

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

+ **RSA No. 148/2016**

% **20th July, 2017**

BRIJ NANDAN GUPTA Appellant

Through: Mr. Pardeep Gupta, Mr.
Parinav Gupta, Ms. Mansi
Gupta and Mr. Moazzam Ali,
Advocates.

versus

GEETA Respondent

Through: Mr. Rajiv Chauhan, 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 appellant impugning the concurrent judgments of the courts below; of the trial court dated 30.10.2013 and the first appellate court dated 30.9.2015 dismissing the suit of the appellant/plaintiff filed against the respondent/defendant for possession of the suit property which comprises of one room in the Flat No. 3/23A, Pocket A-3, Ground Floor, DDA Flats, Everest Apartment, Kalkaji Extension, New Delhi.

The suit was dismissed inasmuch as the courts below have held that the respondent/defendant, being the daughter and one legal heir of Sh. Girdhari Lal Verma and his widow Smt. Bhagwati Devi, had never executed any NOC or relinquishment deed in favour of Smt. Bhagwati Devi after the death of her husband Sh. Girdhari Lal Verma who was the owner, and therefore, the appellant/plaintiff cannot be said to have purchased the entire Flat no. 3/23-A i.e flat purchased by the appellant/plaintiff would be less the share of the respondent/defendant in the flat in question.

2. The facts of the case are that admittedly Sh. Girdhari Lal Verma was the owner of the property being Flat no.3/23-A, Pocket-3, Ground Floor, DDA Flats, Everest Apartment, Kalkaji Extension, New Delhi. On the death of Sh. Girdhari Lal Verma it is pleaded by the appellant/plaintiff that his widow Smt. Bhagwati Devi became the sole owner of the property on account of her children, being two sons and two daughters; including the respondent/defendant/one daughter, had relinquished on 15.1.1993 their rights in the suit property in favour of their mother/Smt. Bhagwati Devi. Since the mother Smt. Bhagwati Devi, widow of Sh. Girdhari Lal Verma hence became the

sole owner of the suit property, she had vide registered documents dated 7.8.2008 including the agreement to sell, power of attorney, Will etc transferred the Flat no. 3/23-A to the appellant/plaintiff. Since the respondent/defendant failed to vacate the suit property/room in the subject flat, the subject suit for possession was filed.

3. Respondent/defendant contested the suit and prayed for dismissal of the suit on the ground that the documents relied upon by the appellant/plaintiff executed by the mother Smt. Bhagwati Devi were forged and fabricated documents. It was also pleaded that neither the respondent/defendant nor her brothers and sisters ever signed any NOCs for transfer of the property in the name of the mother. It is pleaded that the appellant/plaintiff illegally got the documents of the flat in question executed in his name. It was further pleaded on behalf of the respondent/defendant that the suit has been filed after the death of the mother to extort money from the respondent/defendant. Accordingly, suit was prayed to be dismissed.

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

- “1. Whether plaintiff has not approached the court with clean hands and has suppressed the material facts? OPD
2. Whether plaintiff is entitled for the decree of possession as prayed? OPP
3. Whether the plaintiff is entitled for the compensation on account of illegal occupancy @ Rs.2,00,000/- as prayed in para (b) in prayer clause? OPP
4. Relief.”

5. The evidence led by the parties has been referred to by the trial court in paras 9 and 10 and these paras read as under:-

“9. To prove his case, the plaintiff examined only one witness i.e. himself as PW1 and tendered his evidence by way of affidavit (Ex.PW1/X) on similar lines as his plaint and was duly cross examined by the defendant. PW1 also relied upon the following documents i.e

- Registered transfer documents i.e. Agreement to sell and purchase and General Power of Attorney dated 07.08.2008 (Ex.PW1/A) (Colly).
- Site plan (Ex.PW1/B)
- Papers in favour of Sh. Girdhari Lal Verma executed by Sh. Bir Bhan dated 19.01.1989 (Ex.PW1/C)(Colly)
- Ikrarnama/No Objection Certificate (Ex.PW1/D) (Colly)
- Complaint dated 31.08.2008 (Mark PW1/E) / (Mark A)
- Complaint dated 12.06.2009 (Ex.PW1/F)

During his cross examination the witness was confronted with Mukhtiyarnama (Ex.PW1/D1)

10. The defendant examined only herself as DW 1 in support of her defence and tendered her evidence by way of affidavit (Ex.DW1/A) on similar lines as her written statement. DW1 has also relied upon copy of a complaint dated 31.08.2008 i.e Mark A.”

6. For the purpose of disposal of this Regular Second Appeal the following substantial questions of law are framed:-

- (i) Whether the courts below have not committed a manifest illegality and gross perversity in failing to hold that the respondent/defendant had executed any Ikrarnama dated 15.1.1993, although, this document was exhibited and proved by the appellant/defendant collectively along with the entire set of NOCs executed by the two sons and two daughters of Smt. Bhagwati Devi including the respondent/defendant, and which documents were exhibited as Ex.PW1/D (Colly).
- (ii) Whether the courts below have committed a complete perversity in rejecting reliance upon a police complaint dated 31.8.2008 made by the respondent/defendant to the police, and proved as Ex.PW1/E by the appellant/plaintiff, only allegedly because the respondent/defendant pleaded that she had not written the words in the same being “*Vijay Gupta ko sale kar chali gayee*” i.e mother left after selling the property to Sh. Vijay Gupta although it is inconceivable that in a complaint written in hand by the respondent/defendant, there could ever arise the possibility of the aforesaid words not existing in the police complaint Ex.PW1/E dated 31.8.2008 in view of its positioning in the last line of first para of the complaint.
- (iii) Whether the courts below have committed a gross illegality and perversity by refusing to hold the

appellant/plaintiff as the owner of the property although not only the entire original documents of the suit property were in possession of the appellant/plaintiff having been delivered the same by Smt. Bhagwati Devi, but also because no other legal heir of Smt. Bhagwati Devi, being the two brothers and one sister of the respondent/defendant ever objected to the ownership of the mother Smt. Bhagwati Devi of the Flat no. 3/23-A and also thereafter of the transfer of the Flat No. 3/23-A by the mother Smt. Bhagwati Devi to the appellant/plaintiff?.

7. That Smt. Bhagwati Devi executed the transfer documents being an agreement to sell, power of attorney etc in favour of the appellant/plaintiff cannot be doubted in view of the fact that the documents are registered documents. These documents also cannot be doubted because except the respondent/defendant being one out of the four children, no other legal heir of Smt. Bhagwati Devi being her other three other children being two sons and one daughter, have ever objected to the transfer of the suit property by the title documents dated 7.8.2008. Both the courts below have committed a complete illegality in holding that it was upon the appellant/plaintiff to summon the two brothers and one sister of the respondent/defendant to show

validity of the documents dated 7.8.2008 because in fact it was equally upon the respondent/defendant to bring her brothers and sister in the witness box to depose that they were objecting to the documents of transfer of the suit property dated 7.8.2008 by the mother Smt. Bhagwati Devi to the appellant/plaintiff because these three legal heirs had not given up their rights in the suit property to their mother Smt. Bhagwati Devi.

8. I may note that the substantial part of the consideration paid under the registered agreement to sell dated 7.8.2008 by the appellant/plaintiff to Smt. Bhagwati Devi, being a sum of Rs.3.5 lacs out of a total of Rs. 6 lacs, was paid by means of the banking instrument and which is mentioned in the first part of the agreement to sell itself. Therefore, the present is not a case where the entire consideration has been paid in cash to Smt. Bhagwati Devi and once money for transfer of the Flat no.3/23-A goes by means of banking instrument to the bank account of Smt. Bhagwati Devi, it cannot be held that the documents were forged and fabricated or the documents were illegally got signed by the appellant/plaintiff from the mother Smt. Bhagwati Devi as pleaded by the respondent/defendant.

9. Accordingly, it is held that the appellant/plaintiff had become owner of the Flat No.3/23-A by virtue of the documents dated 7.8.2008.

10. I may also note that the father Sh. Girdhari Lal Verma died in the year 1990. The Ikrarnama as also the NOCs executed by all the children of Smt. Bhagwati Devi in her favour are of the year 1993. From the year 1993 to 2008 no one disputed the exclusive ownership of Smt. Bhagwati Devi, including the respondent/defendant. Though respondent/defendant has claimed that she is not the signatory to the Ikrarnama dated 15.1.1993 and the NOC of the same date, however, I have not found any case pleaded and proved by the respondent/defendant that she has never been aware of the existence of the Ikrarnama or the NOCs executed by her brothers and sister in favour of her mother. In the Ikrarnama dated 15.1.1993 the signatures of the respondent/defendant appear in the middle of the signatures of the three other brothers and sisters. Therefore, there remains no doubt as to the authenticity of the Ikrarnama dated 15.1.1993 and which is proved as one of the documents in the set of documents Ex.PW1/D (colly). Clearly therefore, the defence of the

respondent/defendant is a dishonest stand and a third party purchaser who is not a member of the family is being irreparably prejudiced on account of this false and dishonest stand being taken by the respondent/defendant that she did not execute any NOC or any Ikrarnama giving exclusive ownership rights in the Flat No.3/23-A to the mother Smt. Bhagwati Devi.

11. It is also relevant then to note that the mother died in the year 2009 i.e almost after one year of execution of the documents dated 7.8.2008 in favour of the appellant/plaintiff and the appellant/plaintiff receiving possession of the entire flat minus the possession of the room in possession of the respondent/defendant, and in this period none of the children of Smt. Bhagwati Devi including the respondent/defendant, ever objected to the appellant/plaintiff taking over possession of the flat in question. Obviously, therefore respondent/defendant knew that the appellant/plaintiff had purchased the property, and which he could not validly have unless the mother Smt. Bhagwati Devi was the owner, and who had become the owner on account of her four children including the respondent/defendant executing the Ikrarnama and the NOC in her favour. The courts below

have thus clearly committed a complete illegality and perversity in holding otherwise.

12. In fact, to buttress the decision on the aforesaid aspect of the suit property having been validly transferred to the appellant/plaintiff, and he validly receiving the possession of the flat less the room in possession of the respondent/defendant along with the original title documents of the property, the complaint made to the police by the respondent/defendant dated 31.8.2008 Ex.PW1/E becomes very relevant. This complaint Ex.PW1/E dated 31.8.2008 becomes extremely relevant because this complaint shows that in August 2008 itself i.e in the month of the transfer of the flat by the mother Smt. Bhagwati Devi to the appellant/plaintiff the respondent/defendant complained to the police of disputes with one Sh. Vijay Gupta who had purchased the flat. Obviously, the name of Sh. Vijay Gupta is written in ignorance because respondent/defendant did not know that the name of the purchaser is Sh. Brij Nandan Gupta and not Sh. Vijay Gupta. However, the police complaint Ex.PW1/E dated 31.8.2008 having been made, the making of the same leaves no manner of doubt as regards knowledge of the respondent/defendant of

transfer of the flat in question by the mother to the appellant/plaintiff.

I out-rightly reject the argument urged on behalf of the respondent/defendant, and most illegally and perversely accepted by the courts below, that the expression “*Vijay Gupta ko sale kar chali gayee*” has been inserted subsequently inasmuch as subsequent insertion of these words is completely impossible because they form part and parcel of the last line of the first para of the complaint, and which line not only exists in the middle of the complaint but that in the absence of these words the earlier part of the line would have no meaning. Obviously, the respondent/defendant is acting clever by half and intends to dishonestly wriggle away from her admission made in the police complaint Ex.PW1/E showing her knowledge of the transfer of the suit property by her mother to the appellant/plaintiff. Accordingly, it is held that on account of the police complaint Ex.PW1/E dated 31.8.2008 made by the respondent/defendant herself, and which is in her own handwriting, the courts below could not have ignored knowledge of the respondent/defendant of the suit property having been transferred by the mother to the appellant/plaintiff.

13. Learned counsel for the respondent/defendant laid great stress on the fact that in the agreement to sell dated 7.8.2008 the name of the respondent/defendant is not mentioned as a legal heir of her mother, however, in my opinion, though there is some strength to this argument but it is very much possible that there could have been a typing error in the name of the respondent/defendant being left out of the names of four legal heirs as stated in the agreement to sell dated 7.8.2008. In any case, once the Ikrarnama and the NOCs dated 15.1.1993 Ex.PW1/D (Colly) are proved to have been executed by all the legal heirs of Smt. Bhagwati Devi including the respondent/defendant, the respondent/defendant cannot dishonestly and falsely contend that she had not given up her share in the suit property in favor of her widowed mother Smt. Bhagwati Devi.

14. I may note that counsel for the appellant/plaintiff does not press the issue of *mesne* profits being granted inasmuch as no evidence has been led on this aspect.

15. In view of the above discussion, all the substantial questions of law framed are answered in favour of the appellant/plaintiff. The impugned judgments of the courts below

dated 30.10.2013 and 30.9.2015 are set aside. Suit of the appellant/plaintiff will stand decreed for possession with respect to one room of Flat No. 3/23A, Pocket A-3, Ground Floor, DDA Flats, Everest Apartment, Kalkaji Extension, New Delhi as shown in site plan Ex.PW1/B. Parties are left to bear their own costs.

JULY 20, 2017/ib

VALMIKI J. MEHTA, J