

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

+ **RSA No. 345/2016**

% **19th May, 2017**

SANDEEP RATHI AND ORS. Appellants

Through: Mr. Achal Gupta, Dr. Deepa,
Ms. Annie Rais and Ms. Gurmeet Kaur
Kapoor, Advocates.

versus

JAI PRAKASH RATHI Respondent

Through: Mr. Sunil Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RSA No. 345/2016 and C.M. Appl. No. 42829/2016 (for stay)

1. This Regular Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) by the defendants in the suit, impugning the judgment of the First Appellate Court dated 16.8.2016. The trial court by its judgment dated 6.10.2015 had dismissed the suit for injunction filed by the respondent/plaintiff against the appellants/defendants for not interfering in the possession of the respondent/plaintiff with respect to suit land being 1/8th share in khasra nos. 68, 69 and 70, Revenue Estate of Village Rajpur Khurd, New

Delhi. The first appellate court setting aside the judgment and decree of the trial court dated 6.10.2015 has decreed the suit of the respondent/plaintiff and enjoined the appellants/defendants from interfering in the peaceful possession of the suit property shown in red color in the site plan.

2. The facts of the case are that a total of eight brothers were co-owners to the extent of $1/8^{\text{th}}$ share each in the total land of 11 bighas 17 biswas contained in khasra nos. 68, 69 and 70 of the Revenue Estate of Village Rajpur Khurd, New Delhi. This property owned by the eight brothers was joint ancestral property and which was inherited by the brothers from their father Sh. Layak Ram. In the year 1995, the entire land of 11 bighas and 17 biswas was said to be sold to M/s. JCT Limited through an attorney of the brothers, one Sh. Rathinder Nath Dass. None of the eight brothers questioned the execution of the sale deed in favor of M/s. JCT Limited till the subject suit was filed by the respondent/plaintiff on 31.1.2011, except the respondent/plaintiff Sh. Jai Prakash Rathi and another brother Sh. Joginder Singh who challenged the sale deed to M/s. JCT Limited pleading that Sh. Rathinder Nath Dass was not their attorney holder. Whereas the suit of Sh. Joginder Singh against M/s. JCT Limited was compromised with Sh. Joginder Singh retaining about 600 sq. yards of land against

payment of certain consideration to M/s. JCT Limited, the suit which was filed by the respondent/plaintiff in the year 1996 itself against M/s. JCT Limited is still pending disposal before the civil court being then the Court of Sh. N.K. Malhotra, ASJ, North being suit no. 290/06/03. The subject suit was filed by the respondent/plaintiff pleading that the appellants/defendants being successors of one brother Sh. Suraj Bhan were trying to illegally interfere with the possession of the respondent/plaintiff for his 1/8th share of the suit land and which land was the 1/8th share of land falling to the share of respondent/plaintiff and which was never sold by the respondent/plaintiff to M/s. JCT Limited and that the respondent/plaintiff had continued to be in possession of his 1/8th share, and Sh. Suraj Bhan had already sold his share to M/s. JCT Limited. The subject suit was therefore filed seeking the relief of injunction against the appellants/defendants from in any manner interfering with the peaceful possession of the respondent/plaintiff of the suit land and in any manner forcibly dispossessing the respondent/plaintiff from khasra no. 70 and which was one of the khasra of total original land of 11 bighas 17 biswas comprised in khasra nos. 68, 69 and 70.

3. Appellants/defendants contested the suit and pleaded that the respondent/plaintiff was not in exclusive possession of the suit land

and that they were co-owners of the suit land. It was also pleaded by the appellants/defendants that they had been parking their buses in the suit land as they were running a transportation business. Appellants/defendants also stated that the suit land only had a boundary wall but no gate. Accordingly appellants/defendants prayed for dismissal of the suit on both the grounds that they were co-owners of the suit land being the successors-in-interest of one brother Sh. Suraj Bhan and also that the respondent/plaintiff was not in the exclusive possession of the suit land.

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

- “1. Whether the plaintiff has not come to the court with clean hands? OPD
2. Whether the plaintiff has no cause of action to file the present suit? OPD
3. Whether the plaintiff or the defendant no. 1 was in the settled possession of the suit premises at the time of filing the suit? OP(parties)
4. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
5. Relief, if any.”

5. Trial court held in favour of the appellants/defendants and against the respondent/plaintiff that the respondent/plaintiff had failed to prove his exclusive possession of the suit land and once the

respondent/plaintiff failed to prove the exclusive possession of the suit land, a suit for injunction to restrain the appellants/defendants from interfering in possession would not lie. The first appellate court by its impugned judgment dated 16.8.2016 has held that the appellants/defendants do not have any title remaining in the suit land as co-owners because the father of the appellants/defendants Sh. Suraj Bhan had already transferred his 1/8th share in the suit land to M/s. JCT Limited in the year 1995 and neither the appellants/defendants nor their father Sh. Suraj Bhan had ever at any point of time questioned the sale deed executed in favour of M/s. JCT Limited with respect to the sale of the 1/8th share of Sh. Suraj Bhan, and the only challenge to the sale deed in favour of M/s. JCT Limited was by two brothers being the respondent/plaintiff and Sh. Joginder Singh. The first appellate court also has held that merely because buses of the appellants/defendants were parked at one point of time on the suit land or were parked by the appellants/defendants because they had business of transportation, would not mean that the appellants/defendants are in possession of the suit land because possession is on the basis of title and the appellants/defendants had no title of the suit land because their predecessor-in-interest Sh. Suraj Bhan had already transferred his 1/8th

share of the suit land to M/s. JCT Limited by the sale deed of the year 1995.

6. On behalf of the appellants/defendants, it is strenuously argued that the respondent/plaintiff had admitted in his cross examination that appellants/defendants were carrying on transportation business and were parking their buses and transport vehicles on the suit land and which showed that the respondent/plaintiff was not in exclusive possession of the suit land and hence the suit for injunction could not have been decreed by the first appellate court. It is also argued that besides the respondent/plaintiff, one another brother in the year 2013, namely Sh. Ved Prakash, and who had appeared as PW-2 in the present suit, had also filed a suit challenging the sale deed in favour of M/s. JCT Limited of the year 1995, and therefore, once the sale deed in favour of M/s. JCT Limited stands challenged not only by the respondent/plaintiff but also by another brother Sh. Ved Prakash on the ground of illegal inducement and lack of voluntariness in making the sale deed in favour of M/s. JCT Limited in the year 1995, the benefit of the decree of the suit, if decreed in favour of the respondent/plaintiff, and against M/s. JCT Limited will also enure for the benefit of the appellants/defendants and who therefore will be and are entitled to take benefit of the suit filed by the respondent/plaintiff against M/s. JCT

Limited to claim that they are owners of the suit property. Reliance is also placed by the appellants/defendants upon the revenue record being the Khatauni of the year 2011, Ex.DW1/2, which showed that all the brothers were shown as Bhumidars of the suit property in the year 2011.

7. In my opinion, all the arguments urged on behalf of the appellants/defendants do not carry any substance and the present regular second appeal is liable to be and accordingly dismissed for the reasons given hereinafter.

8. In law, if a sale deed is alleged to have been got signed by undue influence and coercion such a sale deed is not a void document but is only a voidable document. A voidable document is valid unless it is sought to be got cancelled under Section 31 of the Specific Relief Act, 1963 or by filing of an appropriate suit, and that too within the period of limitation. Admittedly, neither the appellants/defendants nor their predecessor-in-interest Sh. Suraj Bhan ever filed any litigation to get the sale deed of the year 1995 executed in favour of M/s. JCT Limited cancelled and by which sale deed of the year 1995 1/8th share of Sh. Suraj Bhan, predecessor-in-interest of the appellants/defendants, was transferred to M/s. JCT Limited. Therefore, so far as the transfer

of title of 1/8th share of Sh. Suraj Bhan in the total land of 11 bigas and 17 biswas in khasra Nos. 68 to 70 of Village Rajpur Khurd is final in favour of M/s. JCT Limited, the appellants/defendants therefore cannot claim to be co-owners of the suit land. Once the appellants/defendants are not co-owners of the suit land, it is not upon the appellants/defendants to argue that being co-owners they are entitled to possession of the suit land and which has not been partitioned. It is only if the appellants/defendants would have been co-owners then the possession of the respondent/plaintiff of the suit land would be for and on behalf of all the co-owners but once the appellants/defendants are not the co-owners, the appellants/defendants cannot claim that the possession of the respondent/plaintiff is not an exclusive possession and that the possession of the respondent/plaintiff is allegedly also on behalf of the appellants/defendants as co-owners.

9. Reliance placed upon the revenue record Ex.DW1/2 being the khatauni of the year 2011 only shows that in the revenue record no mutation has taken place on the basis of the sale deed, and in any case mutation does not confer title because title is conferred by a registered sale deed in terms of the provisions of Section 54 of the Transfer of Property Act, 1882 read with Section 17(1)(b) of the Registration Act, 1908. Also, there is a valid reason for the revenue record remaining till

the year 2011 in the name of all the eight brothers because admittedly the suit of the respondent/plaintiff for cancellation of the sale deed so far as his 1/8th share is concerned had already been filed by the year 2011 and in fact continues to remain pending till date. The suit was filed by respondent/plaintiff to question the sale deed of the year 1995 in favour of M/s. JCT Limited in the year 1996 itself. Therefore, I reject the argument urged on behalf of the appellants/defendants by placing reliance upon the khatauni Ex.DW1/2.

10. The next argument of the appellants/defendants is that it has been admitted by the respondent/plaintiff that the transport vehicles of the appellants/defendants were being parked in the suit land, and therefore, since the respondent/plaintiff is not in exclusive possession, the suit for injunction will not lie. This argument is also an argument without merit because possession has to be a legal possession otherwise with respect to an open land which is bounded by a boundary wall without a gate, possession has to necessarily follow title. Appellants/defendants do not have any title to the suit land, and therefore, the user of the land at any point of time by parking of transportation vehicles will not mean that such user of the land amounts to physical possession of the suit land. User is different than physical possession when the property is an open piece of land. This

Court cannot permit owners of the suit land to be deprived of possession, which is only a vacant land without any construction, simply on the basis of parking of some vehicles on the suit land, and which suit land admittedly has no gate and only boundary walls exist without any gate for enclosing the same.

11. A second appeal under Section 100 CPC lies only if there arises a substantial question of law. Once the first appellate court has drawn conclusions about the basis of facts and evidence found on record as also established the legal position, this Court cannot hold that there arises a substantial question of law, or even a question of law for that matter, inasmuch as, it is within the realm of jurisdiction of the trial court and the first appellate court to arrive at findings and conclusions, and such findings of facts and conclusions cannot be interfered with by this Court unless the same are grossly perverse or grossly illegal.

12. Dismissed.

MAY 19, 2017/**/ib**

VALMIKI J. MEHTA, J