

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

+ **RSA No. 392/2015**

% **Reserved on: 11th August, 2017**
Pronounced on: 18th August, 2017

RAMA DEVI Appellant

Through: Mr. N.S. Dalal, Ms. Toral
Banerjee and Mr. Amit
Dhankhar, Advocates.

versus

SOMPAL Respondent

Through: Mr. Madan Lal Sharma, Mr.
Ashish Bhardwaj and Ms. Vidhi
Sharma, Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

**RSA No. 392/2015 and C.M. Appl. No. 26899/2015 (under Order
XLI Rule 27 CPC, filed by the appellant)**

1. This Regular Second Appeal under Section 100 of the Code of the Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the first appellate court dated 13.7.2015 by which the first appellate court allowed the appeal filed by the respondent/plaintiff and decreed the suit for declaration and

injunction in favour of the respondent/plaintiff with respect to the property admeasuring 250 sq. yds. out of 533 sq. yds. comprised in property no. 57, Khasra no. 30/2, Village Pansali, now known as Deep Vihar, Delhi. Trial court by its judgment dated 28.2.2015 had dismissed the suit of the respondent/plaintiff and therefore the respondent/plaintiff was not successful in getting himself declared as owner of the suit property. Respondent/plaintiff therefore had appealed against the judgment of the trial court dated 28.2.2015 and was therefore successful in the first appellate court which passed its judgment dated 13.7.2015 decreeing the suit for declaration and injunction filed by the respondent/plaintiff.

2. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that he is the owner of the suit property being plot no. 57, Block A, measuring 250 sq. yds. out of 533 sq. yds. comprised in khasra no. 30/2, Village Pansali, Deep Vihar Colony, Delhi. Respondent/plaintiff pleaded that he had purchased the suit property along with a large strip of land admeasuring 11888 sq. yds. in different khasra numbers of Village Pansali from its earlier recorded owners by means of Agreement and General Power of Attorney dated

18.1.1989. As per the respondent/plaintiff the land in question was purchased for developing a colony on the land by carving out plots and then selling the same. Respondent/plaintiff pleaded that he sold various plots of different sizes to different buyers, but he did not sell plot no. 57 or part thereof to anybody and that he is the owner and in possession of plot no. 57. It was further pleaded in the plaint by the respondent/plaintiff that the appellant/defendant no. 1 had no right, title and interest to the suit property and she was threatening to take physical possession of the suit property. The subject suit for declaration and injunction was therefore filed.

3. Appellant/defendant no. 1 contested the suit and pleaded that she had purchased the suit plot of 250 sq. yds. from one Sh. Harbhajan Lal. It was pleaded in the written statement of appellant/defendant no. 1 that the suit property was purchased from Sh. Harbhajan Lal on 20.10.1999 and usual set of documentation were executed in favor of the appellant/defendant no. 1 by Sh. Harbhajan Lal. It was further pleaded in the written statement that the respondent/plaintiff had also sold to the appellant/defendant no.1 another plot no. 74 measuring 200 sq. yds. It was pleaded that the

appellant/defendant no. 1 had lodged complaints with the police because when the appellant/defendant no. 1 went to the plot to raise construction the respondent/plaintiff raised objection. Suit was therefore prayed to be dismissed as appellant/defendant no. 1 was pleaded to be the owner of the suit property.

4. Respondent/plaintiff filed replication and reiterated his stand of ownership of the suit property. In para 6 of the replication in response to appellant/defendant no. 1 pleading in para 6 of the written statement that another plot of 200 sq. yds. was also sold to the appellant/defendant no.1 bearing no. 74, the respondent/plaintiff stated that as far as property no. 74 is concerned the same was sold by the respondent/plaintiff by executing the necessary documents.

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

- “(i) Whether the plaintiff has affixed the appropriate Court Fees as per Court Fees Act? OPP
- (ii) Whether plaintiff is entitled for declaration against defendant no.1 that he be declare the owner of the suit property in question bearing no.57, Block-A, out of Khasra no.30/2, Village Pansali, now known as Deep Vihar measuring about 250 sq. yards out of 533 sq. yard? OPP
- (iii) Whether plaintiff is entitled for a decree of permanent injunction, as prayed for? OPP.”

6. Evidence which was led by the parties is recorded in paras 7 and 8 of the judgment of the trial court, and these paras read as under:-

“EVIDENCE ON BEHALF OF PLAINTIFF

(7) Thereafter, the plaintiff examined himself as PW1 vide his testimony Ex PW1/A reiterated the contents of the plaint and relied upon documents Ex PW1/1 to EX PW1/4

PW1/1 is a rough site plan with dimensions of the property in question.

PW1/2 is a Agreement to sell dated 18.01.1989.

PW1/3 is a General Power of Attorney dated 18.01.1989.

PW1/4 is a GPA (OSR) dated 7.4.1989.

PW2 is one Sh. Ajmer Singh who alleges to be Care Taker of the suit property of the plaintiff since the year 2000.

PW3 is Sunil Sonanki, brother-in-law of the plaintiff, who vide his affidavit Ex.PW3/1 testified that he visited the suit property with the plaintiff many times and as per his knowledge plaintiff is the owner in possession of the same.

EVIDENCE ON BEHALF OF DEFENDANT

(8) DW1 who is the defendant herself who vide her affidavit which is Ex.DW1/A reiterated the contents of the WS and relied upon documents.

Ex.DW1/1 is the GPA, affidavit, agreement to sell, receipt etc dated 20.10.1989 (OSR) (colly)

EX. DW1/2 is the affidavit, agreement to sell, GPA, dated 20.10.1999 (Colly) which are marked as mark A.

Ex.DW1/3 is a photocopy of receipts (colly).

Ex.DW1/P1 is police complaint dated 18.06.2009 sent by the defendant no. 1 to the DCP.

DW2 is Sh. Harbajan Lal from whom defendant alleges be have purchased the suit property who vide his affidavit which is Ex DW2/A, supported the case of the defendant and relied upon documents which are marked as A collectively i.e. GPA, Agreement to sell, affidavit, receipt dated 30.11.1989.”

7. Trial court held appellant/defendant no. 1 to be the owner of the suit property in terms of the original documentation dated 30.11.1989 proved by the appellant/defendant no. 1 as Ex.DW1/1

(colly.) and which documents are GPA and Agreement to Sell and affidavit executed in favor of Sh. Harbhajan Lal by the respondent/plaintiff with respect to the suit property of 250 sq. yds. Appellant/defendant no.1 also proved documentation Ex.DW1/2 (colly.) dated 20.10.1999 executed by Sh. Harbhajan Lal in favor of the appellant/defendant no.1. Respondent/plaintiff proved the documents executed in his favour by which he had become owner of the entire land of 11888 sq. yds. and which were exhibited as Ex.PW1/2 to Ex.PW1/4.

8. I may note that there is no dispute that the respondent/plaintiff was the original owner of the suit property and in fact the entire colony. The issue is that whether the respondent/plaintiff did or did not sell the suit plot to Sh. Harbhajan Lal and which Sh. Harbhajan Lal thereafter sold the suit plot to the appellant/defendant no. 1.

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

- (i) Whether the first appellate court has not committed gross illegality and perversity in overlooking the documents

Ex.DW1/1(colly.) proved by the appellant/defendant no. 1 showing purchase of the suit plot by Sh. Harbhajan Lal and Ex.DW1/2(colly.) by Sh. Harbhajan Lal in favor of the appellant/defendant no.1? And, whether the first appellate court has not fallen into complete perversity and illegality in denying the ownership of the suit plot to the appellant/defendant no. 1 only on the ground that the appellant/defendant no. 1 did not have earlier original documents in favor of Sh. Harbhajan Lal and that allegedly Sh. Harbhajan Lal had though entered the witness box but his documents being only photocopies are to be taken as not proved though the same were exhibited as Ex.DW2/1 and Ex.DW2/2 and later de-exhibited and which are the documents dated 20.10.1989 executed by the respondent/plaintiff Sh. Som Pal in favour of the said Sh. Harbhajan Lal?

(ii) Whether the first appellate court has not committed complete illegality and perversity in denying ownership to the appellant/defendant no.1 of the suit property on the ground that in the police complaints filed by the appellant/defendant no. 1 as Ex.DW1/P-1 and complaint dated 21/22.08.2009 (proved in

affidavit by way of evidence of appellant/defendant no.1 but not given exhibit number) the appellant/defendant had stated that she purchased the suit property from Sh. Som Pal/respondent/plaintiff being factually incorrect as the appellant/defendant no.1 had purchased the suit property from Sh. Harbhajan Lal by ignoring that actually in the second complaint dated 21/22.08.2009 the appellant/defendant no. 1 has clearly stated that she purchased the suit property from Sh. Som Pal and Sh. Harbhajan Lal?

(iii) Whether the first appellate court has erred and committed complete perversity in holding that the documents Ex.DW2/1 and Ex.DW2/2 dated 20.10.1989 executed by Sh. Som Pal/respondent/plaintiff in favour of Sh. Harbhajan Lal cannot be looked into as they are only photocopies although no such objection was raised before the commencement of cross-examination of DW-2/Sh. Harbhajan Lal that the documents Ex.DW2/1 and Ex.DW2/2 are only photocopies and therefore objection to mode of proof of the documents stood waived in view of the ratio of the judgment of the Supreme Court in the

case of *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another*, (2003) 8 SCC 752?

(iv) Whether the first appellate court has committed complete illegality and perversity in denying the benefit of the receipts executed by M/s Neel Kamal Properties (owner: Sh. Sompal the respondent/plaintiff) dated 15.10.1989 and 25.11.1989, Ex.DW1/3 (colly.) only because these receipts mention the name of Sh. Shobha Ram the husband of appellant/defendant no.1 instead of appellant/defendant no.1 although Sh. Shobha Ram is admittedly the husband of appellant/defendant no. 1.

10. In my opinion, all the aforesaid substantial questions of law have to be answered in favour of the appellant/defendant no.1 and against the respondent/plaintiff. The detailed reasons are given hereinafter.

11. In my opinion, the first appellate court has placed undue emphasis, and clearly illegally, upon the fact that Sh. Harbhajan Lal did not give original title documents by which he purchased the suit property to the appellant/defendant no.1 inasmuch as the documents

Ex.DW2/1 and Ex.DW2/2 clearly show that Sh. Harbhajan Lal owned 533 sq. yds. in Khasra No. 30/2 and he had only sold 250 sq. yds. of plot no. 57 to the appellant/defendant no.1. Once only part of the plot was sold then surely only photocopies of the original title documents with Sh. Harbhajan Lal would have been given to the appellant/defendant no.1 and not the original title documents which would be required by Sh. Harbhajan Lal with respect to balance area of 283 sq. yds. remaining with him. Also, it has been held by the Supreme Court in the case of *R.V.E. Venkatachala Gounder (supra)* that once there is no objection to the mode of proof of documents being photocopies then subsequently it cannot be argued that the documents cannot be looked into being only photocopies. When DW-2 Sh. Harbhajan Lal was cross-examined on 4.3.2014 after he tendered his affidavit by way of evidence as Ex.DW2/A and also proved the transfer documents Ex.DW2/1, then Ex. DW2/2 these documents could not have been only marked because there is no objection recorded of the respondent/plaintiff that the documents be not exhibited and be only marked because they are photocopies. Clearly, therefore, the ratio of the judgment of the Supreme Court in the case

of *R.V.E. Venkatachala Gounder (supra)* applies and the documents Ex.DW2/1 and Ex.DW2/2 dated 20.10.1989 executed by the respondent/plaintiff/Sh. Som Pal in favour of Sh. Harbhajan Lal stood proved and thus Sh. Harbhajan Lal was validly entitled to transfer 250 sq. yds. of plot no. 57 to the appellant/defendant no.1

12. The trial court has also rightly relied upon the receipts Ex.DW1/3 (colly) dated 15.10.1989 and 25.11.1989 executed by M/s. Neel Kamal Properties in favour of Sh. Shobha Ram with respect to subject plot no. 57-A inasmuch as, these receipts are in favour of the husband of the appellant/defendant no.1 and effectively therefore for the benefit of the appellant/defendant no.1 and these receipts clearly mentioned the plot as the subject/suit plot no.57-A and the area as 250 sq. yds. The trial court has also rightly noted that respondent/plaintiff in his cross examination dated 18.8.2011 had admitted that he had carried on business as a property dealer in the name of M/s. Neel Kamal Properties. Clearly, therefore, appellant/defendant no. 1 had proved that she had paid the necessary consideration for purchase of the properties and at which time Sh. Harbhajan Lal and Sh. Som Pal were acting together. I may note that we are dealing with illiterate

people and unauthorized colonies in Delhi and documentation whether in the form of transfer documents or receipts etc will always have something or the other left which is legally desirable, however, when civil cases are decided, they are decided on preponderance of probabilities by taking all facts and evidence which have come on record and the necessary conclusions and irrefutable inferences which can be drawn therefrom. This Court cannot ignore the fact that the appellant/defendant no.1 is completely illiterate and also a widow, and thus her documents would not be perfectly drafted, prepared and examined by the best legal mind. It is in fact for this reason that the appellant/defendant no.1 in her police complaints Ex.DW1/P1 and dated 21/22.08.2009 had mentioned that she had purchased the property from Sh. Som Pal/respondent/plaintiff, however, in the second complaint dated 21/22.08.2009 she had mentioned both the names of Sh. Sompal and Sh. Harbhajan Lal and therefore, the case of the appellant/defendant no.1 cannot be doubted and her purchase of the property from Sh. Harbhajan Lal. The first appellate court therefore clearly fell into a grave error and perversity in taking an admission of the appellant/defendant no.1 in Ex.DW1/P1 without

referring to the admission in complaint dated 21/22.08.2009 and which shows that in the complaint dated 21/22.08.2009 the appellant/defendant no.1 does not talk of purchase of the property only from Sh. Sompal/respondent/plaintiff but also from Sh. Harbhajan Lal simultaneously.

13. An interesting aspect to be noted in this case is that the respondent/plaintiff admitted in the written statement that plot no.74 is a totally different plot than the suit plot and which was separately purchased by the appellant/defendant no.1 and this is stated by the respondent/plaintiff in para 6 of the plaint and in para 6 of the replication to the para 6 of the written statement. Therefore, the suit plot had nothing to do with plot no.74 and in spite of the same counsel for the respondent/plaintiff before this Court sought to argue that appellant/defendant no.1 had only purchased plot no.74 and that she had never purchased plot no.57A.

14. In fact, during the course of hearing counsel for the respondent/plaintiff first argued that appellant/defendant no.1 is not in possession of 250 sq. yds. out of property no. 57 in Khasra No.30/2 and that she was in possession of entire 500 sq. yds. but after agreeing

initially to appointment of a Local Commissioner, and to which aspect the appellant/defendant no.1 agreed, and which Local Commissioner was to be appointed to ensure that the appellant/defendant no.1 has only 250 sq. yds. in her possession, the counsel for the respondent/plaintiff after taking subsequently instructions backed out and said that the respondent/plaintiff does not agree to appointment of a Local Commissioner to determine the area in possession of the appellant/defendant no.1

15. In view of the aforesaid discussion, this Regular Second Appeal is allowed. All the substantial questions of law are answered in the favour of the appellant/defendant no.1 and against the respondent/plaintiff. Suit of the respondent/plaintiff will stand dismissed by affirming the judgment of the trial court dated 28.2.2015 and setting aside the judgment of the first appellate court dated 13.7.2015. Parties are left to bear their own costs.

AUGUST 18, 2017
ib/Ne/AK

VALMIKI J. MEHTA, J