested the suit and pleaded that they were the owners of the suit property because they had purchased the same from one Sh. Surjeet Singh. Originally in the suit there were three defendants and the present appellant no.1 was the defendant no.2 in the suit. The respondent/plaintiff compromised the suit with the original defendant no.1, namely Sh. Subhash Chand and whose name was thereafter deleted from the array of parties. This compromise pertained to 100 sq yds out of the total area of 200 sq yds. The present dispute therefore concerns 100 sq yds of the property sold by the sale certificate Ex.PW2/1 and of which the appellants/defendant nos.2 and 3 are in possession.

(ii) The appellants/defendant nos.2 and 3 also took up the defence that the suit of the respondent/plaintiff is barred by limitation.

(iii) The appellants/defendant nos.2 and 3 further pleaded before the courts below that the property which is being claimed by the respondent/plaintiff is not the same suit property which is in the possession of the appellants/defendant nos.2 and 3.

3. The first appellate court has held as under:-

(i) There cannot be any dispute that the suit property of 100 sq yds with the appellants/defendant nos.2 and 3 is very much the same property which is the subject matter of the sale certificate Ex.PW2/1 dated 26.11.1960.

(ii) The appellants/defendant nos.2 and 3 cannot be the owners of the property because Sh. Surjeet Singh from whom the appellants/defendant nos.2 and 3 claimed title was not shown to be the owner of the suit property i.e how and from whom Sh. Surjeet Singh (and his successor-in-interest Smt.Krishna Goel from whom the appellant no.2 Smt. Rewati Devi purchased the suit property) had become the owner was not proved.

(iii) The suit has been held not to be barred by limitation as the defendants claim to have been in possession of the suit property since the year 1960 but there was no such evidence on record to show the possession of Sh. Surjeet Singh from 1960 and thereafter of Smt. Krishna Goel to whom Sh. Surjeet Singh had sold the property. The first appellate court has also held that the appellant no.2/Smt. Rewati Devi purchased the property from one Smt. Krishna Goel through her constituted attorney/appellant no.1 by the sale deed registered in the year 1989, and since the suit was filed in the year 1991, the suit was within the 12 years period of limitation.

4(i) So far as the aspect that there is no confusion of the suit property being the same property which was subject matter of the sale certificate, Ex.PW2/1, the first appellate court has given the following reasoning:-

“26. It is admitted position that the previous defendant no.1/Sh. Subhash Chand purchased the northern side of the suit property from the defendant no.1 earlier from the previous owner and subsequently from the plaintiff.

27. Similarly the DW2 Smt. Rawati Devi has also deposed in her cross examination that:-

*“I have purchased the suit property from Smt. Krishna Goel.
On the eastern side of the suit property there is open piece of*

land and on the western side of the suit property there is Gali and on the southern side of the suit property there is property bearing no.3/37 and on the northern side of the suit property there is property being no.3/36.”

28. Now coming to the sale deed which was filed by the defendant no.2 Smt. Rewati Devi in their favour. The same is exhibited as Ex.DW2/1 and the suit property which the defendant no.2 Smt. Rewati Devi Mundra purchased from Smt. Krishna Goel through her attorney i.e. PW2 is pointed out as under:-

East: Other property
West: 20 Ft. wide road
North: Property no.3/36-A
South: Property no.3/37

29. This sale deed is dated 20.03.1989. It is matter of record that Smt. Krishna Goel has not executed any document in favour of Smt. Rewati Devi Mundra rather documents have been executed by Smt. Krishna Goel through Sh. Dwarka Dass i.e. the defendant no.2/respondent no.1 Smt. Krishna Goel is stated to have purchased this property from Sh. Surjeet Singh and has filed on record Ex.DW2/4 i.e. receipt duly registered with the office of Sub-Registrar and the affidavit of Sh. Surjeet Singh in favour of Smt. Krishna Goel is unregistered and agreement to sell executed by Sh. Surjeet Singh in favour of Smt. Krishna Goel is also unregistered and there is no power of attorney on court record given by Sh. Surjeet Singh in favour of Smt. Krishna Goel or Sh. Dwarka Dass Mundra.

30. Therefore, there are two disputes which have to be resolved from this evidence i.e. whether the suit property which is claimed by the defendant no.3 is the same suit property which is being claimed by the appellant and secondly whether the documents executed in favour of the defendant no.3 by Smt. Krishna Goel through her attorney Sh. Dwarka Dass are sufficient to transfer the title in favour of the defendant no.3.

31. It is matter of record that when the defendants were cross examining the plaintiff and when they were examining themselves they have deposed on the basis of pleadings and the sale certificate which has been filed on record by the plaintiff has not been challenged. No suit for declaration of the sale certificate in favour of the plaintiff has been filed at all with a prayer that the sale certificate as has been produced by the appellants be declared as false one or forged one. The reason may be obvious that the stand of the defendants from the very beginning is that the sale certificate does not pertain to the property which is in possession of the defendants. The Ld. Trial Court has also observed that the plaintiff was required to bring on record that the property purchased by his father and the property purchased by the defendants are the same and the plaintiff has no site plan to show as to whether the plot purchased by his father was located in the said khasra as it is an admitted position of the fact that the plot purchased by the plaintiff's father was a part of aforesaid khasra. Therefore, in absence of the site plan of plaintiff's father, the property of the plaintiff's father can not be related to the property in possession of the defendant no.3. The Ld. Trial Court ultimately came to the conclusion that the plaintiff has failed to prove that the father of the plaintiff was the owner of the same property which is now in possession of respondent no.2.

32. Now, there is Ex.PW2/1 i.e. sale certificate before the court and there is evidence of the parties describing the suit property i.e. the evidence of the PW1 and PW2 and also of DW1 and DW2 is on record who all have described the boundaries of the property. From such comparison of the boundaries of the property as is being reflected in sale certificate and also as has been deposed by the witnesses of the plaintiff and of the defendants, it stands established that the suit property for which the plaintiff holds sale certificate and which is in the possession of the defendants through the sale deed i.e. the suit property for which the plaintiff has filed the suit against the defendants and which property is being claimed by the defendant no.3 to be owner is one and the same property and there can not be any other conclusion except the fact that the property in dispute is the

same for which the parties are contesting the matter and accordingly it is held that the suit property in possession of the respondent no.2, and for which the plaintiff/appellant is having sale certificate is one and same property.” (underlining added)

(ii) I completely agree with the aforesaid conclusions of the first appellate court because the first appellate court has very meticulously dealt with the issue as to how the property was located in reference to the terms of the location in original sale certificate Ex.PW2/1 thereafter how as per the deposition of the witness of the appellants/defendant nos.2 and 3 themselves the suit property was shown to be between the plot of 100 sq yds which was compromised with the defendant no.1 and the other plot bearing property no.3/37. The first appellate court has also chronologically and thoroughly with reference to step by step analysis demonstrated that the suit property of 100 sq yds is the 100 sq yds out of the 200 sq yds of the property sold by the sale certificate Ex.PW2/1 inasmuch as admittedly on the East side there was a property of someone else (i.e plot no.52); to the West there was a 20 feet wide road and to the South there was the property bearing no.3/37 and therefore the original suit plot no.3/36 got bifurcated into two parts of 100 sq yds each, and, of which total area of 200 sq yds, so far as 100 sq yds is concerned, the dispute was compromised with the

defendant no.1 and which is stated to be plot no.3/36A and hence the balance 100 sq yds was the suit property. The detailed reasoning of the first appellate court is accepted by this Court and no substantial question of law arises so far as this conclusion of the first appellate court is concerned.

5(i) So far as the conclusion that the suit is not barred by limitation, the first appellate court has given the following reasoning and which I accept:-

“45. Now coming to the next aspect i.e. issue no.2 with respect to suit is barred by law of limitation. The Ld. Trial Court has not given its finding on this issue and has merely disposed off this issue on the basis of the finding of the Ld. Trial Court on the issues no.1 and 6 and the Ld. Trial Court while deciding this issue has held that no cause of action has arisen in favour of the plaintiff and against the defendants. This finding of the Ld. Trial Court again is not in accordance with. This court is of the opinion that once an issue has been framed by the Ld. Trial Court it was supposed to give its specific finding on the same and issue can not be permitted to be left open.

46. This court is competent under section 107 CPC either to remand back this case on the basis of such finding of the Ld. Trial Court as well as the court is also competent to dispose off this issue of its own and the court is disposing off this issue.

47. The present suit of the plaintiff has been filed on 11.04.1991. The defendants took this objection in their written statement that the suit is barred by the law of limitation. How the suit is barred by the law of limitation have not been

explained. The defendant no.3 is claiming his possession in the suit property on the basis of registered sale deed in her favour as executed by the defendant no.2 being the attorney of Smt. Krishna Goel who has purchased the property from Sh. Surjeet Singh. The sale deed in favour of defendant no.3 is dated 20.03.1989 as executed by the defendant no.2 as attorney of Smt. Krishna Goel. The claim of the defendants in the written statement was that the persons from whom the defendants have purchased the property were in possession of this property since 1960 but there is no evidence on record to the effect that Sh. Surjeet Singh i.e. the person from whom Smt. Krishna Goel purchased the property was in possession of the suit property right from the year 1960. Defendants have not examined said Sh. Surjeet Singh or said Smt. Krishna Goel in their support. Therefore, they are not able to prove that the predecessor in interest were in possession of the suit property from the year 1960. As far as defendants themselves are concerned, they are in possession of the suit property only from 1989. The suit has been filed against these defendants in the year 1991. This is admittedly in a suit for possession and the onus was heavy upon the defendants to prove that they are in hostile possession of the suit property for a continuous period of 12 years and only if they would have been able to prove this fact, issue would have been decided in favour of the defendants. Here the admitted position of law is that these defendants have come in possession of the suit property only in the year 1989. The suit has been filed in the year 1991 and the same is not barred by law of limitation.” (underlining added)

- (ii) Once the possession of Sh. Surjeet Singh and of Smt. Krishna Goel, the predecessors-in-interest of the appellant/defendant nos.2 & 3, was not proved by appellants/defendant nos.2 and 3, surely the first appellate court was fully justified in holding that the suit was not barred by limitation of 12 years.

6(i) So far as the third argument that the appellants/defendant nos.2 and 3 failed to prove how Sh. Surjeet Singh/Smt. Krishna Goel could actually be the owners and as to how could they trace their title from the Government who was the proved initial owner of the suit property, the first appellate court has observed as under:-

“33. Now coming to the next aspect as to who is the owner of this property. If the plaintiff/appellant is able to prove that he is the owner of the suit property then he is entitled for the relief claimed and if the defendants/respondents are the owner of the property then the plaintiff is not entitled to the relief claimed. The Ld. Trial Court while deciding issue no.1 and 6 together has come to the conclusion that the plaintiff is not the absolute owner of the suit property and hence the plaintiff has no right to file the present suit independently.

34. Now coming to the evidence which have come on record. The plaintiff has examined PW2 to prove the sale certificate. The plaintiff/appellant has claimed that he has purchased the property from the competent authority i.e. Government of India by the sale certificate and the same has been duly registered in the office of the Sub-Registrar concerned, and is a legal document which is sufficient to confer the title upon the plaintiff and it is argued that the defendants on the other hand have failed to prove that they are the actual owner of the suit property and more particularly they have failed to prove the complete previous chain of all these title documents. It is argued by the Id. Counsel for appellant that the present defendant no.3 Smt. Rewati Devi Mundra has purchased the property by way of sale deed which sale deed has been executed by the defendant no.2 as an attorney of Smt. Krishna Goel. How the property was transferred in favour of Smt. Krishna Goel has not been proved. The unregistered document as executed by Sh. Surjeet Singh in favour of Smt. Krishna Goel have no capacity to transfer the title of the property for two reasons i.e. documents are not registered one and secondly where from the property has come to Sh. Surjeet Singh has also not been described. The document of the property which were executed in

favour of Sh. Surjeet Singh by the previous owner have not been filed on record. The respondents have not been able to prove the complete chain of documents with them so as to prove that they are the purchaser of the suit property from the rightful owner or that such document creates a title in favour of the respondents.

35. Ld. Counsel for respondents on the other hand has argued that the documents executed by Smt. Krishna Goel are valid documents and the property has been purchased by the respondents from Smt. Krishna Goel who was the owner of the property. The defendants have proved the sale deed in favour of respondent no.3, which sale deed is executed by the respondent no.2 as attorney of Smt. Krishna Goel. However, there is no specific reply with respect to complete chain of previous documents. No doubt the power of attorney sales have been recognized by our law until the recent judgment of the Hon'ble Supreme Court which has come with respect to power of attorney sales but the contention of the respondent that Smt. Krishna Goel was having power of attorney in her favour who had purchased the property from Sh. Surjeet Singh who had transferred the property through unregistered power of attorney has no force as even if this contention of the respondents is accepted then there is no answer to the question as to how the title of the suit property was vested with Sh. Surjeet Singh, from whom onward the defendants claim that they have complete chain of documents with them. Here the contention of the appellant being the owner of the suit property right from its origin gets support and appears to be well found. Now there is sale certificate before the court which has been proved from its beginning in favour of the plaintiff/appellant and on the other hand there is sale deed in favour of the respondent no.2, who purchased it from defendant no.1, who is attorney of Smt. Krishna Goel (registered attorney but not on court file) and unregistered transfer documents as executed by Sh. Surjeet Singh in favour of Smt. Krishna Goel.

36. Therefore, the sale certificate in favour of the appellant coupled with the fact that the appellant was in symbolic possession of the property alongwith title documents and coupled with the fact that the respondents have failed to prove that how Sh. Surjeet Singh was the title holder of the suit property conclusively proves that the

plaintiff is possessing the title document over the suit property. Mere registered sale deed in favour of the respondents without complete chain of previous documents does not confer any right in favour of the respondents i.e. the transferor of the property or the executor of sale deed himself has not been able to prove that how the property has come to his hands.

37. It is settled proposition of law that no one can transfer a better title in favour of the transferee. Therefore, from this evidence, the court is of the opinion that the finding of the Ld. Trial Court to the extent that the appellant has failed to prove that he is the owner of the suit property or the appellant has failed to prove that this is the same property which was purchased by his father and for which the sale certificate Ex. PW2/1 was executed was not in accordance with the evidence and the same suffers from the material illegality in arriving to that conclusion and accordingly the order of the Ld. Trial Court is required to be set aside and be set aside accordingly.” (underlining added)

(ii) Once again, I agree with the conclusions of the first appellate court because surely once the property originally belonged to the Government any title to the same should be only claimed from a person to whom the Government had sold the property i.e from Sh. Amir Chand Shahi. The respondent/plaintiff is the legal heir of Sh. Amir Chand Shahi and thus showing he was the owner of the property but the appellants/defendant nos.2 and 3 failed to prove as to how Sh. Surjit Singh and Smt. Krishna Goel got any ownership rights in the suit property from the Government who was the initial owner.

7(i) Learned counsel for the appellants strenuously argued two
RSA 5/2012 *Page 12 of 13*

aspects before this Court. First aspect was that the respondent/plaintiff failed to discharge the onus of showing that the respondent/plaintiff is the owner of the suit property. The second aspect was that the respondent/plaintiff has failed to prove the chain of title documents showing himself to be the owner.

(ii) Both the aspects urged on behalf of the plaintiff have already been dealt with by this Court in the above paragraphs and the first appellate court has exhaustively dealt with the chain of title documents with respect to the suit property forming 100 sq yds out of the original 200 sq yds of property bearing no.3/36 and as to how Smt. Krishna Goel or Sh. Surjeet Singh failed to trace their title from the Government which was the original owner of the suit property. Therefore, the arguments urged on behalf of the appellant do not raise any question of law, much less a substantial question of law, for this appeal to be entertained under Section 100 CPC.

8. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

APRIL 15, 2014
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VALMIKI J. MEHTA, J.