

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

% **Date of decision: 14th September, 2018**

+ **RSA 131/2018, CM No.37323/2018 (for stay) & CM No.37326/2018
(for condonation of delay of 144 days in re-filing the appeal).**

BISHAN CHAND

..... Appellant

Through: Mr. Hem C. Vashisht and Mr. Rahul
Malik, Advs.

Versus

VED PRAKASH (SINCE DECEASED)

THR LRS & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 8th December, 2017 in CIS-RCA DJ-8726-2016 (CNR-DLST 01-000072-2013) of the Court of the District Judge (South)] of dismissal of First Appeal under Section 96 of the CPC filed by the appellant against the judgment and decree [dated 22nd November, 2013 in CS No.800/10/1996 (Unique Case ID No.02401C0070131998) of the Court of Civil Judge-06 (Central)] of dismissal of suit filed by the appellant/plaintiff against the two respondent/defendants, (i) for declaration that the appellant/plaintiff is the owner of plot/property No.B-34, Central Market, Madangir, New Delhi; (ii) for permanent injunction restraining the respondent/defendant no.1 from making any construction over the said property; (iii) for mandatory injunction directing the respondent/defendant no.1 to remove/demolish the

illegal construction raised over the said property; and, (iv) and for recovery of possession of the said property from the respondent/defendant no.1.

2. The appeal came up first before this Court on 12th September, 2018, when on request on behalf of the counsel for the appellant/plaintiff, it was adjourned to today.

3. The appeal is accompanied with an application for condonation of delay in re-filing of 144 days. The question of considering the application for condonation of delay will arise only if the Second Appeal is found to entail a substantial question of law which is *sine qua non* for entertaining a Second Appeal as per dicta of the Supreme Court in **Surat Singh Vs. Siri Bhagwan** (2018) 4 SCC 562.

4. The counsel for the appellant/plaintiff has been heard.

5. The appellant/plaintiff and the two respondents/defendants are brothers. The appellant/plaintiff claimed to have purchased the said property from respondent/defendant no.2 through Agreement to Sell, Power of Attorney, Affidavit, Receipt etc. and further claimed to have allowed the respondent/defendant no.1 use of the said property.

6. The respondent/defendant no.2, in his written statement, denied Agreement to Sell and other documents on the basis of which the appellant/plaintiff claimed to have purchased the property.

7. The respondent/defendant no.1 claimed to be a tenant under the respondent/defendant no.2 in the property at a rent of Rs.100/- per month. Needless to state that if the occupation/possession of the respondent/defendant no.1 of the property is as a tenant, at a rent of Rs.100

per month, the Delhi Rent Control Act, 1958 would apply and under Section 14(1) and 50 thereof, the jurisdiction of the Civil Court to order recovery of possession would be barred.

8. The respondent/defendant no.2 in his written statement admitted the said tenancy of the respondent/defendant no.1.

9. However the respondent/defendant no.2, in his statement under Order X of the CPC, admitted his signatures on the Agreement to Sell, Power of Attorney, Affidavit, Receipt etc. in favour of the appellant/plaintiff but stated that the said signatures were obtained by the appellant/plaintiff by practicing misrepresentation.

10. The counsel for the appellant/plaintiff has argued that since the finding of both the Courts on the issue framed in the suit i.e. “Whether plaintiff has concealed material facts. If so, its effect? OPD” is in favour of the appellant/plaintiff, the Courts below have committed an illegality in still denying relief to the appellant/plaintiff. It is further argued that the appellant/plaintiff in the First Appeal filed an application under Order XLI Rule 27 of the CPC to lead additional evidence. It is informed that the appellant/plaintiff, during the pendency of the appeal, discovered that the wife of the respondent/defendant no.1 has appeared before the Licencing Authority claiming to be in possession of the property as a tenant under the appellant/plaintiff.

11. I have enquired from the counsel for the appellant/plaintiff, that since the appellant/plaintiff sued for declaration of his title and for recovery of possession of immovable property on the basis of title, how can the appellant/plaintiff on the basis of Agreement to Sell, Power of Attorney etc.

be declared to be the owner of the property and be granted a decree of declaration of title and for recovery of possession on the basis of title.

12. The counsel for the appellant/plaintiff, aware of ***Suraj Lamp & Industries P. Ltd. Vs. State of Haryana*** 2009 (7) SCC 363, (2012) 1 SCC 656, states that the same does not apply to the appellant/plaintiff since the documents are of the year 1984 i.e. prior to the pronouncement of the said judgment. However on enquiry as to why the said judgment would not apply, the counsel for the appellant/plaintiff is unable to give an answer.

13. There appears to be a prevalent misconception that ***Suraj Lamp & Industries P. Ltd.*** supra is only prospective and not retrospective. The following paragraphs of the said judgment as reported in (2012) 1 SCC 656 are relevant:-

“23. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank, that the "concept of power-of-attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/WILL transfers” do not convey title and do not amount

to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53-A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

25. *It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.*

26. *We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said “SA/GPA/WILL transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/WILL*

transactions” has been accepted acted / upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. *We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favor of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/WILL transactions” are not intended to apply to such bonafide/genuine transactions.”*

14. However, as would be clear from the aforesaid paragraphs, the judgment does not lay down any new law or principle and is not pathbreaking and merely reiterates the well settled legal position as always understood in the past as well. Even on request to make the judgment applicable prospectively, it was clarified that SPA/GPA/Will transactions effected prior to the said judgment, could not be treated as completed transfers or conveyances and could be treated as existing agreements of sale on basis of which conveyance deeds to perfect title could be obtained or specific performance sought or defence of Section 53A of Transfer of

Property Act, 1882 taken or registration from development authorities sought. It was further clarified that where on basis of SPA/GPA/Will transactions, mutations had already been effected, such mutations will also not be disturbed on account of the judgment. Supreme Court nowhere said that SPA/GPA/Will transactions of a date prior to the judgement will constitute a title. Rather, it was held, they would not. The appellant / plaintiff thus cannot claim that he has title to the property as agreement purchaser and the courts cannot declare the appellant / plaintiff to be having title to the property.

15. As far back as in *Jiwan Dass Rawal Vs. Narain Dass* AIR 1981 Del 291 followed in *Deewan Arora Vs. Tara Devi Sen* 2009 SCC OnLine Del 3203, *Sunil Kapoor Vs. Himmat Singh* 2010 SCC OnLine Del 354, *ASV Industry Vs. Surinder Mohan* 2013 SCC OnLine Del 3176 and *Samarjit Chakravarty Vs. Tej Properties Pvt. Ltd.* 2014 SCC OnLine Del 240, this Court held that an Agreement to Sell does not vest any title in the property and only gives a right to seek specific performance. It was further held that even on passing of a decree for specific performance no right in the property is acquired by the agreement purchaser till implementation of the said decree by execution / registration of conveyance / transfer deed being executed in favour of agreement purchaser.

16. As far as the contention of the counsel for the appellant/plaintiff, of the application of the appellant/plaintiff under Order XLI Rule 27 of the CPC having been wrongly dismissed by the First Appellate Court, is concerned, even if the said evidence were to be allowed and considered, it would not take away from the fact that the appellant/plaintiff cannot be

declared as owner of the property and the appellant/plaintiff cannot be granted the decree for recovery of possession inasmuch as even if the respondent/defendant no.1 were to be held to be a tenant under the appellant/plaintiff, the jurisdiction of the Civil Court to order his eviction would be barred as aforesaid by the provisions of the Rent Act.

17. No error is thus found in the judgment and decree impugned. The same do not raise any substantial question of law.

Dismissed.

No costs.

SEPTEMBER 14, 2018
'pp'..

RAJIV SAHAI ENDLAW, J.