

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

+ RSA No. 39/2013 & CM No.2981 /2013 (stay)

% 24th March, 2014

GOMTI DEVI

..... Appellant
Through Mr. Mohinder Madan, Ms. Rashmi
B. Singh, Ms. Kalpana Thakur, Advocates

versus

RAM PRASAD

..... Respondent
Through Ms. Kamlesh Mahajan, 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 is filed impugning the judgment of the first appellate court dated 14.12.2012. First appellate court by the impugned judgment has allowed the appeal of the defendant/respondent and set aside the judgment and decree of the trial court dated 28.9.2010 by which the suit filed by the appellant –plaintiff was decreed for possession with respect to first floor property bearing no.891 in K.No. 311, situated at Mahawar Nagar, Kotla Mubarakpur, New Delhi. Trial court had also passed a decree for

damages at Rs.2000/- pm from 16.12.2000 and awarded interest at the rate of 6% p.a on the amount of damages.

2. Before proceeding further, it needs to be mentioned that trial court by two judgments of the same date 28.9.2010 decided three suits. Two of the suits were suits filed by the appellant-plaintiff claiming rights under the agreement to sell dated 20.5.1999 executed by Sh. Sukhram (father of respondent/plaintiff) and also challenging the compromise decree dated 9.9.1999 whereby father Sh. Sukhram had given rights in the first floor of the property to respondent/plaintiff. This appeal arises from one suit of the appellant/plaintiff which was decreed by the judgment dated 28.9.2010. Third suit was a suit filed by the respondent against the appellant and her husband seeking the relief of claiming rights in the first floor of the property by virtue of the compromise/agreement decree dated 9.9.1999 entered into between the respondent and his father Sh. Sukhram. This compromise dated 9.9.1999 was a compromise effectively under Order 23 Rule 3 CPC whereby the first floor of the property was agreed by the father Sh. Sukhram to be owned by respondent herein. This third suit was dismissed in favour of the appellant herein and it was held that the appellant after paying valuable consideration under the agreement to sell dated 20.5.1999 had acquired

rights in the entire property being H.No. 891 and that the subsequent compromise dated 9.9.1999 entered into in the judicial proceedings being the appeal filed by the respondent-Ram Prasad against the decree in favour of the father Sh. Sukhram with respect to the suit property. The third judgment passed dismissing the suit of the respondent has become final as the respondent has not challenged the judgment and decree dated 28.9.2010 whereby, the rights claimed by him in the first floor of the property by virtue of compromise dated 9.9.1999 entered into between the respondent/son/Ram Prasad with Sh. Sukhram/father, were denied to him.

3. For the purposes of disposal of this regular second appeal, the following substantial questions of law are framed:-

“(i). Whether the first appellate court has committed a gross illegality and perversity in denying ownership rights to the appellant-plaintiff arising from the agreement to sell dated 20.5.1999; Ex.PW1/2 and the sale deed dated 20.9.1999; Ex.PW1/10, inasmuch as, a subsequent compromise dated 9.9.1999 entered into between the respondent/son/Ram Prasad with the father Sh. Sukhram cannot take away prior rights created by Sh. Sukhram in favour of the appellant/plaintiff under the agreement to sell Ex.PW1/2 dated 20.5.1999 ?

(ii) Whether the first appellate court has committed a gross illegality and perversity in setting aside the judgment of the trial court dated 28.9.2010 ignoring the binding precedent of the Supreme Court in the case of ***Vannarakkal Kallalathil Sreedharan Vs. Chandramaath Balakrishnan & Anr. (1990) 3 SCC 291*** ?

(iii) Whether the first appellate court has committed a gross illegality and perversity in ignoring the fact that by a judgment of the same date i.e 28.9.2010 the third suit filed by the respondent herein claiming rights in the first floor of the property B-891, Mahawar Nagar, Kotla Mubarakpur, New Delhi-03 was dismissed and this judgment had become final and consequently the claim of the respondent herein to the property on the basis of the compromise dated 9.9.1999 entered into by the respondent with his father Sukhram stood finally decided against him?"

4. Since the questions no. 1 and 2 framed above can be answered by referring to the ratio of the Supreme Court in the case of ***Vannarakkal Kallalathil Sreedharan (supra)***, I would seek to reproduce paras 2,3,9 of the said judgment and which read as under:-

"2. An extent of 80 cents of land which is in dispute in this appeal was agreed to be sold in favour of the appellant under an agreement dated October 9, 1978. Before the sale deed was executed, a third party in execution of a decree got the property attached on November 16, 1978. The sale deed was executed on November 23, 1978. The question is: Does the sale prevail over the attachment?

3. The High Court of Kerala in the judgment under appeal has held that the sale would be subject to attachment. This appears from the following observation.

The sale deed was executed at a time when the property was already under attachment. It is true that even before affecting attachment there was an agreement for sale by Sarojini Ramakrishnan in favour of the appellant. But the agreement for sale will not create any interest in the property. The fact that Ext. A-12 Sale deed was executed on the basis of an agreement executed before the attachment will not place the appellant in any better position. He could take the 80 cents under Ext. A-12 only subject to the attachment.

9. In our opinion, the view taken by the High Courts of Madras, Bombay, Calcutta and Travancore-Cochin in the aforesaid cases appears to be reasonable and could be accepted as correct. The agreement for sale indeed creates an obligation attached to the ownership of property and since the attaching creditor is entitled to attach only the right, title and interest of the judgment- debtor, the attachment cannot be free from the obligations incurred under the contract for sale. Section 64 CPC no doubt was intended to protect the attaching creditor, but if the subsequent conveyance is in pursuance of an agreement for sale which was before the attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of the attaching creditor. The rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property. The attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor. We cannot, therefore, agree with the view taken by the Punjab and Haryana High Court in Mohinder Singh's case." (underlining added)

5. A reference to the ratio in the case of *Vannarakkal Kallalathil Sreedharan (supra)* shows that the agreement to sell would prevail over a

later attachment and even if a sale deed is entered into after attachment but

the same is pursuant to earlier agreement to sell entered into before attachment, the sale deed even though entered into post attachment prevail in view of the earlier agreement to sell. In the present case, the compromise between the respondent/son/Ram Prasad and father Sh. Sukhdev is dated 9.9.1999 i.e after the agreement to sell dated 20.5.1999. The father Sh. Sukhram was a defendant in the present suit which was filed by the appellant/plaintiff and he filed a written statement in favour of the appellant-plaintiff and admitted to the receipt of consideration under the agreement to sell Ex. PW1/2 dated 20.5.1999 and also of execution of an earlier registered general power of attorney dated 24.8.1993, Ex.PW1/8, in favour of Sh. Ramesh Kumar who is the husband of the appellant-plaintiff-Smt. Gomti Devi. Therefore, in view of the ratio in the case of ***Vannarakkal Kallalathil Sreedharan (supra)*** and the facts as found in this case of the agreement to sell dated 20.5.1999 being prior in point of time to the compromise dated 9.9.1999 entered into by the respondent/son with the father-Sh. Sukhram, the subsequent sale deed dated 20.9.1999, Ex.PW1/10 entered into between the father-Sukhram through Ramesh Chand (husband of appellant-plaintiff) as attorney of Sukhram pursuant to the earlier agreement to sell dated 20.5.1999 will prevail over the later compromise decree dated 9.9.1999

whereby the father Sh. Sukhram gave rights in the first floor to the respondent-son-Ram Prasad.

6. In my opinion, also, the very fact that the judgment in the suit no. 468/06/02 (old number 773/03/02) titled ***Sh. Ram Prasad Vs. Sh. Khem Chand, Smt. Gomti Devi & Sh. Ramesh Kumar*** dated 28.9.2010 (third suit judgment) has become final as there is no challenge to the same, and which judgment dismissed the claim of the respondent herein relying upon the compromise dated 9.9.1999, the judgment dated 28.9.2010 in suit no. 486/06/02 will operate as res judicata against the respondent herein for denying him any rights on the basis of the compromise dated 9.9.1999 entered into by the respondent with his father.

7. In view of the above, all the three substantial questions of law are answered in favour of the appellant and against the respondent. The impugned judgment of the first appellate court dated 14.12.2012 is set aside and the judgment of the trial court dated 28.9.2010 in suits no. 501/06/01 (old number 303/03/01) titled as ***Smt. Gomti Devi VS. Ram Prasad & Sukhram*** is restored and the appellant-plaintiff is granted the decree for possession and mesne profits and interest in terms of para 26 of the judgment of the trial court dated 28.9.2010. Also the judgment and decree

in suit no. 505/2006/03 (old number 594/03) titled as ***Gomti Devi Vs. Ram Prasad*** will stand revived. Parties are left to bear their own costs.

MARCH 24, 2014
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VALMIKI J. MEHTA, J