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

+ **RSA 443/2015**

Date of Decision: 18.05.2016

CHITTAR LEKHA

..... Appellant

Through: Ms.Kusum Lata Sharma and
Mr.Karan Sharma, Advocates.

versus

GANGA RAM

..... Respondent

Through: Mr.S.S.Parashar &
Mr.S.R.Parashar, Advocates.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Smt.Chittar Lekha, the appellant, has put up a challenge to the judgment dated 29.11.2012 passed in Civil Suit No.506/1993 (old No.S-133/92) preferred by the respondent Ganga Ram, seeking possession of the suit property, which was decreed and the appellant was directed to hand over the vacant possession of the suit property to the respondent/plaintiff as well as against the judgment dated 19.10.2015 passed by the Additional District Judge-II (Central), Tis Hazari Courts, Delhi in RCA No.110/2013 whereby the judgment of the Trial Court referred to above was upheld and affirmed and the first appeal preferred by the appellant was dismissed.

2. The respondent/plaintiff, Ganga Ram claimed to be the owner of the suit property namely House No.86 measuring 50 sq.yards in Nangloi Extension after having purchased it from one Rambir Singh on 15.06.1990 for a consideration amount of Rs.74,000/-. The documents on which the respondent/plaintiff relied are Agreement to Sell, General Power of Attorney and affidavit which was executed by Rambir Singh in favour of the respondent/plaintiff on 15.06.1990. The case of the respondent/plaintiff is that the appellant/defendant was inducted in the suit property as a caretaker since 16.06.1990 on a monthly remuneration of Rs.50/- for the sole purpose of looking after the house. The appellant/defendant had also executed an affidavit on 30.06.1990 stating that the suit premises would be vacated whenever it would be required by the respondent/plaintiff.

3. An oral intimation to the appellant/defendant for vacating the suit premises went unheeded whereafter a legal notice dated 17.10.1992 was served upon her through registered post as well as UPC. The suit property, even then, was not vacated, rather it is alleged that the appellant/defendant doled out threats to the respondent/plaintiff for implicating him in a false case. A case also was lodged against the respondent/plaintiff in Nangloi police station.

4. A suit, therefore, was filed seeking possession of the suit premises.

5. The appellant/defendant contested the suit on the ground that the land in dispute was agricultural land situated in revenue estate of Village Nangloi and, therefore, Delhi Land Reforms Act was applicable, ousting the jurisdiction of the Civil Courts. The locus to

prefer the suit was also challenged on the premise that respondent/plaintiff is neither the owner nor the bhoomidar and that even the so called vendor of the respondent/plaintiff did not have any right to sell or transfer the property as he, too, was neither a bhoomidar or an asami. The specific case of the appellant/defendant before the Trial Court was that the property was purchased by her from Rambir Singh on a consideration amount of Rs.74,000/-. Since the money could not be arranged in the first instance, Rs.35,000/- was borrowed from the respondent/plaintiff who stands in relation to the appellant/defendant and only by way security, General Power of Attorney was, at the instance of the appellant/defendant, executed in favour of the respondent/plaintiff by the vendor Rambir Singh. It was only later that the respondent/plaintiff fraudulently and maliciously paid the entire consideration amount and got a receipt issued in his name. Blank signed papers of the appellant/defendant were misused by the respondent/plaintiff for converting it into an affidavit dated 30.06.1990.

6. Relying upon the pleadings of the parties, the Trial Court vide order dated 08.09.1994 framed the following issues:-

- (i) *Whether the jurisdiction of this Court is barred to try the present case by Delhi Land Reforms Act? OPD*
- (ii) *Whether the plaintiff is the owner of the property in dispute? OPP*
- (iii) *Whether the plaintiff is entitled to relief of possession as claimed on his averments as contained in the plaint? OPP*
- (iv) *Relief.*

7. The issue regarding the jurisdiction having been taken as a preliminary issue, the Trial Court vide its order dated 30.03.2002 rejected the plaint under Order 7 Rule 11 of the CPC holding that the jurisdiction of the Civil Court was barred. Against the aforesaid judgment dated 30.03.2002, the respondent/plaintiff preferred an appeal and the Lower Appellate Court vide order dated 07.02.2012 set aside the Trial Court order rejecting the plaint and remitted the case back to the Trial Court to decide the suit afresh after waiving off issue No.1 viz. “whether the Civil Court had the jurisdiction to try the suit?”. The aforesaid order of the Lower Appellate Court dated 07.02.2012, remitting the case back to the Trial Court, was not challenged by the appellant herein.

8. The suit was tried afresh by the Trial Court.

9. The respondent/plaintiff deposed before the Trial Court that the suit property was purchased from Rambir Singh on 15.06.1990 who executed GPA, Special Power of Attorney, Agreement to Sell and an affidavit (Exh.PW-1/A to PW-1/C). The receipt issued by Rambir Singh in his favour also was registered before the office of the Sub Registrar. The respondent/plaintiff also proved exhibit PW-1/2 whereby the appellant/defendant had promised to vacate the suit premises whenever desired by the respondent/plaintiff. On the contrary, the respondent/defendant attempted to prove the Khatauni (Exh.DW-1/1) and stated before the Trial Court that the documents relating to the property were pilfered by the respondent/plaintiff in her absence. However, she admitted that the documents were executed by

the vendor of the property in favour of the respondent/plaintiff. Smt.Kaushalya, DW-2 who appeared on behalf of the appellant/defendant as a witness only testified to the fact that the appellant had taken a loan of Rs.35,000/- from her which amount was repaid within six months and that such amount was paid to the respondent/plaintiff in her presence.

10. From the testimonies of the appellant/defendant as DW-1 and of Smt.Kaushalya (DW-2), it could not be proved that the suit property was ever sold to the appellant/defendant by the vendor Rambir Singh.

11. The affidavit (Exh.PW-1/2) further buttressed the stand of the respondent/plaintiff that the appellant/defendant resided in the suit property as a caretaker and received an emolument of Rs.50/- per month. The assertion of the appellant/defendant that the aforesaid affidavit was forged and fabricated and had been brought into existence by using the blank signed paper could not be substantiated. The status of the appellant/defendant as a caretaker in the property was not categorically denied by defendant No.2, Smt.Kaushalya.

12. Thus the Trial Court held that the respondent/plaintiff was the owner of the suit property and was entitled to the relief of possession.

13. The appellant/defendant challenged the aforesaid judgment of the Trial Court on the ground that the document PW-1/2 which was allegedly an undertaking given on 30.06.1990 by the appellant/defendant was wrongly relied upon as only a photocopy was produced and which could not have been exhibited or relied upon. It was further urged that construction was undertaken over the suit property in the year 2006 and it was completed in the year 2007. The

suit property now is a two-storeyed building. If at all the respondent/plaintiff was the owner of the property, such construction would not have been permitted by him. The Trial Court, it was alleged, also did not take into account the fact that various amenities like electricity and water were supplied in the suit premises in the name of the appellant/defendant which established that the suit property belonged to her. Additionally it was argued that the paltry monthly remuneration shown by the respondent/plaintiff is unbelievable and, therefore, unacceptable.

14. The aforesaid contentions of the appellant/defendant were repelled by the Lower Appellate Court. The Lower Appellate Court was of the view that the appellant/defendant ought not to have carried out construction over the property in dispute and if at all construction was undertaken, it was at the risk of the appellant/defendant. No permission was sought either from the Trial Court or from the respondent/plaintiff and, therefore, such construction, even if made during the pendency of the suit, would not accord any right to the appellant or be a proof of her being the owner of the property.

15. The First Appellate Court affirmed the findings of the Trial Court regarding the ownership of the suit property as the respondent/plaintiff had proved the ownership through GPA and other documents as well as receipt of Rs.74,000/- which was executed by the vendor Rambir Singh in favour of the respondent/plaintiff. The factum of payment of Rs.69,000/- by the respondent/plaintiff to the vendor of the property by way of a demand draft has not been denied by the appellant/defendant. The First Appellate Court, therefore,

completely rejected the claim of the appellant/defendant.

16. This Court finds no occasion to differ with the concurrent findings of the Courts below and that also in the absence of any substantial question of law having been raised by the appellant/defendant.

17. The second appeal is, therefore, for the aforestated reasons, dismissed but without costs.

CM Appln.31192/2015

1. In view of the petition having been dismissed, the application has become infructuous.

2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

MAY 18, 2016

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