

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

+ **RSA No.100/2008**

% **4th November, 2016**

BANWARI LAL (D) BY LRS. AND ANR. Appellants

Through: Mr. Vivek B. Saharya, Advocate
with Mr. Viresh B. Saharya,
Advocate.

versus

BALBIR SINGH Respondent

Through: Mr. Santosh Kumar, Advocate with
Mr. Rajiv Ranjan Mishra, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit against the Judgment of the First Appellate Court dated 4.2.2008 whereby the first appellate court decreed the suit for declaration and injunction filed by the respondent/plaintiff with respect to claim of ownership and possession of the suit property being plot nos.5,6 and 7 out of Rectangle no.42, Kila 5/1, situated in the area of village Karawal Nagar in the abadi of Prem Nagar Extension, Illaqa Shahdara, Delhi. The first appellate court by its impugned

judgment set aside the Judgment of the Trial Court dated 23.9.2005 dismissing the suit for declaration for declaring the respondent/plaintiff as the owner in possession of the suit property and injunction the appellants/defendants from disturbing the settled possession of the respondent/plaintiff. The original defendants in the suit died *pendente lite* and they are now represented by appellants who are their legal heirs. Reference to defendants will include reference to the appellants who are their legal heirs.

2. The facts of the case are that the respondent/plaintiff claimed ownership of the suit property on the ground that the suit property was originally owned by one Sh. Ram Prashad. Sh. Ram Prashad sold rights in the suit property by way of usual documentation being the Agreement to Sell, General Power of Attorney etc dated 8.3.1982 in favour of Smt. Prem Lata and Sh. Chander Prakash who constructed a boundary wall and a room over the suit property in April, 1982. Smt. Prem Lata and Sh. Chander Prakash sold the suit property along with the super structure vide documentation dated 25.9.1985 being the Agreement to Sell, General Power of Attorney etc to the respondent/plaintiff and since then the respondent/plaintiff is in the possession of the suit property. Respondent/plaintiff further pleaded that though by documentation dated

25.9.1985 area of 600 sq. yds was sold to him, however, on measurement at the spot the area came out to be lesser of 527 sq. yds only. Accordingly, the respondent/plaintiff claimed the relief of declaration of ownership of the suit property in his favour and that he was in lawful settled possession of the property.

3(i) The appellants/defendants contested the suit and denied the ownership of the respondent/plaintiff of the suit property. The appellants/defendants pleaded that they are in fact the owners of the suit property and that they have constructed the boundary wall and the room.

(ii) At this stage, this Court would like to observe that in the entire written statement filed by the appellants/defendants, there is no reference as to how the appellants/defendants became the owners of the suit property i.e by which documentation, of which date, and from whom. Also, the only plea in the written statement was denial of ownership of the suit property of the respondent/plaintiff. Also, in the written statement there was no such issue raised that the suit property is not the suit property as stated in the plaint.

4. After pleadings were complete, the trial court on 04.01.1995 framed the following issues:-

“(i) Whether the plaintiff is the actual owner of the suit property? OPP.

(ii) Whether the defendants is owner of the suit property as alleged in written statement? OPD.

(iii) Whether the plaintiff is in possession of suit property? OPP.

(iv) Whether the plaintiff is entitled to relief claimed? OPP.

(v) Relief.”

5. The Trial Court by its Judgment dated 23.9.2005 held that the respondent/plaintiff failed to prove ownership of the suit property because an agreement to sell and general power of attorney cannot confer title rights in an immovable property. As regards issue no.2, it was held by the trial court that even the appellants/defendants failed to prove their ownership of the suit property. Trial court, however, held that the respondent/plaintiff was in possession of the suit property.

6. The first appellate court while allowing of the appeal by its impugned judgment has made the following salient observations and drawn the following conclusions:-

(i) Appellants/defendants proved no documents to prove their claim of ownership of the suit property, and even if the copies of the documents filed by the appellants/defendants are looked into, the same show the claim of ownership of only 125 sq. yds whereas the suit property as per the documentation of the respondent/plaintiff was of 600 sq. yds.

(ii) Appellants/defendants claimed to have been dispossessed by the respondent/plaintiff from the suit property on 20.11.1985 as per the statement of Sh. Swaraj/DW1/defendant no. 2, however, the subject suit was filed on 13.8.1986 i.e. after six months and the appellants/defendants did not file any suit for possession within the period of six months from dispossession under Section 6 of the Specific Relief Act, 1963. This aspect and conclusion is further buttressed by the first appellate court by holding that although the appellants/defendants claimed to have been dispossessed on 20.11.1985, no suit for possession was filed by the appellants/defendants till the time the appeal was decided in 2008, and which would be a period of about 22 years, and therefore, the respondent/plaintiff in any case would be the owner by law of prescription and adverse possession as against the appellants/defendants.

(iii) The first appellate court also noticed that an Application dated 17.10.1996 for amendment of the written statement was filed by appellants/defendants to add the counter claim for possession and damages against the respondent/plaintiff, and which application filed after more than 10 years of filing of the suit and 11 years from the date of the alleged trespass was dismissed vide Order dated 28.1.1997, and that there was no

challenge to that Order dated 28.1.1997 by which the application for amendment of the written statement was dismissed.

7. It is therefore seen that on the one hand the respondent/plaintiff has proved the documentation for claiming rights in his favour under Section 202 of the Indian Contract Act with respect to the suit property being the general power of attorney Ex.PW1/2 executed in his favour by the earlier owners Smt. Prem Lata and Sh. Chander Prakash and who had themselves purchased from the earlier owner Sh. Ram Prashad, the appellants/defendants, on the other hand, not only laid out a totally vague written statement by not stating as to how and when and by which documentation the appellants/defendants became the owners of the suit property, but that even in the evidence led on behalf of the appellants/defendants, no documentary evidence was proved to show ownership of the appellants/defendants of the suit property. In fact, appellants/defendants did not claim ownership of the suit property, but claimed ownership of another property which is stated to be in rectangle no. 48. Also, the documentation of claim of title of the appellants/defendants, even if looked into, was only for 125 sq. yards and not for 600 sq. yds/527 sq. yds and which is the area of the suit property. Trial court wrongly held that the documentation dated 25.9.1985 cannot confer rights in the suit

property in favour of the respondent/plaintiff inasmuch as the documentation in favour of the respondent/plaintiff are prior to 24.9.2001 and only whereafter the agreement to sell in the nature of part performance under Section 53A of Transfer of Property Act, 1882 required *ad valorem* stamping and registration. The issue is surely covered in favour of the respondent/plaintiff in terms of the ratio of the judgment of this Court in the case of ***Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538***, and which judgment also deals with the rights arising under Section 202 of the Indian Contract Act, 1872 with respect to a general power of attorney.

8. In view of the above, it is seen that the first appellate court has rightly reached its conclusions on the basis of a valid reasoning of the respondent/plaintiff being in settled possession when the subject suit was filed, and that the respondent/plaintiff having proved his claim of title rights in the suit property as per general power of attorney Ex.PW1/2 which gives rights under Section 202 of the Indian Contract Act, the appellants/defendants pleaded only vaguely in the written statement the claim of ownership without any details and did not even prove the alleged ownership, and finally that till 22 years after the alleged dispossession of the appellants/defendants from November, 1985 till 2008 when the first appeal

was decided, no suit for possession was filed by the appellants/defendants against the respondent/plaintiff for possession and hence the respondent/plaintiff would become the owner by law of prescription and adverse possession. I would like to note that today is now about 31 years from November, 1985 and yet no suit has been filed by the appellants/defendants against the respondent/plaintiff for possession and which they could have always done even if their application for amendment of the written statement to include the relief of counter claim of possession and damages was dismissed vide Order dated 28.1.1997.

9. No substantial question of law arises for this Regular Second Appeal to be entertained. The second appeal is accordingly dismissed, leaving the parties to bear their own costs.

NOVEMBER 04, 2016
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VALMIKI J. MEHTA, J