

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

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Date of decision: 3rd January, 2014

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RFA No.135/2013

SHYAM MISHRA

..... Appellant

Through: Mr. Suresh Sharma, Adv.

Versus

MADHU & ORS.

..... Respondents

Through: Mr. S.C. Singhal, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree (dated 4th February, 2013 of the Court of the Addl. District Judge-IV, South District, Dwarka Courts, New Delhi in Suit No.470/2012 (UID No.02405C0412702009) filed by the respondent no.1 against the appellant and the respondents no.2 to 4 herein) of declaration, declaring the documents in respect of suit property being plot No.12-B *ad measuring* 125 sq.yds. (38x29.6) out of Khasra No.6/1 situated in Village Nangli Sakaravati Delhi *abadi*, now known as Prem Vihar, Najafgarh, New Delhi in favour of the respondent No.1 / plaintiff as valid and the documents with respect to the same property in favour of the appellant / defendant as bogus and directing cancellation

thereof and of mandatory injunction directing the appellant to demolish the construction existing at the suit property and failing which the respondent No.1/plaintiff has been permitted to demolish the same and of recovery of possession of the said property and of *mesne profits* from the appellant/defendant.

2. The appeal came up first before this Court on 12th March, 2013 when the respondent-1/plaintiff being on caveat appeared. Notice of the appeal was issued and subject to the appellant/defendant depositing the decretal amount in this Court, execution of the decree was stayed. In compliance with the said direction a sum of Rs.46,000/- has been deposited in this Court. The appeal was on 8th July, 2013, admitted and posted for hearing and the earlier interim order was made absolute. The counsel for the appellant/defendant and the counsel for the respondent-1/plaintiff have been heard and the Trial Court record has been perused. Though notice of the appeal was not issued to the respondents no.2 to 4 / defendants but the respondent no.3/defendant was *ex parte* before the trial Court and the respondent no.2/defendant though had appeared did not file any written statement and the respondent no.4 /defendant though had filed the written

statement but has otherwise no claim to the property. Thus to complete the record, it is formally recorded that their service is dispensed with.

3. The respondent no.1/plaintiff instituted the suit from which this appeal arises, pleading:-

- (a) that the respondent no.4 /defendant Shri Hari Ram was the owner of the plot No.12 admeasuring 250 sq. yds.;
- (b) that the respondent no.4 Shri Hari Ram divided the said plot into two portions and gave them numbers 12-A and 12-B;
- (c) that the respondent no.4 Shri Hari Ram vide Agreements to Sell coupled with delivery of possession and Power of Attorney and Will etc. and after receiving the entire sale consideration sold the plot No.12-A measuring 103 sq. yds. to one Smt. Chhavi Garg and plot No.12-B measuring 150 sq. yds. to one Smt. Anju Sharma @ Anju Rani;
- (d) that Smt. Anju Rani in the same manner and with the consent of the respondent no.4 sold the plot No.12-B to one Shri Balihari;
- (e) that Shri Balihari sold/transferred 125 sq. yds. out of plot No.12-B (ad measuring total 150 sq. yds) to the respondent-1/

plaintiff vide Agreement to Sell, General Power of Attorney dated 8th May, 2000 and also delivered all the original documents to the respondent-1/plaintiff;

- (f) that the respondent-1/plaintiff raised the boundary wall to protect the plot and demarcated the same and was in possession thereof;
- (g) that when the respondent-1/plaintiff visited the said plot on 14th October, 2009, she found that somebody had unauthorizedly constructed two rooms and had also obtained the electricity connection therein;
- (h) that the respondent-1/plaintiff reported the matter to the Police and the Police apprehended one Shri Pradeep who disclosed that the appellant/defendant had raised construction;
- (i) that the Police did not take any action and in fact the appellant/defendant filed a suit for injunction before the Civil Judge against the respondent-1/plaintiff and her husband, to restrain them from forcibly dispossessing him from the said property; and,

(j) that the appellant/defendant had forged documents of transfer of the said plot by the respondent no.2 /defendant Shri Rahul Sharma in his favour; it was further claimed that the respondent no.2 /defendant had acquired the said plot from the respondent no.3 /defendant Shri Kishan Lal and who in turn had acquired the same from the respondent no.4 /defendant Shri Hari Ram.

accordingly, the suit for declaration, cancellation, recovery of possession, mandatory injunction, *mesne* profits etc. was filed.

4. The appellant/defendant contested the suit by filing a written statement claiming the documents with respect to the property in his favour to be genuine and the documents in favour of the respondent-1/plaintiff to be bogus and claiming to be in lawful possession of the property under the documents in his favour.

5. Needless to state that the respondent-1/plaintiff filed a replication controverting the contents of the written statement of the appellant/defendant.

6. The respondent no.4 Shri Hari Ram who as per the documents of title, claimed both by the appellant/defendant and the respondent-1/plaintiff, was the original owner of the property, also filed a written statement confirming the sale in favour of Smt. Chhavi Garg and Smt. Anju Rani and denying any transfer in favour of the respondent no.3/defendant Shri Kishan Lal through whom the appellant/defendant was claiming.

7. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 22nd March, 2010:-

“(i) Whether the plaintiff is entitled to a declaration that documents mentioned in Relief No.1 are without any authority of law? OPP

(ii) Whether the plaintiff is entitled to a declaration that documents mentioned in Relief No.2 are validly executed documents? OPP

(iii) Whether the plaintiff is entitled to a decree of possession of suit property, as shown in red colour in attached site plan? OPP

(iv) Whether the plaintiff is entitled to mandatory injunction directing defendant no.1 to remove construction from the suit property? OPP

(v) Whether the plaintiff is entitled to receive Rs.10,000/- on account of damages and mesne profits from 14.08.2009 to date of filing of suit? OPP

(vi) Whether the plaintiff is entitled to mesne profits, if yes, at what rate? OPP

(vii) Relief.”

8. The learned Addl. District Judge, in the impugned judgment has found/observed/held:-

- (i) that the documents in favour of the respondent-1/plaintiff were registered while the documents in favour of the appellant/defendant were unregistered;
- (ii) that the documents of transfer of the plot by Smt. Anju Rani in favour of Shri Balihari were also witnessed by the respondent no.4 /defendant Shri Hari Ram;
- (iii) that the respondent no.4 /defendant had admitted the documents in favour of the respondent-1/plaintiff and denied the documents purportedly executed by him in favour of the respondent no.3 /defendant Shri Kishan Lal.
- (iv) that though the receipt of money purportedly executed by the respondent no.3 /defendant Shri Kishan Lal in favour of the respondent no.2 /defendant Shri Rahul Sharma was purportedly registered but when the records of the Sub Registrar were summoned, the said document was not found and some other

document was found to be registered against the particulars of registration which the said receipt bore;

- (v) that though the appellant/defendant had examined the respondent no.2 /defendant Shri Rahul Sharma from whom the appellant/defendant claimed to have acquired the property and the respondent no.2 /defendant claimed to be owner of the property but did not specify the basis of his ownership and did not prove any document;
- (vi) that thus the chain of documents on the basis of which the appellant/defendant claimed rights in respect of the property was suspicious and could not be said to be passing any title in the suit property to the appellant/defendant;
- (vii) that though the documents executed by the respondent no.2 /defendant in favour of the appellant/defendant mention the sale consideration as Rs.80,000/-, the appellant/defendant in his deposition disclosed the sale consideration to be Rs.1 lac;

- (viii) that the respondent no.3/defendant Shri Kishan Lal was reported to have died in the year 1995; the appellant/defendant though examined the son of the said Shri Kishan Lal but did not put any documents (allegedly executed by his father in favour of respondent no.2/defendant) to the said witness and the said witness also did not say that he was acquainted with the signatures of his father Shri Kishan Lal;
- (ix) that the son of the respondent no.3 /defendant Shri Kishan Lal examined by the appellant/defendant was not at all creditworthy;
- (x) that the appellant/defendant did not cross examine the respondent-1/plaintiff with regard to the authenticity of her documents;
- (xi) thus issues No.1,2&3 were decided in favour of the respondent-1/plaintiff and against the appellant/defendant;
- (xii) that the respondent-1/plaintiff had acted with promptitude in reporting the matter to the Police and in filing the suit as soon

as she became aware of the adverse title being claimed by the appellant/defendant;

- (xiii) that the respondent-1/plaintiff had thus proved that she was in possession of the property and had been illegally disposed therefrom; accordingly issue No.3 decided in favour of the respondent-1/plaintiff and against the appellant/defendant; and,
- (xiv) axiomatically, issues No.4 to 6 were also decided in favour of the respondent-1/plaintiff and on the basis of the admission of the appellant/defendant that the property was capable of fetching rent of Rs.600/- to Rs.700/- per month, the rate of *mesne* profits was fixed at Rs.700/- per month.

accordingly, the suit of the respondent-1/plaintiff was decreed as prayed.

9. The counsel for the appellant/defendant has argued:-

- A. that none of the witnesses and the respondent-1/plaintiff has proved the execution of documents in favour of the respondent-1/plaintiff;

- B. that the registration of the documents does not prove execution thereof or delivery of possession in pursuance thereto;
- C. that the respondent no.4 /defendant Shri Hari Ram though filed a written statement and did admission/denial of documents, chose not to appear as a witness;
- D. that the appellant/defendant is now not relying on the receipt of money executed by respondent no.3/defendant Sh. Kishan Lal in favour of respondent no.1/defendant Sh. Rahul Sharma being registered;
- E. that the respondent-1/plaintiff also did not choose to produce the respondent no.4/defendant Shri Hari Ram as her witness;
- F. that it was for the respondent-1/plaintiff to prove her case and which the respondent-1/plaintiff has failed to do; reliance is placed on *M/s. Sudir Engineering Company Vs. M/s. Nitco Roadways Ltd.* 1995 II AD (Delhi) 189 to contend that admission of document into evidence does not amount to its proof; and,

G. that the respondent-1/plaintiff had not produced any witness to prove delivery of possession of the property to the respondent- 1/plaintiff in pursuance to the Agreement to Sell in favour of the respondent-1/plaintiff.

10. The counsel for the respondent-1/plaintiff has supported the judgment.

11. As far as the argument raised by the counsel for the appellant/defendant, of the respondent-1/plaintiff having not proved the delivery of possession of the property to her by Shri Balihari, the same in the context of the pleadings has no relevance. It was not the case of the appellant/defendant that he was in possession of the property since prior to the execution of the documents of sale by Shri Balihari in favour of the respondent-1/plaintiff. The suit, as aforesaid, was for declaration of title/rights with respect to the property and which rights/title, both the respondent-1/plaintiff and the appellant/defendant were claiming on the basis of documents in their favour and not independently thereof. Once it is found that the documents in favour of the appellant/defendant are bogus and reasoning of the learned Addl. District Judge for arriving at which finding is not challenged, it has but to be held that the transaction as depicted in the documents in favour of the respondent-1/plaintiff took place and in that view

of the matter it was not necessary for the respondent-1/plaintiff to, independently of the documents, prove delivery of possession of the property in favour of herself.

12. As far as the non-examination by the respondent-1/plaintiff of the respondent no.4/defendant Shri Hari Ram is concerned, the respondent no.4/defendant Shri Hari Ram in his written statement had supported the documents executed by him in favour of Smt. Anju Rani through whom the respondent-1/plaintiff claimed and had denied sale/transfer in favour of the respondent no.3/defendant Shri Kishan Lal through whom the appellant/defendant claimed. The appellant/defendant did not seek any opportunity to file pleading in response to the said written statement of the respondent no.4 /defendant Shri Hari Ram and which was prejudicial to the appellant/defendant, as the appellant/defendant could in law have done. The respondent no.4 /defendant having in his written statement so admitted the claim of the respondent-1/plaintiff, no adverse inference can be drawn against the respondent-1/plaintiff for not examining the said respondent no.4/defendant Shri Hari Ram; since it was the appellant/defendant who was prejudiced by the said admission of the respondent no.4 /defendant Shri Hari Ram, it was for the appellant/defendant to claim an opportunity for

cross examination of the respondent no.4 /defendant Shri Hari Ram and which again was not done.

13. As far as the argument of the counsel for the appellant/defendant of the respondent-1/plaintiff having not proved the documents under which she claims rights to the property is concerned, the said documents were proved by the respondent-1/plaintiff in her own affidavit by way of examination-in-chief; along with the said affidavit, the documents referred therein were tendered into evidence and a perusal of the Trial Court record does not show the appellant/defendant having taken any objection to the admission into evidence of the said documents. The respondent-1/plaintiff also examined Shri Balihari aforesaid as her witness on 18th December, 2010 who in his examination-in-chief deposed having delivered possession of the property to the respondent-1/plaintiff and also proved the documents of transfer in favour of the respondent-1/plaintiff as well as the documents of transfer executed by Smt. Anju Rani in his favour. It was the counsel for the appellant/defendant who did not cross examine Shri Balihari on that date and sought an adjournment for the said purpose. The suit thereafter was adjourned to 20th January, 2011 for cross examination of Shri Balihari and on which date he did not appear and on the next date i.e. 29th January, 2011

it was stated that Shri Balihari had died. In this view of the matter also, it cannot be said that the respondent no.1/plaintiff has not proved the documents of title in her favour. Moreover it is not as if anybody other than the respondent-1/plaintiff is claiming title to the land through Shri Balihari.

14. I have even otherwise perused the evidence and find the learned Addl. District Judge to have on a correct appreciation of the same reached the conclusions supra. Need is thus not felt for me to reiterate the reasons which prevailed with the learned Addl. District Judge and as culled out hereinabove.

15. I am also of the view that the attempt by the appellant/defendant to portray a document i.e. the receipt of money aforesaid, which though was not registered, as registered and offering no explanation therefor when the said falsehood projected by the appellant/defendant no.1 was caught, is enough to even disentitle the appellant/defendant from contesting the suit and this appeal.

16. No merit is thus found in the appeal which is dismissed with costs. Counsel's fee assessed at Rs.20,000/-.

17. Decree sheet be drawn up.

18. The monies deposited in this Court be forthwith released to the respondent-1/plaintiff.

JANUARY 03, 2014
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RAJIV SAHAI ENDLAW, J